

CITY OF DES MOINES, WASHINGTON

ORDINANCE NO. 1444

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the incurrence of indebtedness; providing for the sale and issuance of \$3,450,000 Limited Tax General Obligation and Refunding Bonds, 2008B, to provide funds to refund the City's outstanding Limited Tax General Obligation Bonds, 1997 maturing on and after December 1, 2009, and to pay the incidental costs and costs related to the sale and issuance of such bonds; and to pay part of the costs necessary to carry out certain capital improvements to the City's transportation infrastructure, providing for the date, denominations, form, terms, registration privileges, maturities, interest rates and covenants of the bonds; providing for the annual levy of taxes to pay the principal of and the interest on such bonds; establishing a bond fund and a project fund for the bonds; and providing for the sale and delivery of such bonds to Seattle-Northwest Securities Corporation, Seattle, Washington.

WHEREAS, pursuant to Ordinance No. 1201, the City has heretofore issued and sold the 1997 Bonds, of which \$1,025,000 in aggregate principal amount are currently outstanding; and

WHEREAS, pursuant to chapter 39.53 RCW, the City is authorized to sell and issue, without an election, limited tax general obligation bonds of the City to refund the Refunded 1997 Bonds; and

WHEREAS, the refunding of the Refunded 1997 Bonds will provide a debt service savings to the City and for a modification of the covenants and other terms of such bonds; and

WHEREAS, pursuant to Resolution No. 944 passed on December 5, 2002, the City Council of the City adopted the City's Comprehensive Transportation Plan, which contains a capital plan recommending certain capital improvements to be made to the City's transportation infrastructure; and

WHEREAS, the City deems it necessary and advisable that \$3,450,000 in aggregate principal amount of limited tax general obligation and refunding bonds now be issued and sold to provide funds to pay the all or part of the costs of the Project; and

WHEREAS, the incurrence of indebtedness by the City to carry out the Project will not cause the total indebtedness of the City to be incurred without the assent of the voters of the City to exceed the limitations set forth in chapter 39.36 RCW; and

WHEREAS, the Purchaser has offered, by way of the Purchase Agreement, to purchase such limited tax general obligation and refunding bonds upon the terms and conditions set forth below; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Sec 1. Definitions. Unless the context otherwise requires, the terms defined in this Section, for all purposes of this Ordinance (including the recitals hereto) and of any ordinance supplemental hereto, shall have the meanings herein specified; words importing the singular number include the plural number and vice versa:

“Beneficial Owner” means, with respect to any Bond, the Person named on the records of the Custodian as having the right, without a physical certificate evidencing such right, to transfer, to hypothecate and to receive the payment of the principal of, premium, if any, and interest on such Bond as the same becomes due and payable.

“Bond Fund” means the special fund designated as the “Limited Tax General Obligation and Refunding Bond Fund, 2008B,” created in Section 19 of this Ordinance.

“Bond Register” means the registration books on which are maintained the names and addresses of the owners or nominees of the owners of the Bonds.

“Bonds” means the City of Des Moines, Washington, Limited Tax General Obligation and Refunding Bonds, 2008B, dated December 1, 2008, in an original aggregate principal amount of \$3,450,000, the sale and issuance of which are authorized by this ordinance.

“Book-Entry Termination Date” means the fifth business day following the date of receipt by the Registrar of the City’s request to terminate the book-entry system of registering the beneficial ownership of the Bonds.

“City” means the City of Des Moines, Washington, a code city, organized and existing under State law.

“City Council” means the City Council of the City.

“Closing” means the date and time when the Bonds are delivered to the Purchaser in exchange for payment in full therefor.

“Code” means the Internal Revenue Code of 1986, as heretofore or hereafter amended, together with all applicable rulings and regulations heretofore or hereafter promulgated thereunder.

“Custodian” means (a) The Depository Trust Company, New York, New York, or (b) any successor thereto engaged by the City to operate a book-entry system for recording, through electronic or manual means, the beneficial ownership of the Bonds, in which system no physical certificates are issued to and registered in the name of the Custodian or its nominee, and delivered to the Custodian; provided, that such book-entry system operated by the Custodian may include the use of subsystems of recording the beneficial ownership of Bonds which are operated by parties other than the Custodian and the use of a nominee for the Custodian; and the term “Custodian,” as used herein, includes any party operating any such subsystem.

“Escrow Agreement” means that certain agreement between the City and the Escrow Trustee, dated as of Closing.

“Escrow Obligations” means those certain Government Obligations necessary to accomplish the Refunding Plan, as set forth on Schedule 1 to the Escrow Agreement.

“Escrow Trustee” means U.S. Bank National Association, acting in its fiduciary capacity as escrow trustee pursuant to the Escrow Agreement.

“Government Obligations” means “government obligations,” as defined in Chapter 39.53 RCW, as now in existence or hereafter amended.

“Letter of Representations” means the Letter of Representations, between the City and the Custodian pertaining to the payment of the Bonds and the “book-entry” system for evidencing the beneficial ownership of the Bonds prior to the Book-Entry Termination Date.

“MSRB” means the Municipal Securities Rulemaking Board.

“1997 Bonds” means the City of Des Moines, Washington, Limited Tax General Obligation Bonds, 1997, dated December 1, 1997, in the outstanding aggregate principal amount of \$1,025,000 as of this date.

“NRMSIR” means a nationally recognized municipal securities information repository designated by the SEC.

“Ordinance” means this Ordinance No. 1444 of the City.

“Owner” means the person named as the registered owner of a Bond on the Bond Register.

“Preliminary Official Statement” means the Preliminary Official Statement pertaining to the Bonds and the City’s Limited Tax General Obligation Bonds, 2008A, dated November 14, 2008.

“Project” means the following projects to be financed, in whole or in part, with proceeds of the Bonds: (1) refunding the Refunded 1997 Bonds on a current basis pursuant to the Refunding Plan, (2) undertaking the Transportation Projects, and (3) paying the incidental costs and costs related to the sale and issuance of the Bonds.

“Project Fund” means the special fund designated as the “Transportation Capital Improvement Fund, 2008B,” created in Section 20 of this Ordinance.

“Purchase Agreement” means the Bond Purchase Agreement for the Bonds by and between the City and the Purchaser, which written Purchase Agreement is on file with the City Clerk and is incorporated herein by this reference.

“Purchaser” means Seattle-Northwest Securities Corporation.

“RCW” means the Revised Code of Washington, as amended.

“Refunded Bonds” means the 1997 Bonds maturing on and after December 1, 2009.

“Refunding Plan” means the plan to refund all of the Refunded 1997 Bonds on a current basis with a portion of the proceeds of the Bonds, as more particularly described in the Escrow Agreement.

“Registrar” means the fiscal agency of the State in New York, New York (as of the date of Closing, The Bank of New York Mellon), which fiscal agency is appointed from time to time by the State Finance Committee pursuant to chapter 43.80 RCW.

“Rule” means SEC Rule 15c2-12.

“SEC” means the United States Securities and Exchange Commission.

“SID” means a state information depository.

“State” means the State of Washington.

“Term Bonds” means the Bonds scheduled to mature on December 1, 2021, 2025 and 2028.

“Transportation Projects” means capital improvements to the City’s transportation infrastructure described in the Comprehensive Transportation Plan of the City, or necessary repairs to transportation infrastructure owned and maintained by the City, such as bridges and other structures, and roadways.

Sec 2. Finding, purpose and description of Bonds. The City authorizes the sale and issuance of its “Limited Tax General Obligation and Refunding Bonds, Series 2008B,” for the purpose of providing all or part of the funds for the Project.

The Bonds shall be in the aggregate principal amount of \$3,450,000. The Bonds shall be dated December 1, 2008; shall be issued in fully registered form as to both principal and interest; shall be in the denomination of \$5,000 each or any integral multiple thereof within a single maturity; and shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification. The Bonds shall bear interest at the rates set forth below and shall mature on December 1 in each of the years and in the principal amounts, as set forth below:

Maturity Date (December 1)	Principal Amount	Interest Rate Per Annum
2009	\$ 170,000	4.000%
2010	185,000	4.000%
2011	190,000	4.000%
2012	200,000	4.000%
2013	195,000	4.000%
2014	205,000	4.000%
2015	210,000	4.250%
2016	225,000	4.250%
2017	235,000	4.250%
2021*	510,000	4.375%
2025*	600,000	4.625%
2028*	525,000	4.700%

* Term Bonds

The Bonds shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) from their date or from the most recent interest payment date to which interest has been paid or duly provided for, whichever is later, payable on June 1, 2009, and semiannually thereafter on December 1 and June 1 of each year to the maturity or earlier redemption thereof. If any Bond is duly presented for payment upon maturity or earlier redemption and is not paid, then interest thereon shall continue to accrue thereafter at the rate stated therein until such Bond is paid.

The Bonds shall be negotiable instruments to the extent provided by RCW 62A.8-102 and RCW 62A.8-105.

On the date of issue of the Bonds, all Bonds maturing in the same maturity year shall be issued in the form of a single certificate, which certificate shall be registered in the name of the Custodian, or its nominee, and delivered to the Custodian. The Custodian shall hold each such Bond certificate in fully immobilized form for the benefit of the Beneficial Owners of the Bonds pursuant to the Letter of Representations, until the earliest to occur of either (1) the date of maturity of the Bonds evidenced by such certificate, at which time the Custodian shall surrender such certificate to the Registrar for payment of the principal of and interest on such Bonds coming due on such date, and the cancellation thereof; (2) the Book-Entry Termination Date; or (3) the date the City determines to utilize a new Custodian for the Bonds, at which time the old Custodian shall (provided the City is not then in default of any payment then due on the outstanding Bonds) surrender the immobilized certificates to the Registrar for transfer to the new Custodian and cancellation as herein provided.

For so long as any outstanding Bonds are registered in the name of the Custodian or its nominee and held by the Custodian in fully immobilized form as described in this Section 2, the rights of the Beneficial Owners shall be evidenced solely by an electronic and/or manual entry made from time to time on the records established and maintained by the Custodian in accordance with the Letter of Representations, and no certificates evidencing such Bonds shall be issued and registered in the name of any Beneficial Owner or such Beneficial Owner's nominee.

The City may terminate the “book-entry” system of registering ownership of the Bonds at any time (provided the City is not then in default of any payment then due on the outstanding Bonds) by delivering to the Registrar: (a) a written request that it issue and deliver Bond certificates to each Beneficial Owner or such Beneficial Owner’s nominee on the Book-Entry Termination Date; (b) a list identifying the Beneficial Owners as to both name and address; and (c) a supply of Bond certificates, if necessary for such purpose. Upon surrender to the Registrar of the immobilized certificates evidencing all of the then outstanding Bonds, the Registrar shall issue and deliver new certificates to each Beneficial Owner or such Beneficial Owner’s duly appointed agent, naming such Beneficial Owner or such Beneficial Owner’s nominee as the Owner thereof. Such certificates may be in any integral multiple of \$5,000 within a single maturity. Following such issuance, the Owners of such Bonds may transfer and exchange such Bonds in accordance with Section 10 hereof.

Neither the City nor the Registrar shall have at any time any responsibility or liability to any Beneficial Owner of Bonds or to any other person for any error, omission, action or failure to act on the part of the Custodian with respect to payment, when due, to the Beneficial Owner of the principal and interest on the Bonds, proper recording of beneficial ownership of Bonds, proper transfers of such beneficial ownership, or any notices to Beneficial Owners or any other matter pertaining to the Bonds.

Sec 3. Place, manner and medium of payment. Both the principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Prior to the Book-Entry Termination Date, the principal of and interest on the Bonds shall be paid by the Registrar to the Custodian as the Owner thereof, for the benefit of the Beneficial Owners thereof, in accordance with the Letter of Representations. From and after the Book-Entry Termination Date, interest on the Bonds shall be paid by check or draft mailed by the Registrar (or, if approved by the City Finance Director, by wire transfer) on or before the interest payment date, to the Owners, at the addresses for such Owners appearing on the Bond Register on the fifteenth day of the month preceding the interest payment date. From and after the Book-Entry Termination Date, principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the Owners at the principal corporate trust office of the Registrar.

Sec 4. Redemption; open market purchase. The Bonds maturing on December 1, 2021, are Term Bonds and, if not previously purchased by the City in the open market or optionally redeemed as set forth below, are subject to mandatory sinking fund redemption prior to maturity in part on December 1 in 2018 through 2020, inclusive, by lot (in such manner as the Registrar shall determine), at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date, in the following mandatory sinking fund redemption amounts:

Mandatory Sinking Fund Redemption Dates (December 1)	Mandatory Sinking Fund Redemption Amounts
2018	\$ 120,000
2019	125,000
2020	130,000
2021*	135,000

* Scheduled maturity

The Bonds maturing on December 1, 2025, are Term Bonds and, if not previously purchased by the City in the open market or optionally redeemed as set forth below, are subject to mandatory sinking fund redemption prior to maturity in part on December 1 in 2022 through 2024, inclusive, by lot (in such manner as the Registrar shall determine), at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date, in the following mandatory sinking fund redemption amounts:

Mandatory Sinking Fund Redemption Dates (December 1)	Mandatory Sinking Fund Redemption Amounts
2022	\$ 140,000
2023	145,000
2024	155,000
2025*	160,000

* Scheduled maturity

The Bonds maturing on December 1, 2028, are Term Bonds and, if not previously purchased by the City in the open market or optionally redeemed as set forth below, are subject to mandatory sinking fund redemption prior to maturity in part on December 1 in 2026 through 2027, inclusive, by lot (in such manner as the Registrar shall determine), at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date, in the following mandatory sinking fund redemption amounts:

Mandatory Sinking Fund Redemption Dates (December 1)	Mandatory Sinking Fund Redemption Amounts
2026	\$ 165,000
2027	175,000
2028*	185,000

* Scheduled maturity

The Bonds maturing on or prior to December 1, 2017, shall not be subject to redemption prior to their scheduled maturity. The Bonds maturing on or after December 1, 2021, are subject to redemption at the option of the City, in whole or in part on any date on or after December 1, 2018 (maturities to be selected by the City and by lot within a maturity in such manner as the Registrar shall determine), at a redemption price of par plus accrued interest, if any, to the date fixed for redemption. In the event that the City shall purchase or optionally redeem any Term Bonds, the principal amount of such Term Bond shall be applied as a credit against future mandatory sinking fund redemption requirements applicable to such Term Bond, pro rata to the extent feasible; provided that the amount of credit in each year shall be at least \$5,000 or any integral of \$5,000 in excess thereof.

Any Bond in the principal amount of greater than \$5,000 may be partially redeemed in any integral multiple of \$5,000. In such event, upon surrender of such Bond at the principal corporate trust office of the Registrar, a new Bond or Bonds (at the option of the Owner) of the same maturity and interest rate and in the aggregate principal amount remaining unredeemed shall be authenticated and delivered to the Owner, without charge to the Owner for such partial redemption, in any denomination authorized by this Ordinance and selected by the Owner.

Prior to the Book-Entry Termination Date, the Registrar shall give, or cause to be given, notice of a call for redemption of any Bonds to the Custodian, as the Owner thereof, for the benefit of the Beneficial Owners thereof, in accordance with the Letter of Representations. From and after the Book-Entry Termination Date, notice of any such intended redemption shall be given by or on behalf of the City not less than 30 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the Owner of each Bond to be redeemed at the address appearing on the Bond Register on the day the notice is mailed. The requirements of this Section shall be deemed to be complied with when notice is mailed as provided in this Ordinance, whether or not it is actually received by the Owner of any Bond. In addition, such redemption notice shall be mailed within the same time period, postage prepaid, each NRMSIR, but such additional notice shall not be a condition precedent to the redemption of such Bonds.

If such notice to the Owners shall have been given and the City shall have set aside sufficient money for the payment of all Bonds called for redemption on the date fixed for redemption, the Bonds so called shall cease to accrue interest after such redemption date, and all such Bonds shall be deemed not to be outstanding under this Ordinance for any purpose, except

that the Owners of such Bonds shall be entitled to receive payment of the redemption price and interest accrued on the principal of the Bonds to the redemption date from the money set aside for such purpose.

The City reserves the right to purchase any or all of the Bonds on the open market at any time and at any price.

All Bonds redeemed or purchased by the City shall be surrendered to the Registrar for cancellation.

Sec 5. Debt limit not exceeded. The City finds and covenants that the Bonds are issued within all constitutional and statutory debt limitations presently applicable to the City.

Sec 6. Pledge of full faith, credit and resources. The Bonds are limited tax general obligations of the City. Unless the principal of and interest on the Bonds are paid from other sources, so long as any Bonds are outstanding, the City hereby irrevocably covenants to include in its budgets and to make annual levies of taxes within the constitutional and statutory tax limitations provided by law without a vote upon all property within the City subject to taxation in amounts which, together with any other money of the City legally available for such purposes, shall be sufficient to pay such principal and interest on the Bonds as the same shall become due. The City hereby irrevocably pledges its full faith, credit and resources to the annual levy and collection of such taxes and for the prompt payment of principal and interest on the Bonds. The City hereby irrevocably covenants that the annual tax provided for herein to be levied for the payment of the principal of and interest on the Bonds shall be within and as a part of the tax levy permitted the City without a vote.

The City hereby further irrevocably sets aside, pledges and appropriates to the payment of the principal of and interest on the Bonds a sufficient portion of each annual tax levy to be levied and collected by the City prior to the full payment of the principal of and interest on the Bonds. All such taxes and other money to be used for such purposes shall be paid into the Bond Fund no later than the date such funds are required for the payment of principal of and interest on the Bonds.

Sec 7. Form of Bonds. The Bonds shall be typewritten, printed or lithographed on good bond paper in a form consistent with this Ordinance and Washington law.

Sec 8. Execution of Bonds. The Bonds shall be signed on behalf of the City with the facsimile or manual signatures of the Mayor and the City Clerk, and shall have the seal of the City impressed or a facsimile of such seal imprinted on the Bonds.

In case either or both of the officers who shall have executed any Bond shall cease to be such officer or officers of the City before the Bond so signed shall have been authenticated or delivered by the Registrar or issued by the City, such Bond nevertheless may be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. Any Bond also may be signed and attested on behalf of the City by such persons as at the actual date of execution of such Bond shall be the proper officers of the City although at the original date of such Bond such persons were not such officers of the City.

Sec 9. Authentication and delivery of Bonds by Registrar. The Registrar is authorized and directed, on behalf of the City, to authenticate and deliver Bonds initially issued or transferred or exchanged in accordance with the provisions of such Bonds and this Ordinance.

Only such Bonds as shall bear a "Certificate of Authentication" manually executed by an authorized signatory of the Registrar shall be valid or obligatory for any purpose or entitled to the benefits of this Ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered under and are entitled to the benefits of this Ordinance.

The Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bonds.

Sec 10. Registration. The Registrar shall keep, or cause to be kept, the Bond Register at its principal corporate trust office.

The City and the Registrar, in its discretion, may deem and treat Owner of each Bond as the absolute owner thereof for all purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 3 of this Ordinance, but such registration may be transferred as provided in this Section 10. All such payments made as provided in Section 3 of this Ordinance shall be valid and shall satisfy and discharge the liability of the City upon such Bond to the extent of the amount or amounts so paid.

The registered ownership of any Bond may be transferred or exchanged. Prior to the Book-Entry Termination Date, the beneficial ownership of the Bonds may only be transferred on the records established and maintained by the Custodian. On and after the Book-Entry Termination Date, transfer of any Bond shall be valid only if it is surrendered at the principal corporate trust office of the Registrar, with the assignment form appearing on such Bond duly executed by the Owner or such Owner's duly authorized agent, in a manner satisfactory to the Registrar. Upon such surrender, the Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Owner or transferee for such transfer (other than taxes payable on account of such transfer), a new Bond or Bonds (at the option of the new Owner), of the same maturity and interest rate and for the same aggregate principal amount, in any authorized denomination, naming as Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and cancelled Bond.

On and after the Book-Entry Termination Date, any Bond may be surrendered at the principal corporate trust office of the Registrar and exchanged, without charge, for an equal aggregate principal amount of Bonds, in any authorized denomination. The Registrar shall not be obligated to transfer or exchange any Bond during the 15 days preceding any interest payment, redemption or maturity date.

The Registrar may become the Owner of any Bond with the same rights it would have if it were not the Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners of the Bonds.

The City covenants that, until all Bonds shall have been surrendered and cancelled, it will maintain a system of recording the ownership of each Bond that complies with the provisions of the Code.

Sec 11. Mutilated, lost, stolen or destroyed Bonds. If any Bond becomes mutilated, lost, stolen or destroyed, the Registrar may authenticate and deliver a new Bond of the same maturity and interest rate and of like tenor and effect in substitution for such mutilated, lost, stolen or destroyed Bond, all in accordance with law. If such mutilated, lost, stolen or destroyed Bond has matured, the City, at its option, may pay the same without the surrender of the original Bond. However, no such substitution or payment shall be made unless and until the applicant shall furnish (a) evidence satisfactory to the Registrar of the destruction or loss of the original Bond and of the ownership of such original Bond, and (b) such additional security, indemnity or evidence as may be required by or on behalf of the City. No substitute Bond shall be furnished unless the applicant shall reimburse the City and the Registrar for their respective expenses in the furnishing of such substitute Bond. Any such substitute Bond so furnished shall be equally and proportionately entitled to the security of this Ordinance with all other Bonds issued under this Ordinance.

Sec 12. Defeasance. If money and/or Government Obligations maturing at such times(s) and bearing such interest to be earned on such obligations (without any reinvestment thereof) as will provide a series of payments which shall be sufficient, together with any money initially deposited, to provide for the payment of all of the principal of and interest on all or a portion of the Bonds, when due in accordance with their terms in accordance with a refunding plan adopted by the City, are set aside in a special fund (hereinafter called the "Trust Account") to effect such payment and are pledged irrevocably for the purpose of effecting such payment, then no further payments need be made into the Bond Fund for the payment of the principal of and the interest

on such Bonds, the Owners thereof shall cease to be entitled to any lien, benefit or security of this Ordinance except for the right to receive the money and the principal and interest proceeds on the obligations set aside in the Trust Account, and such Bonds shall no longer be deemed to be outstanding under this Ordinance.

Sec 13. Sale of the Bonds. The Purchaser has presented the Purchase Agreement to the City pursuant to which the Purchaser has offered to purchase the Bonds, under the terms and conditions provided in the Purchase Agreement, which written Purchase Agreement is on file with the City Clerk and is incorporated in this Ordinance by this reference. The City Council finds that entering into the Purchase Agreement is in the City's best interest and therefore accepts the offer contained in the Purchase Agreement and authorizes the execution of the Purchase Agreement by the City Manager.

The Bonds will be printed at City expense and will be delivered to the Purchaser in accordance with the terms of the Purchase Agreement with the approving legal opinion of Gottlieb Fisher PLLC ("Bond Counsel"), Seattle, Washington, relative to the issuance of the Bonds, printed on or attached to each Bond. Bond Counsel has not been engaged to review or express any opinion concerning the completeness or accuracy of the official statement or other disclosure documentation used in connection with the offer or sale of the Bonds by any person, and Bond Counsel's opinion shall so state. Bond Counsel has not been retained to monitor, and shall not be responsible for monitoring, the City's compliance with any federal law or regulations to maintain the tax-exempt status of the interest on the Bonds.

Sec 14. Execution of Documents; Delivery of Bonds; temporary Bonds. The proper City officials, including, but not limited to, the City Manager and the Finance Director, are authorized and directed to execute and/or approve, as appropriate, all documents, including but not limited to, the final Official Statement pertaining to the Bonds and the commitment from Assured Guaranty Corp. (the "Bond Insurer") for the issuance of a financial guaranty insurance policy for the Bonds (the "Insurance Policy"), and to do everything necessary for the preparation and delivery of a transcript of proceedings pertaining to the Bonds, and the printing, execution and prompt delivery of the Bonds to the Purchaser and for the proper application and use of the proceeds of the sale thereof.

If definitive Bonds are not ready for delivery by the Closing, the City Finance Director, upon the approval of the Purchaser, may cause to be issued and delivered to the Purchaser one or more temporary Bonds with appropriate omissions, changes and additions. Any temporary Bond or Bonds shall be entitled and subject to the same benefits and provisions of this Ordinance with respect to the payment, security and obligation of such temporary Bonds as definitive Bonds authorized by this Ordinance. Such temporary Bond or Bonds shall be exchangeable without cost to the Owners for definitive Bonds when the latter are ready for delivery.

Sec 15. Call of Refunded 1997 Bonds for redemption. The City hereby calls the Refunded 1997 Bonds for redemption on December 31, 2008, at a redemption price of 100% of the principal amount plus accrued interest. Such call for redemption shall become irrevocable upon delivery of the Bonds at Closing.

Sec 16. Acquisition of escrow obligations. The proper City officials, including, but not limited to, the City Finance Director shall, at or prior to Closing, make appropriate arrangements for the payment for and delivery of any Escrow Obligations which are to be purchased in the open market pursuant to the Refunding Plan; and shall, prior to closing, deliver or cause to be delivered to the Federal Reserve Bank in Seattle, Washington, subscriptions for any Escrow Obligations which are to be acquired from the United States Bureau of Public Debt pursuant to the Refunding Plan. The maturing principal of and the interest on such Escrow Obligations, together with the initial cash to be provided to the Escrow Trustee pursuant to the Refunding Plan, shall be sufficient to pay all of the principal of and interest to become due on the refunded Bonds from Closing to and including December 31, 2008, when due, and to redeem on said date, all of the outstanding Refunded 1997 Bonds at a redemption price of 100% of the principal amount of the Refunded 1997 Bonds to be redeemed and interest accrued thereon to the date of redemption.

The Escrow Trustee shall designate in any such subscriptions that all the principal of and interest on the Escrow Obligations subscribed for with the United States Bureau of Public Debt

shall be payable to the Escrow Trustee. Such subscription may be amended as permitted by federal law.

Sec 17. Verification of sufficiency of escrow. The proper City officials, including, but not limited to, the City Finance Director are authorized and directed to obtain, prior to Closing, independent verification that, among other things, the cash flow scheduled to be received from the Escrow Obligations, together with any uninvested initial cash, shall be sufficient to make the payments described in Section 16 hereof.

Sec 18. Escrow Agreement. The Escrow Agreement, in substantially the same form as the draft dated December 1, 2008, on file with the City Clerk, is hereby approved in order to accomplish the refunding of the Refunded 1997 Bonds. The City Finance Director is authorized and directed to (a) execute and to deliver said Escrow Agreement, on behalf of the City, to the Escrow Trustee on or before Closing, with such changes as the City Finance Director deems to be in the best interests of the City; and such execution and delivery of the Escrow Agreement shall evidence irrevocably the approval of the executed Escrow Agreement by the City; and (b) cause the Escrow Trustee to deliver notice of redemption of the Refunded 1997 Bonds in accordance with the Escrow Agreement.

Sec 19. Establishment of Bond Fund. There is hereby created and established in the office of the City Finance Director a special fund to be designated as the "Limited Tax General Obligation and Refunding Bond Fund, 2008B" (the "Bond Fund"). The accrued interest on the Bonds received by the City upon the sale of the Bonds, if any, shall be deposited into the Bond Fund and shall be applied to the payment of interest coming due on the Bonds. The money and investments in the Bond Fund shall be used by the City, together with any other money legally available and designated therefor, to pay the principal of and interest on the Bonds, when due.

Except as provided by the Code and Section 21 of this Ordinance, the interest and profits derived from the investment of funds in the Bond Fund shall be retained therein and applied as described in this Section 19.

Sec. 20. Establishment of Project Fund; Application of Bond proceeds. There is hereby created and established in the office of the City Finance Director a special fund to be designated as the "Transportation Capital Improvement Fund, 2008B" (the "Project Fund").

Proceeds from the sale of the Bonds in the amount of \$3,492,039.05 (which is equal to the original aggregate principal amount of the Bonds, plus a net aggregate original issue premium of \$66,016.55, less an underwriter's discount of \$23,977.50) shall be applied as follows: the sum of \$958,985.33 shall be paid to the Escrow Trustee, for application to the payment of the costs of issuance of the Bonds and costs of accomplishing the Refunding Plan, all in accordance with the Escrow Agreement; the sum of \$23,512.50 shall be paid by the Purchaser on behalf of the City, to the Bond Insurer, for the premium for the Insurance Policy; and the balance of sale proceeds in the amount of \$2,509,541.22 shall be deposited into the Project Fund, for application solely to the costs of the Transportation Projects, incidental costs and remaining costs related to the sale and issuance of the Bonds, if any.

Except as provided by the Code and Section 21 of this Ordinance, the interest and profits derived from the investment of Bond proceeds deposited into the Project Fund shall be deposited in therein and applied as described in this Section 20.

Except as provided by the Code and Section 21 of this Ordinance, if any money allocable to the Bond proceeds in the Project Fund remains in such fund after the payment of all the costs of the Transportation Projects and payment of all incidental costs and costs related to the sale and issuance of the Bonds, or after termination of the Transportation Projects by the City, such money shall be transferred to the Bond Fund and applied to the payment of the principal of and interest on the Bonds.

Pending application as described in this Section 20 and subject to the requirements of the Code and Section 21 of this Ordinance, money allocable to the Bond proceeds in the Project Fund may be temporarily deposited with such institutions or invested in such investments as may be lawful for the investment of City funds.

Sec 21. Tax-exemption covenants. The City covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exclusion of the interest on the Bonds from gross income for purposes of federal income taxation, and will take or require to be taken such acts as may be permitted by Washington law and as may from time to time be required under applicable law to continue the exclusion of the interest on the Bonds from gross income for purposes of federal income taxation. Without limiting the generality of the foregoing, the City will not invest or make or permit any use of the proceeds of the Bonds or of its other money at any time during the term of the Bonds which would cause the Bonds to be “arbitrage bonds” within the meaning of section 148 of the Code.

The City further covenants that it will calculate or cause to be calculated, and shall rebate to the United States, all earnings from the investment of Bond proceeds that are in excess of the amount that would have been earned had the yield on such investments been equal to the yield on the Bonds, plus income derived from such excess earnings, to the extent and in the manner required by section 148 of the Code.

The City has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the City is a bond issuer the arbitrage certifications of which may not be relied upon.

The City will take no actions and will make no use of the proceeds of the Bonds or any other funds held under this Ordinance which would cause any Bond to be treated as a “private activity bond” (as defined in section 141(b) of the Code) subject to treatment under said section 141(b) as an obligation not described in section 103(a) of the Code, unless the tax exemption thereof is not affected.

The City covenants that it will not issue more than \$10,000,000 of “qualified tax-exempt obligations,” as defined in section 265 of the Code (relating to the partial interest expense deduction authorized for banks, thrift institutions and certain other financial institutions) during calendar year 2008. The City hereby designates the Bonds as “qualified tax-exempt obligations” for such purposes and authorizes and directs the proper City officials to execute and deliver all documents necessary to evidence such designation to any and all interested parties.

Sec 22. Preliminary official statement declaration. The City has been provided with copies of the Preliminary Official Statement. For the sole purpose of the Purchaser’s compliance with SEC Rule 15c2-12(b)(1), the City “deems final” the Preliminary Official Statement, as of its date, except for the omission of information on offering prices, interest rates, selling compensation, delivery dates, ratings, and other terms of the Bonds dependent on such matters.

Sec 23. Undertaking to provide continuing disclosure. This Section constitutes the City’s written undertaking for the benefit of the Owners and Beneficial Owners of the Bonds required by subsection (b)(5)(i) of Rule 15c2-12 of the SEC.

The City hereby agrees to provide or cause to be provided to each then existing NRMSIR, to the SID, if one is created, the following annual financial information and operating data (collectively, the “Annual Financial Information”) for each prior fiscal year, commencing with the fiscal year ending December 31, 2008, on or before the last day of the seventh month following the end of such prior fiscal year:

(a) Annual financial statements prepared in accordance with the generally accepted accounting principles applicable to governmental units, as such principles may be changed from time to time and as permitted by state law; which statements will not be audited, except that if and when audited financial statements are otherwise prepared and available to the City, they will be provided (the “Annual Financial Statements”);

(b) The assessed valuation of taxable property in the City;

(c) Ad valorem taxes due and percentages of taxes collected;

(d) Property tax levy rates per \$1,000 of assessed valuation;

(e) A statement of authorized, issued and outstanding indebtedness of the City; and

(f) A narrative explanation of the reasons for any amendments to this Section 23 made during the previous fiscal year and the impact of such amendments on the Annual Financial Information being provided.

In its provision of such financial information and operating data, the City may cross-reference to any "final official statement" (as defined in the Rule) available from the MSRB or any other documents theretofore provided to each then existing NRMSIR or the SID, if one is created.

If not submitted as part of the Annual Financial Information, then when and if available, the City shall provide its Annual Financial Statements, which shall have been audited by such auditor as shall be then required or permitted by the State law, to each then existing NRMSIR, to the SID, if one is created.

The City further agrees to provide or cause to be provided, in a timely manner, to the SID, if one is created, and to either the MSRB or each then existing NRMSIR, notice of any of the following events with respect to the Bonds, if material:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions or events affecting the tax-exempt status of the Bonds;
7. Modifications to rights of the Owners of the Bonds;
8. Optional redemptions of the Bonds;
9. Defeasances of the Bonds;
10. Release, substitution or sale of property securing repayment of the Bonds; and
11. Rating changes.

The City also agrees to provide or cause to be provided, in a timely manner, to the SID, if one is created, and to either the MSRB or each then existing NRMSIR, notice of its failure to provide the Annual Financial Information for the prior fiscal year on or before the last day of the seventh month following the end of such prior fiscal year.

After the issuance of the Bonds, so long as the interests of the Owners and Beneficial Owners of the Bonds will not be materially impaired thereby, as determined by a party unaffiliated with the City (including, without limitation, a trustee for the Owners or Beneficial Owners, nationally recognized bond counsel or other counsel familiar with the federal securities law), or pursuant to a favorable "no-action letter" issued by the SEC, this Section 23 may only be amended in connection with any change in legal requirements, change in law, or change in the identity, nature or status of the obligated person, or type of business conducted, and only in such a manner that the undertaking of the City, as so amended, would have complied with the requirements of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances.

The City's obligations to provide Annual Financial Information and notices of certain events shall terminate without amendment upon the defeasance, prior redemption or payment in full of all of the then outstanding Bonds. This Section 23 or any provision hereof, shall be null and void if the City (i) obtains an opinion of nationally recognized bond counsel or other counsel familiar with the federal securities laws to the effect that those portions of the Rule which require

this Section 23 or any such provision are invalid, have been repealed retroactively or otherwise do not apply to the Bonds; and (ii) notifies and provides the SID, if any, and either the MSRB or each then existing NRMSIR with copies of such opinion.

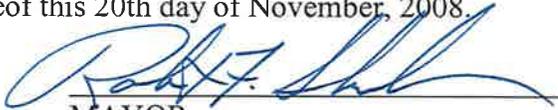
The right of each Owner and Beneficial Owner of Bonds to enforce the provisions of this Section 23 shall be limited to the right to obtain specific enforcement of the City's obligations under this Section 23, and any failure by the City to comply with the provisions of this undertaking shall not be a default with respect to the Bonds under this Ordinance.

The City Finance Director is authorized and directed to take such further action on behalf of the City as may be necessary, appropriate or convenient to carry out the requirements of this Section 23.

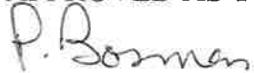
Sec 24. Contract; severability. The covenants contained in this Ordinance shall constitute a contract between the City and the Owners of each and every Bond. The City unconditionally covenants that it will keep and perform all of the covenants of the Bonds and this Ordinance. If any one or more of the provisions of this Ordinance shall be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining provisions of this Ordinance or the Bonds, and this Ordinance and the Bonds shall be construed and enforced as if such unconstitutional or invalid provision had not been contained in this Ordinance.

Sec 25. Effective date. This Ordinance shall take effect and be in full force five days following its passage, approval and publication according to law.

PASSED BY the City Council of the City of Des Moines this 20th day of November, 2008, and signed in authentication thereof this 20th day of November, 2008.


MAYOR

APPROVED AS TO FORM:



CITY ATTORNEY

ATTEST:



CITY CLERK

Published: November 25, 2008

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. 1444, Adopted November 20, 2008.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates to the incurrence of indebtedness; providing for the sale and issuance of \$3,450,000 Limited Tax General Obligation and Refunding Bonds, 2008B, to provide funds to refund the City's outstanding Limited Tax General Obligation Bonds, 1997 maturing on and after December 1, 2009, and to pay the incidental costs and costs related to the sale and issuance of such bonds; and to pay part of the costs necessary to carry out certain capital improvements to the City's transportation infrastructure, providing for the date, denominations, form, terms, registration privileges, maturities, interest rates and covenants of the bonds; providing for the annual levy of taxes to pay the principal of and the interest on such bonds; establishing a bond fund and a project fund for the bonds; and providing for the sale and delivery of such bonds to Seattle-Northwest Securities Corporation, Seattle, Washington

The full text of the Ordinance will be mailed without cost upon request.

Denis Staab
City Clerk

Published: November 25, 2008