



ST. CHARLES  
SINCE 1834

## AGENDA ITEM EXECUTIVE SUMMARY

Title:	Resolution of Official Intent Regarding Capital Expenditures to be Reimbursed from Proceeds of an Obligation to be Issued by the City of St Charles, Kane and DuPage Counties, Illinois
Presenter:	Chris Minick, Finance Director

*Please check appropriate box:*

	Government Operations		Government Services
	Planning & Development	X	City Council (04/16/2012)
	Public Hearing		

Estimated Cost:	N/A	Budgeted:	YES		NO
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If NO, please explain how item will be funded:

**Executive Summary:**

We are seeking a motion to approve a resolution of official intent to reimburse the City for capital costs related to the construction of the Red Gate Road Bridge from future bond proceeds. This is a housekeeping matter to assure that any costs incurred after February 16, 2012 are eligible to be funded from the proceeds of the bond to be issued later this spring /summer.

It is important to note that none of the costs, projections, grant funding, or other aspects of the financing plan have changed, this is simply required by IRS regulations to assure that costs paid prior to bond issuance can be reimbursed to the City with proceeds from the bond.

**Attachments:** *(please list)*

Resolution

**Recommendation / Suggested Action** *(briefly explain):*

Recommend a motion to approve a Resolution of Official Intent Regarding Capital Expenditures to be Reimbursed from Proceeds of an Obligation to be Issued by the City of St Charles, Kane and DuPage Counties, Illinois.

*For office use only:*

*Agenda Item Number:* TE

EXTRACT OF MINUTES of the regular public meeting of the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, held at the City Hall, located at 2 East Main Street, in said City, at 7:00 p.m., on the 16<sup>th</sup> day of April, 2012

\* \* \*

The Mayor called the meeting to order and directed the City Clerk to call the roll. The roll being called, the Mayor, being physically present at such time and place, and the following Aldermen, being physically present at said time and place, answered present: \_\_\_\_\_

The following Aldermen were allowed by a majority of the Aldermen in accordance with and to the extent allowed by rules adopted by the City Council to attend the meeting by video or audio conference: \_\_\_\_\_

No Alderman was not permitted to attend the meeting by video or audio conference.

The following Aldermen were absent and did not participate in the meeting in any manner or to any extent whatsoever: \_\_\_\_\_

The Mayor announced that the City has developed a list of capital projects for which it reasonably expects to reimburse itself for the expenditures related thereto with the proceeds of an obligation and that the City Council would consider the adoption of a resolution expressing its official intent with regard to such expenditures.

Whereupon Alderman \_\_\_\_\_ presented the following resolution, copies of which were made available to all in attendance at said meeting who requested a copy:

RESOLUTION expressing official intent regarding certain capital expenditures to be reimbursed from proceeds of an obligation to be issued by the City of St. Charles, Kane and DuPage Counties, Illinois.

\* \* \*

WHEREAS

A. The City Council (the “*Corporate Authorities*”) of the City of St. Charles, Kane and DuPage Counties, Illinois (the “*City*”), has developed a list of capital projects described in *Exhibit A* hereto (the “*Projects*”).

B. All or a portion of the expenditures relating to the Projects (the “*Expenditures*”) (i) have been paid within the 60 days prior to the passage of this Resolution or (ii) will be paid on or after the passage of this Resolution.

C. The City reasonably expects to reimburse itself for the Expenditures with the proceeds of an obligation.

NOW THEREFORE It Is Hereby Resolved by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, as follows:

*Section 1. Incorporation of Preambles.* The Corporate Authorities hereby find that all of the recitals contained in the preambles to this Resolution are full, true and correct and do incorporate them into this Resolution by this reference.

*Section 2. Intent to Reimburse.* The City reasonably expects to reimburse the Expenditures with proceeds of an obligation.

*Section 3. Maximum Amount.* The maximum principal amount of the obligation expected to be issued for the Projects is \$7,000,000.

*Section 4. Ratification.* All actions of the officers, agents and employees of the City that are in conformity with the purposes and intent of this Resolution, whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

*Section 5. Authorization.* This Resolution is made pursuant to Treasury Regulations Section 1.150-2.

*Section 6. Severability.* If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

*Section 7. Repeal.* All resolutions or parts thereof in conflict herewith be and the same are hereby repealed and this Resolution shall be in full force and effect forthwith upon its adoption.

*Section 8. Filing.* This Resolution shall be filed immediately in the office of the City Clerk.

ADOPTED: This 16th day of April, 2012

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

APPROVED: April 16, 2012

\_\_\_\_\_  
Mayor, City of St. Charles  
Kane and DuPage Counties, Illinois

ATTEST:

\_\_\_\_\_  
City Clerk, City of St. Charles  
Kane and DuPage Counties, Illinois

[SEAL]

## **EXHIBIT A**

### **DESCRIPTION OF CAPITAL PROJECTS**

Costs related to construction of the Red Gate Bridge including all costs and expenses related to construction, design, engineering, and site preparation costs

Alderman \_\_\_\_\_ moved and Alderman \_\_\_\_\_  
seconded the motion that said resolution as presented and read be adopted.

After a full discussion thereof, the Mayor directed that the roll be called for a vote upon  
the motion to adopt said resolution.

Upon the roll being called, the following Aldermen voted AYE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

The following Aldermen voted NAY: \_\_\_\_\_

Whereupon the Mayor declared the motion carried and said resolution adopted, approved  
and signed the same in open meeting and directed the City Clerk to record the same in the  
records of the Mayor and Board of Aldermen of the City of St. Charles, Kane and DuPage  
Counties, Illinois, which was done.

Other business not pertinent to the adoption of said resolution was duly transacted at the  
meeting.

Upon motion duly made, seconded and carried, the meeting was adjourned.

\_\_\_\_\_  
City Clerk

STATE OF ILLINOIS    )  
                                  ) SS  
COUNTY OF KANE     )

**CERTIFICATION OF MINUTES AND RESOLUTION**

I, the undersigned, do hereby certify that I am the duly qualified and acting City Clerk of the City of St. Charles, Kane and DuPage Counties, Illinois (the “City”), and as such official I am the keeper of the records and files of the City and of the City Council (the “Corporate Authorities”) thereof.

I do further certify that the foregoing constitutes a full, true and complete transcript of the minutes of the meeting (the “Meeting”) of the Corporate Authorities held on the 16th day of April, 2012, insofar as same relates to the adoption of a resolution entitled:

RESOLUTION expressing official intent regarding certain capital expenditures to be reimbursed from proceeds of an obligation to be issued by the City of St. Charles, Kane and DuPage Counties, Illinois.

(the “Resolution”) a true, correct and complete copy of which Resolution as adopted at the Meeting appears in the foregoing transcript of the minutes of the Meeting.

I do further certify that the deliberations of the Corporate Authorities on the adoption of the Resolution were conducted openly, that the vote on the adoption of the Resolution was taken openly, that the Meeting was called and held at a specified time and place convenient to the public, that notice of the Meeting was duly given to all of the news media requesting such notice, that an agenda for the Meeting was posted at the principal office of the Corporate Authorities and at the location where the Meeting was held, on a day which was not a Saturday, Sunday or legal holiday for Illinois municipalities and at least 48 hours in advance of the holding of the Meeting and also, on or before 5:00 p.m. on the Friday preceding the Meeting, and remained continuously posted until after the adjournment of the Meeting, that a true, correct and *complete copy of said agenda, which contains a specific item relating to the Resolution is attached hereto as Exhibit A,*

that the Meeting was called and held in strict compliance with the provisions of the Open Meetings Act of the State of Illinois, as amended, and with the provisions of the Illinois Municipal Code, as amended, and that the Corporate Authorities have complied with all of the provisions of said Act and said Code and with all of the procedural rules of the Corporate Authorities.

IN WITNESS WHEREOF, I hereunto affix my official signature, this 16th day of April, 2012.

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City Clerk

**[CITY CLERK TO ATTACH AGENDA]**

June 2, 1997

RE: July, 1993 Final Regulations—Reimbursement Rules —  
As Revised by May, 1997 Regulations

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On June 14, 1993, the Internal Revenue Service (the “*Service*”) released final regulations relating to arbitrage (both yield restriction and rebate) and related matters, hedge bonds, and the reimbursement of prior expenditures with the proceeds of tax-exempt bonds and other obligations (such as notes and financing leases). The final regulations represent the Service’s attempt to provide greater coordination of the rules applicable to tax-exempt bonds and to provide new guidance on various topics. On May 8, 1997, the Internal Revenue Service released various revisions to the final regulations, including revisions to the requirements relating to reimbursement in the case of exempt facility or small issue bonds.

This memorandum addresses the rules contained in the final regulations relating to reimbursement bonds. Unlike the existing reimbursement regulations, which generally apply only to governmental use bonds (*i.e.*, non-private activity bonds), qualified 501(c)(3) bonds and exempt facility bonds where the bond-financed property is owned by a governmental unit, the final regulations apply to all tax-exempt bonds and other obligations, including exempt facility bonds and small issue bonds. Although for most types of bonds the final regulations liberalize the prior requirements that must be satisfied before bond proceeds can be used to reimburse an issuer (or a borrower in a conduit financing), the final regulations significantly change the rules applicable to those bonds that, in the past, were subject only to the SOSOA provisions in Treas. Reg. Section 1.103-8(a)(5) (*i.e.*, exempt facility and small issue bonds other than those used for governmentally owned projects). In general, the final regulations apply to all obligations issued after June 30, 1993. The only two exceptions to this effective date relate to the form of official intent and the application of the regulations to exempt facility or small issue bonds. A separate memorandum discussing the application of the regulations to exempt facility or small issue bonds is available.

#### **DEFINITION OF A REIMBURSEMENT BOND**

These rules apply for all purposes of the tax-exempt bond provisions of the Internal Revenue Code of 1986, as amended (the “*Code*”). A reimbursement bond is the portion of an issue used to pay for an expenditure that was paid prior to the date the bond or other obligation was issued. The final regulations contain rules similar to those in the prior regulations regarding the application of the reimbursement rules to refundings. The final regulations do not apply to refundings. However, in determining whether proceeds of a prior issue are treated as unspent proceeds, the final regulations continue the rule that proceeds of the prior issue used for reimbursement must have satisfied the law applicable to reimbursed expenditures on the issue date of the prior issue.

## OFFICIAL INTENT

The final regulations require the issuer to declare an official intent to reimburse an expenditure. Under the final regulations, for all private activity bonds (other than qualified 501(c)(3) bonds, qualified student loan bonds, qualified mortgage bonds and qualified veterans' mortgage bonds), the term "issuer" means only the actual issuer; while, for all other types of financings, the "issuer" is defined as either the actual issuer or, in addition, in a conduit financing, the conduit borrower. The final regulations continue to allow an issuer to authorize or designate a person or entity to declare official intent on its behalf. The final regulations also specifically allow an official intent to be provided in the form of a specific legislative authorization for the issuance of bonds for a particular project. Finally, unlike the prior regulations, the final regulations provide an exception to the official intent and reimbursement timing requirements of the final regulations for a de minimis amount of bond proceeds (*i.e.*, an amount not in excess of the lesser of \$100,000 or five percent of the proceeds of the issue) used to reimburse an expenditure.

Under the final regulations, the official intent must:

(i) generally describe the project for which the expenditure to be reimbursed is paid (*e.g.*, "highway capital improvement program" or "hospital equipment acquisition") or identify by name and functional purpose of the fund or account from which the expenditure is to be paid (*e.g.*, "parks and recreation fund—recreational facility capital improvement program")—deviations between a project described in an official intent and the actual project financed with reimbursement bonds do not invalidate the official intent to the extent that the actual project is reasonably related in function to the described project; and

(ii) state the maximum principal amount of obligations expected to be issued for the project (as opposed to the maximum principal amount expected to be issued for reimbursement purposes). Thus, under the final regulations, an issuer can simply list the total estimated cost of the project instead of listing the amount expected to be issued for reimbursement purposes as was required under the prior regulations.

The final regulations delete the provision in the prior regulations requiring the statement of official intent to contain a specific statement that it is a declaration of official intent under the prior regulations.

Unlike the prior regulations, the final regulations do not require that a declaration of official intent be reasonably available for public inspection. In addition, the final regulations provide more general rules for determining whether an official intent is reasonable. The final regulations delete the requirement that an official intent must be consistent with an issuer's budgetary and financial circumstances. This requirement essentially meant that, at the time an expenditure was paid, no funds or other moneys could be reserved, allocated on a long-term basis or otherwise set aside by the issuer for such expenditures. However, this requirement is still embodied in the new anti-abuse rule discussed later in this memorandum. The final regulations continue to provide that (i) an issuer reasonably must expect to reimburse the

expenditures covered by the official intent with the proceeds of a debt obligation, (ii) official intents declared as a matter of course or in amounts substantially in excess of the amounts expected to be necessary for the project are not reasonable and (iii) a pattern of failing to reimburse expenditures covered by official intents is evidence of unreasonableness absent extraordinary circumstances.

The final regulations contain a transition rule to the general effective date of the regulations, which states that an official intent will be treated as meeting the official intent requirements of the final regulations if the declaration satisfies the provisions of Treas. Reg. Section 1.103-18 and the declaration was made between January 27, 1992 and June 30, 1993. For purposes of satisfying the official intent requirements in the final regulations, if a declaration satisfies the official intent requirements of the final regulations, it does not matter when the declaration was made.

The prior regulations contained a transition rule providing that the official intent and timing requirements did not apply to expenditures originally paid by an issuer after September 8, 1989 and before March 3, 1992 so long as there was objective evidence that, at the time the expenditure was paid, the issuer expected to reimburse itself for the expenditure from the proceeds of a taxable or tax-exempt borrowing and such expectation was reasonable. The final regulations delete this transition rule and, thus, require that an official intent (as opposed to objective evidence) that satisfies the final regulation must have been declared with respect to expenditures between those dates, unless the de minimis exception is satisfied.

#### **TIMING REQUIREMENTS REGARDING OFFICIAL INTENT**

The final regulations liberalize the timing requirements by allowing an official intent to be declared not later than sixty days after payment of the original expenditure (although the provision in the prior regulations relating to unforeseen expenditures has been deleted). Under the prior regulations, the official intent must have been declared on or before the payment of the original expenditure except in the case of certain unforeseen or preliminary expenditures. However, under the final regulations, unlike the proposed form of the final regulations, the exception to the official intent requirement for preliminary expenditures has been retained. Under this provision, it is not necessary to declare official intent (or to satisfy the timing requirement discussed in the next section of this memorandum) to reimburse preliminary expenditures in an amount not in excess of twenty percent of the issue price of the issue or issues that finance the facilities relating to such preliminary expenditures. Preliminary expenditures include architectural, engineering, surveying, soil testing, bond issuance costs and similar costs incurred prior to commencement of construction, rehabilitation or acquisition of the facilities, but do not include land acquisition or site preparation costs and similar costs that were incurred prior to commencement of construction, rehabilitation or acquisition of facilities. This exception for preliminary expenditures is in addition to the de minimis exception mentioned earlier in this memorandum.

## **PERIOD WITHIN WHICH REIMBURSEMENT MUST BE MADE**

In general, the final regulations require that an issuer must reimburse itself from bond proceeds within eighteen months (as opposed to one year under the prior regulations) after the later of (i) the date on which the expenditure to be reimbursed was paid or (ii) the date on which the property financed with such expenditure was placed in service (as defined below), but in no event more than three years after the original expenditure is paid. For certain long-term construction projects, this three-year period is increased to five years with certain certificates from both the issuer and a licensed architect or engineer. In addition, the final regulations provide a special reimbursement period rule for issuers that qualify for the small issuer exception to rebate (generally, certain issuers with general taxing powers that issue no more than \$5,000,000 in non-private activity bonds during a given calendar year). For these small issuers, the eighteen-month reimbursement period is lengthened to three years and the three-year limitation applicable to other issuers is disregarded.

Under the final regulations, a facility is placed in service on the date on which, based on all the facts and circumstances, the facility has reached a degree of completion that would permit its operation at substantially its design level and the facility is, in fact, in operation at such level.

As under the prior regulations, the use of bond proceeds for reimbursement must be allocated to expenditures in writing on the books or records of the issuer. The final regulations do, however, contain a new provision that allows allocations made within thirty days of the issue date to be treated as made on the issue date.

## **NATURE OF EXPENDITURE LIMITATION**

Under the final regulations, the reimbursed expenditure must be one that would be chargeable to a capital account under general federal income tax principles, a cost of issuing a bond, certain extraordinary, nonrecurring working capital expenditures (such as casualty losses or extraordinary legal judgments in excess of reasonable insurance coverage), a grant, a qualified student loan, a qualified mortgage loan or a qualified veterans' mortgage loan.

The final regulations contain an expanded general anti-abuse rule prohibiting the use of an abusive device to avoid arbitrage restrictions or to avoid the restrictions under Sections 142 through 147 of the Code. In general, an abusive device to avoid arbitrage restrictions is any action or series of actions not expressly permitted by the Code that permits one to obtain a material financial advantage based on the difference between taxable and tax-exempt rates and overburdens the tax-exempt market. The final regulations consolidate the specific anti-abuse rules under the prior regulations into a single rule that essentially provides that bond proceeds will not be treated as spent and will continue to be subject to, among other things, rebate and yield limitations if, within one year after a reimbursement allocation, bond proceeds received as reimbursement are used in a manner that results in the creation of replacement proceeds of the reimbursement issue or another issue. In general, replacement proceeds are defined in the final regulations to include so-called "sinking funds," "pledged funds," and other amounts that have a nexus to the governmental purpose of an issue. This rule does not apply to moneys deposited, in

general, in a fund or account to be used to pay principal or interest on an issue within twelve months from its date of deposit in such fund or account.

If you have any questions with respect to the regulations, please call your regular contact person at Chapman and Cutler LLP.