

**ORDINANCE NO. 1535**

**AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON** relating to the incurrence of indebtedness; providing for the sale and issuance of \$2,810,000 Limited Tax General Obligation Refunding Bonds, 2012, to obtain part of the funds necessary to advance refund and defease all of the City's outstanding Limited Tax General Obligation and Refunding Bonds, 2002, to fund a deposit to the Bond Reserve Account for the Bonds, and to pay the incidental costs and costs related to the sale and issuance of such bonds; providing for the date, denominations, form, terms, registration provisions, maturities, interest rates and covenants of such bonds; providing for the annual levy of taxes to pay the principal of and the interest on such bonds; establishing a Bond Principal and Interest Account and a Bond Reserve Account in the Marina Revenue Fund, for such bonds; providing for the disposition of the proceeds of such bonds; and providing for the sale and delivery of such bonds to Seattle-Northwest Securities Corporation.

**WHEREAS**, pursuant to Ordinance No. 1312, the City has heretofore issued and sold the 2002 Bonds, of which \$2,795,000 in aggregate principal amount is currently outstanding, and

**WHEREAS**, pursuant to Ordinance No. 1312, the City reserved the right to defease all or a portion of the 2002 Bonds pursuant to a refunding plan adopted by the City, and

**WHEREAS**, pursuant to Ordinance No. 1312, the City reserved the right to redeem the 2002 Bonds maturing on and after December 1, 2014, in whole or in part, at any time on and after December 1, 2012, at a redemption price of par plus accrued interest to the date fixed for redemption, and

**WHEREAS**, all of the outstanding 2002 Bonds mature on and after December 1, 2014, and

**WHEREAS**, undertaking a refunding plan to advance refund and defease all of the outstanding 2002 Bonds to their earliest redemption date on December 1, 2012, will effect a debt service savings to the City, 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 2002 Bonds, and

**WHEREAS**, the City deems it to be in the best interest of the City that the City incur indebtedness and issue and sell its limited tax general obligation refunding bonds for the purpose of obtaining part of the funds necessary to undertake the Refunding Plan, and

**WHEREAS**, the incurrence of such indebtedness will not cause the total indebtedness of the City 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 bonds upon the terms and conditions set forth below; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS 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:

(1) "Annual Debt Service" means, in any year, that year's total of principal and interest requirements for the then-outstanding Bonds or Parity Bonds, as the context may require (except the principal maturity of any Bonds or Parity Bonds issued as term bonds), plus any mandatory sinking fund or mandatory bond redemption requirement for such Bonds or Parity Bonds for that year.

(2) "Authorized Officer" means the City Manager and the City Finance Director, acting alone or in combination.

(3) "Average Annual Debt Service" means, in any year, the sum of the remaining Annual Debt Service of the then-

outstanding Bonds, divided by the number of years such Bonds are scheduled to remain outstanding.

(4) "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.

(5) "Bond Principal and Interest Account" means the Limited Tax General Obligation Refunding Bond Principal and Interest Account, 2012 in the Marina Revenue Fund created pursuant to Section 20 of this Ordinance.

(6) "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.

(7) "Bond Reserve Account" means the Limited Tax General Obligation Refunding Bond Reserve Account, 2012 in the Marina Revenue Fund created pursuant to Section 20 of this Ordinance.

(8) "Bonds" means the City of Des Moines, Washington, Limited Tax General Obligation Refunding Bonds, 2012, the sale and issuance of which are authorized by this Ordinance.

(9) "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.

(10) "City" means the City of Des Moines, Washington, a code city organized and existing under State law.

(11) "City Council" means the City Council of the City.

(12) "Closing" means the time on the Date of Issue when the Bonds are delivered to the Purchaser in exchange for payment in full therefor.

(13) "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.

(14) "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 the Beneficial Owners of the Bonds, but in which a limited number of 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.

(15) "Date of Issue" means the date on which the Bonds are issued and delivered to the Purchaser in return for payment of the purchase price therefor.

(16) "Escrow Agent" means U.S. Bank National Association, acting in its fiduciary capacity as Escrow Agent pursuant to the Escrow Agreement.

(17) "Escrow Agreement" means that certain Escrow Agreement, to be dated as of the Date of Issue, by and between the City and the Escrow Agent, in substantially the same form as the draft dated April 5, 2012, a copy of which is on file with the City Clerk and is incorporated herein by this reference.

(18) "Escrow Obligations" means those certain Government Obligations necessary to accomplish the Refunding Plan, as set forth on Schedule 1 to the Escrow Agreement.

(19) "Future Parity Bonds" means all limited tax general obligation bonds of the City issued after the Date of Issue, for the payment of principal and interest on which the City has also pledged the Net Revenue.

(20) "Government Obligations" means "government obligations," as defined in chapter 39.53 RCW, as now in existence or hereafter amended.

(21) "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.

(22) "Marina" means the small boat harbor and marina, including the Redondo facilities, owned and operated by the City.

(23) "Marina Improvement Projects" means capital improvements to the Marina, including, but not limited to, the improvements described in the marina master plan of the City.

(24) "Marina Revenue Fund" means that special fund of the City into which all Revenue of the Marina (except for earnings in any special fund for the redemption of revenue obligations of the Marina) shall be deposited.

(25) "Maximum Annual Debt Service" means the maximum amount of Annual Debt Service that shall become due in any future year on any outstanding Bonds or Parity Bonds, as the context may require.

(26) "MSRB" means the Municipal Securities Rulemaking Board.

(27) "Net Revenue" means the Revenue of the Marina less the Operating and Maintenance Expense.

(28) "Operating and Maintenance Expense" means all necessary operating expenses of the Marina, current maintenance charges, expenses of reasonable upkeep and repairs, properly allocated share of charges for insurance and all other expenses incident to the operation of the Marina, but shall exclude depreciation, interest expense, and all general administrative expenses of the City.

(29) "Ordinance" means this Ordinance No. 1535 of the City.

(30) "Owner" means the person named as the registered owner of a Bond on the Bond Register.

(31) "Parity Bonds" means, collectively, (a) the Bonds, (b) the City of Des Moines, Washington, Limited Tax General Obligation Bonds, 2008A, and (c) any Future Parity Bonds.

(32) "Preliminary Official Statement" means the Preliminary Official Statement pertaining to the Bonds, dated March 28, 2012.

(33) "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.

(34) "Purchaser" means Seattle-Northwest Securities Corporation.

(35) "RCW" means the Revised Code of Washington, as amended.

(36) "Refunding Plan" means the plan to advance refund and defease all of the outstanding 2002 Bonds, to fund a deposit to the Bond Reserve Account, and to pay the incidental costs and costs related to the sale and issuance of the Bonds, all as more particularly defined and described in the Escrow Agreement.

(37) "Registrar" means the fiscal agency of the State located in New York, New York (as of the Date of Issue, 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.

(38) "Reserve Requirement" means the least of (1) 1.25 times the Average Annual Debt Service with respect to all outstanding Bonds; (2) Maximum Annual Debt Service with respect

to all outstanding Bonds; or (3) 10% of the proceeds of the Bonds.

(39) "Revenue of the Marina" means all of the earnings and revenues received by the City from the maintenance and operation of the Marina, except government grants, proceeds from the sale of property, City taxes collected by or through the Marina, principal proceeds of bonds and earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund Marina obligations (until commingled with other earnings and revenues of the Marina) or held in a special account for the purpose of paying a rebate to the United States Government under the Code.

(40) "Rule" means SEC Rule 15c2-12.

(41) "SEC" means the United States Securities and Exchange Commission.

(42) "State" means the State of Washington.

(43) "2002 Bond Redemption Date" means December 1, 2012.

(44) "2002 Bonds" means the City of Des Moines, Washington, Limited Tax General Obligation and Refunding Bonds, 2002, currently outstanding in the aggregate principal amount of \$2,795,000.

**Sec 2. Finding, purpose and description of Bonds.** The City Council hereby finds that undertaking the Refunding Plan will be in the best interest of the City because it will effect a debt service savings to the City. To that end, the incurrence of indebtedness and the issuance of by the City of its "Limited Tax General Obligation Refunding Bonds, 2012" for the purpose of obtaining part of the funds necessary to undertake the Refunding Plan are hereby authorized.

The Bonds shall be issued in the aggregate principal amount of \$2,810,000. The Bonds shall be dated the Date of Issue; 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 and shall mature on December 1 in each of the years and in the principal amounts, all as set forth below:

Maturity Date (December 1)	Principal Amount	Interest Rate Per Annum	Initial CUSIP Number
2012	\$265,000	2.00%	250172 HLO
2013	230,000	2.00	250172 HM8
2014	230,000	2.00	250172 HN6
2015	235,000	2.00	250172 HP1
2016	240,000	3.00	250172 HQ9
2017	245,000	3.00	250172 HR7
2018	250,000	4.00	250172 HS5
2019	50,000	2.50	250172 HT3
2019	215,000	4.00	250172 HX4
2020	270,000	4.00	250172 HU0
2021	285,000	4.00	250172 HV8
2022	295,000	4.00	250172 HW6

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 December 1, 2012, and semiannually thereafter on June 1 and December 1 of each year to their maturity.

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, all Bonds maturing in the same maturity year and bearing the same initial CUSIP number 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 (a) 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; (b) the Book-Entry Termination Date; or (c) 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 Custodian will be deemed to be the Owner of the Bonds for all purposes, 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: (1) 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; (2) a list identifying the Beneficial Owners as to both name and address; and (3) 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 11 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, the 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. No redemption; open market purchase.** The Bonds shall not be subject to redemption prior to their scheduled maturity. However, 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 so 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. Debt service coverage covenant.** The City covenants and agrees that it has established, maintains, and revises as necessary and collects such rental fees and charges for boat moorage and other Marina services furnished, sufficient to produce Net Revenue in each calendar year, which, together with other revenue available therefor, will be at least equal to 1.25 times the Annual Debt Service on the outstanding Parity Bonds in the year for which such debt service coverage ratio is being calculated.

**Sec 7. Pledge of full faith, credit and resources and Marina revenue.** The Bonds are limited tax general obligations of the City. The City hereby irrevocably covenants that, unless the principal of and interest on the Bonds are paid from other sources, so long as any Bonds are outstanding, it will include in its budgets and make annual levies of taxes within the constitutional and statutory tax limitations provided by law without a vote of the voters of the City upon all property within the City subject to taxation in amounts which, together with the Net Revenue and 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.

In addition, the City hereby irrevocably pledges the Net Revenue for the payment of principal and interest on the Bonds. 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 the Net Revenue and 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. Such portion of the Net Revenue, taxes and other money to be used for such purposes shall be deposited into the Bond Principal and Interest Account of the Marina Revenue Fund no later than the date such funds are required for the payment of principal of and interest on the Bonds.

**Sec 8. Form of Bonds.** The Bonds shall be wordprocessed, printed or lithographed on good bond paper in a form consistent with this Ordinance and State law.

**Sec 9. 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 10. Authentication 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 11. Registration, transfer and exchange.** The City covenants that, until all Bonds shall have been surrendered and cancelled, it will cause the Registrar to maintain a system of recording the ownership of each Bond that complies with the provisions of the Code. To that end, 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 the 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 11. 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 any 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 of the same maturity and interest rate, in any authorized denomination. The Registrar shall not be obligated to transfer or exchange any Bond during the 15 days preceding any interest payment 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.

**Sec 12. 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 13. Defeasance.** The City may, at any time, defease all or a portion of the Bonds (the "Defeased Bonds"), as follows: if money and/or Government Obligations maturing at such times and bearing such interest as will provide, without any reinvestment, amounts sufficient to repay, redeem or retire the Defeased Bonds in accordance with their terms are set aside in a special trust fund or escrow account (the "Escrow Account") pledged irrevocably to the repayment, redemption or retirement of the Defeased Bonds, then all right and interest of the Owners of the Defeased Bonds in the covenants of this Ordinance and in

the funds and accounts obligated to the payment of the Defeased Bonds shall cease and become void. The Owners of the Defeased Bonds shall have the right to receive payment of the principal of and interest on the Defeased Bonds only from the Escrow Account. The Defeased Bonds shall no longer be deemed to be outstanding, and the City may apply any money in any other fund or account established for the payment or redemption of the Defeased Bonds to any lawful purposes as it shall determine.

**Sec 14. 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 upon 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.

**Sec 15. Execution of documents; delivery of Bonds; temporary Bonds.** The Bonds will be printed at City expense and will be delivered to the Purchaser at the Closing in accordance with the terms of the Purchase Agreement, together with the approving legal opinion of Gottlieb Fisher PLLC ("Bond Counsel"), Seattle, Washington, relative to the issuance of the Bonds. 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.

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.

The Authorized Officers 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 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.

**Sec 16. Conditional call of 2002 Bonds for redemption.**

The City hereby calls the 2002 Bonds for redemption on the 2002 Bond Redemption Date at a redemption price of par plus accrued interest to the 2002 Bond Redemption Date. Such call for redemption shall become irrevocable upon delivery of the Bonds to the Purchaser at the Closing; provided, however, that if the Bonds are not delivered to the Purchaser at the Closing, or if the Purchaser fails to pay the full purchase price therefor at the Closing for any reason, then this call of such 2002 Bonds for redemption shall be hereby automatically revoked and shall be null and void.

**Sec 17. Escrow Agreement.** The Escrow Agreement is hereby approved in order to accomplish the Refunding Plan. The Authorized Officers are authorized and directed: (a) to execute and to deliver the Escrow Agreement, on behalf of the City, to the Escrow Agent on the Date of Issue, with such changes as are deemed by such Authorized Officer(s) as actually execute such document 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) to cause the Escrow Agent to deliver notices of defeasance and redemption of the 2002 Bonds in accordance with the Escrow Agreement.

**Sec 18. Acquisition of Escrow Obligations.** The Authorized Officers shall, at or prior to the 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 the Closing, deliver or cause to be delivered to the United States Bureau of Public Debt 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 Agent pursuant to the Refunding Plan, shall be sufficient to pay all of the interest to become due on the 2002 Bonds from the Date of Issue to and including the 2002 Bond Redemption Date, when due, and to redeem on said date, all of the 2002 Bonds at a redemption price of par plus accrued interest to the 2002 Bond Redemption Date.

The Escrow Agent 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 Agent. Such subscription may be amended as permitted by federal law.

**Sec 19. Verification of sufficiency of escrow.** The Authorized Officers 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 pay all of the interest to become due on the 2002 Bonds from the Date of Issue to and including the 2002 Bond Redemption Date, when due, and to redeem on said date, all of the 2002 Bonds at a redemption price of par plus accrued interest to the 2002 Bond Redemption Date.

**Sec 20. Establishment of Bond Accounts.** There is hereby created and established in the office of the City Finance Director special accounts for the Bonds in the Marina Revenue Fund to be designated as the "Limited Tax General Obligation Refunding Bond Principal and Interest Account, 2012" (the "Bond Principal and Interest Account") and "Limited Tax General Obligation Refunding Bond Reserve Account, 2012" (the "Bond Reserve Account"). Each such Bond account shall be held separate and apart from the other.

The accrued interest on the Bonds received by the City upon the sale of the Bonds, if any, shall be deposited into the Bond Principal and Interest Account in the Marina Revenue Fund and shall be applied to the payment of interest coming due on the Bonds. The money and investments in the Bond Principal and Interest Account 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.

The Bond Reserve Account is established in the Marina Revenue Fund for the purposes of securing the payment of the Bonds. At the Closing, the City will transfer and pay into the Bond Reserve Account (a) the sum of \$19,215.36 derived entirely from sale proceeds of the Bonds, and (b) the sum of \$279,500.00, constituting all of the funds on deposit in the City's Limited Tax General Obligation and Refunding Bond Reserve Account, 2002, established pursuant to Ordinance No. 1312. The City covenants and agrees that it will set aside and pay into the Bond Reserve Account out of Revenue of the Marina or from any other money that the City may have available for that purpose such amounts so that by no later than December 31, 2012, there shall have been accumulated in the Bond Reserve Account an amount not less than the Reserve Requirement for the Bonds. The City further covenants and agrees that when the required amounts have been paid into the Bond Reserve Account in the Marina Revenue Fund, it will maintain an amount of money and assets in the Bond Reserve Account that will be equal to the Reserve Requirement.

In the event there shall be a deficiency in the Bond Principal and Interest Account to meet maturing installments of either principal of or interest on any Bonds, such deficiency shall be made up from the Bond Reserve Account by the withdrawal of money therefrom. Any deficiency created in the Bond Reserve Account by reason of any such withdrawal shall be made up from the Net Revenue or any other money legally available therefor (after providing for the required deposits to the Bond Principal and Interest Account).

Income from the investments in the Bond Principal and Interest Account shall be deposited in such account. Income from investments in the Bond Reserve Account shall be deposited in such account until the amount therein is equal to the Reserve

Requirement, and any excess shall be deposited into the Bond Principal and Interest Account. Investments in the Bond Reserve Account shall be valued at fair market value and marked to market at least once each year. Investments in the Bond Reserve Account shall not have maturities extending beyond five years. If the value of the money and investments in the Bond Reserve Account exceeds the Reserve Requirement, the excess shall be transferred to the Bond Principal and Interest Account.

**Sec. 21. Application of Bond proceeds.** Proceeds from the sale of the Bonds in the amount of \$2,959,222.20 (which is equal to the original aggregate principal amount of the Bonds, plus original issue premium of \$177,153.60, less an underwriter's discount of \$27,931.40) shall be applied as follows: (a) the sum of \$19,215.36 shall be deposited into the Bond Reserve Account; (b) the sum of \$2,937,598.88 shall be paid to the Escrow Agent, for application to the payment of the costs of advance refunding and defeasing all of the 2002 Bonds and paying the costs of issuing the Bonds; and (c) the sum of \$2,407.96 (the "rounding amount") shall be deposited into the Bond Principal and Interest Account for application to the payment of the interest first coming due on the Bonds.

**Sec 22. 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 any Bond to be an "arbitrage bond" 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 hereby designates the Bonds as "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). The City covenants that it will not issue more than \$10,000,000 of "qualified tax-exempt obligations" during calendar year 2012, and authorizes and directs the Authorized Officers to execute and deliver all documents necessary to evidence such designation to any and all interested parties.

**Sec 23. 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 24. 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 "Undertaking").

The City hereby agrees to provide or cause to be provided to the MSRB 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, 2011, 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) Principal amount of the Parity Bonds outstanding and the coverage calculation showing the ratio of Net Revenue to Annual Debt Service with respect to the Parity Bonds;

(c) Updated operating and financial data regarding the Marina, of the type found under the heading "The Marina" in the Preliminary Official Statement;

(d) Historical operating information (for the prior fiscal year only) of the type shown in the tables in the Preliminary Official Statement entitled "City of Des Moines Moorage Rates," "City of Des Moines Guest Moorage Rates" and "Current Length Distribution of Waiting List Vessels";

(e) Historical operating information (for the prior fiscal year only) of the type shown in the tables in the Preliminary Official Statement entitled "City of Des Moines Marina Income Statement (Years ending December 31)" and "City of Des Moines Marina Statement of Net Assets (Years ending December 31)";

(f) Historical financial information (for the prior fiscal year only) of the type shown in the table in the Preliminary Official Statement entitled "Historical Assessed Valuation and Property Tax Collection Record";

(g) Historical financial information (for the prior fiscal year only and excluding overlapping debt information) of the type shown in the tables in the Preliminary Official Statement entitled "Debt Capacity Computation," "Debt Information" and "Bonded Debt Ratios;

(h) Historical financial information (for the prior fiscal year only) of the type shown in the Preliminary Official Statement under the headings "Pension System" and "Insurance Coverage";

(i) Any change in the auditing, budgetary process or investment policies of the City; and

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

Items (b) through (j) shall be required only to the extent that such information is not included in the annual financial statements.

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 to the public on the MSRB's internet web site or filed with the SEC.

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 State law, to the MSRB.

The City further agrees to provide or cause to be provided to the MSRB, in a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the Bonds:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;

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, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;

7. Modifications to rights of the Owners of the Bonds, if material;

8. Bond calls, if material, and tender offers;

9. Defeasances of the Bonds;

10. Release, substitution or sale of property securing repayment of the Bonds, if material;

11. Rating changes;

12. Bankruptcy, insolvency, receivership, or similar event of the City;

13. The consummation of a merger, consolidation or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

Solely for purposes of disclosure, and not intending to modify this Undertaking, the City advises with reference to item 14 above that there is no trustee for the Bonds.

The City also agrees to provide or cause to be provided to the MSRB, in a timely manner, 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.

The City agrees that all documents provided to the MSRB pursuant to this Undertaking shall be provided in an electronic format and accompanied by such identifying information, each as prescribed by the MSRB.

The City may amend its obligations under, or waive any provision of, this Undertaking upon receipt of a favorable opinion of 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. In the event of any amendment or waiver of the City's obligations under this Undertaking, the City agrees to describe such amendment in the Annual Financial Information for such fiscal year and shall include, as applicable, a narrative explanation of the reason for such amendment or waiver and its impact of the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (A) notice of such change will be given in the same manner as for a material event, and (B) the Annual Financial Information for the fiscal year in which the change is made shall present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

The City's obligations to provide Annual Financial Information and notices of certain events shall terminate without amendment upon the defeasance or payment in full of all of the then outstanding Bonds. This Undertaking, 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 Undertaking or any such provision are invalid, have been repealed retroactively or otherwise do not apply to the Bonds; and (ii) notifies and provides the MSRB with copies of such opinion.

The right of each Owner or Beneficial Owner of Bonds to enforce the provisions of this Undertaking shall be limited to the right to obtain specific enforcement of the City's obligations under this Undertaking, 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 Authorized Officers are 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 Undertaking.

**Sec 25. Additional covenant.** The City covenants to the Owners that it will at all times as long as the Bonds are outstanding (a) maintain the Marina in good repair, working order and condition, (b) operate the Marina in an efficient manner and at a reasonable cost, and (c) establish, maintain and collect rentals, rates and charges for Marina services as may be necessary to provide for (1) the Operating and Maintenance Expenses of the Marina and (2) the deposits into the Bond Principal and Interest Account and the Bond Reserve Account.

**Sec 26. 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.

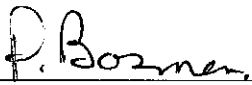
**Sec 27. Effective date.** This Ordinance shall take effect and be in full force five days following its passage, approval and publication according to law.

PASSED BY the City Council of the City of Des Moines this 5th day of April, 2012, and signed in authentication thereof this 5th day of April, 2012.



M A Y O R

APPROVED AS TO FORM:



CITY ATTORNEY

ATTEST:



CITY CLERK

Published: April 11, 2012

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. 1535, Adopted April 5, 2012.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance relates to the incurrence of indebtedness; providing for the sale and issuance of \$2,810,000 Limited Tax General Obligation Refunding Bonds, 2012, to obtain part of the funds necessary to advance refund and defease all of the City's outstanding Limited Tax General Obligation and Refunding Bonds, 2002, to fund a deposit to the Bond Reserve Account for the Bonds, and to pay the incidental costs and costs related to the sale and issuance of such bonds; providing for the date, denominations, form, terms, registration provisions, maturities, interest rates and covenants of such bonds; providing for the annual levy of taxes to pay the principal of and the interest on such bonds; establishing a Bond Principal and Interest Account and a Bond Reserve Account in the Marina Revenue Fund, for such bonds; providing for the disposition of the proceeds of such bonds; and providing for the sale and delivery of such bonds to Seattle-Northwest Securities Corporation

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

Sandy Paul, CMC  
City Clerk

Published: April 11, 2012