

Date September 24, 2018

SERIES RESOLUTION APPROVING AND AUTHORIZING A FORM OF LOAN AND DISBURSEMENT AGREEMENT BY AND BETWEEN THE CITY OF DES MOINES, IOWA FINANCE AUTHORITY, IOWA DEPARTMENT OF NATURAL RESOURCES AND WELLS FARGO BANK, N.A., AND AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SECURING THE PAYMENT OF \$6,093,000 SEWER REVENUE CAPITAL LOAN NOTES, SERIES 2018D, OF THE CITY OF DES MOINES, IOWA, UNDER THE PROVISIONS OF THE CITY CODE OF IOWA, AND PROVIDING FOR A METHOD OF PAYMENT OF SAID NOTES, AND APPROVING THE FORM OF TAX EXEMPTION CERTIFICATE

WHEREAS, the City Council of the City of Des Moines, Iowa, sometimes hereinafter referred to as the "Issuer", has heretofore established charges, rates and rentals for services which are and will continue to be collected as system revenues of the municipal sewer system, sometimes hereinafter referred to as the "System"; and

WHEREAS, this City Council has, by Roll Call Number 04-2450, approved on November 8, 2004, (the "Master Resolution"), authorized the issuance of Sewer Revenue Refunding Bonds, Series 2004H; and

WHEREAS, this City Council has, by Roll Call Number 04-2454 approved on November 8, 2004, authorized the issuance of Sewer Revenue Capital Loan Notes, Series 2004I; and

WHEREAS, this City Council has, by Roll Call Number 14-0485 approved on March 24, 2014, authorized the issuance of Sewer Revenue Capital Loan Notes, Series 2014B; and

WHEREAS, said Master Resolution authorizes the issuance of additional sewer revenue obligations under the terms of a Series Resolution which incorporates certain of the terms of the Master Resolution by reference and makes the same applicable to the obligations being issued under the Series Resolution; and

WHEREAS, the Issuer has submitted a Construction Loan Application to the Iowa Finance Authority, which is expected to be approved on October 3, 2018; and



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WHEREAS, Issuer proposes to issue, subject to final approval of the Construction Loan Application by the Iowa Finance Authority, its Sewer Revenue Capital Loan Notes, Series 2018D, to the extent of \$6,093,000, for the purpose of defraying the costs of the Project as set forth in Section 1 of this Resolution; and, it is deemed necessary and advisable and in the best interests of the City that a form of Loan and Disbursement Agreement by and between the City and the Iowa Finance Authority, be approved and authorized; and

WHEREAS, the notice of intention of Issuer to take action for the issuance of not to exceed \$6,093,000 Sewer Revenue Capital Loan Notes has heretofore been duly published and no objections to such proposed action have been filed.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IN THE COUNTY OF POLK, STATE OF IOWA:

Section 1. Definitions. All terms defined in the Master Resolution shall be given the same meaning whenever used in this Series Resolution. In addition, for purposes of this Series Resolution, the following terms shall have the following meanings in this Series Resolution unless the text expressly or by necessary implication requires otherwise:

- ◆ "Agreement" shall mean a Loan and Disbursement Agreement dated as of the Closing between and among the Issuer, the Original Purchaser, the Department and the SRF Trustee relating to the Loan made to the Issuer under the Program.
- ◆ "Closing" shall mean the date of delivery of the Series 2018D Note to the Original Purchaser and the funding of the Loan by the SRF Trustee.
- ◆ "Construction Fund" shall mean the Loan Account maintained by the SRF Trustee under the Program for the benefit of the Issuer, into which the proceeds of the Loan and the Series 2018D Note shall be allocated and held until disbursed to pay Series 2018D Project costs.
- ◆ "Department" shall mean the Iowa Department of Natural Resources.



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- ◆ "Loan" shall mean the principal amount allocated by the Department to the Issuer under the Program, equal in amount to the principal amount of the Series 2018D Notes.
- ◆ "Master Resolution" shall mean the Roll Call of the Issuer approved on November 8, 2004, authorizing the issuance of the Sewer Revenue Refunding Bonds, Series 2004H, and providing for the issuance of additional sewer revenue obligations by the Issuer under the terms thereof.
- ◆ "Original Purchaser" shall mean the Iowa Finance Authority, as the purchaser of the Series 2018D Notes from Issuer at the time of their original issuance.
- ◆ "Paying Agent" shall be the City Finance Director, or such successor as may be approved by Issuer as provided herein and who shall carry out the duties prescribed herein as Issuer's Agent to provide for the payment of principal of and interest on the Series 2018D Notes as the same shall become due.
- ◆ "Program" shall mean the Iowa Water Pollution Control Works Financing Program undertaken jointly by the Original Purchaser and the Department.
- ◆ "Registrar" shall be the City Finance Director, or such successor as may be approved by Issuer as provided herein and who shall carry out the duties prescribed herein with respect to maintaining a register of the owners of the Series 2018D Notes. Unless otherwise specified, the Registrar shall also act as Transfer Agent for the Series 2018D Notes.
- ◆ "Series 2018D Notes" or "Series 2018D Note" shall mean \$6,093,000 Sewer Revenue Capital Loan Notes, Series 2018D, authorized to be issued by this Resolution.
- ◆ "Series 2018D Projects" shall mean the acquisition, construction, reconstruction, extending, remodeling, improving, repairing and equipping of the System, including those costs associated with the Lower Oak Park and Highland Park – Separation Project.

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◆ "Tax Exemption Certificate" shall mean the Tax Exemption Certificate executed by the Finance Director and delivered at the time of issuance and delivery of the Series 2018D Notes.

◆ "Treasurer" shall mean the City Finance Director or such other officer as shall succeed to the same duties and responsibilities with respect to the recording and payment of the Series 2018D Notes issued hereunder.

◆ "Trustee" shall mean Wells Fargo Bank, National Association, with its principal office located in the City of Des Moines, Iowa, and its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee under the Program.

◆ "Yield Restricted" shall mean required to be invested at a yield that is not materially higher than the yield on the Series 2018D Notes under Section 148(a) of the Internal Revenue Code or regulations issued thereunder.

Section 2. Authority. The Agreement and the Series 2018D Notes authorized by this Resolution shall be issued, subject to final approval of the Construction Loan Application, pursuant to Sections 384.24A and 384.82 of the City Code of Iowa, and in compliance with the Master Resolution and all applicable provisions of the Constitution and laws of the State of Iowa.

Section 3. Status as Series Resolution and Senior SRF Bonds. This Series Resolution shall constitute and be treated as a Series Resolution within the meaning of the Master Resolution. The terms of the Master Resolution are hereby ratified, confirmed and approved and all of the provisions thereof are hereby made applicable to the Series 2018D Notes as if fully set forth herein, except as the same may otherwise be modified in this Series Resolution. The Series 2018D Note shall be delivered to the Original Purchaser as described herein on the date of issuance of the Series 2018D Notes authorized by the Master Resolution and shall be treated as having been issued together with such bonds. The Series 2018D Notes shall constitute and be treated for all purposes as Senior SRF Bonds under the Master Resolution.



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Section 4. Authorization and Purpose. There are hereby authorized to be issued, negotiable, serial, fully registered Revenue Notes of the City of Des Moines, in the County of Polk, State of Iowa, each to be designated as "Sewer Revenue Capital Loan Note, Series 2018D", in the aggregate amount of \$6,093,000, for the purpose of paying costs of the Series 2018D Projects. The City Council, pursuant to Sections 384.24A and 384.82 of the City Code of Iowa, hereby finds and determines that it is necessary and advisable to issue said Series 2018D Notes authorized by the Agreement and this Resolution. The Agreement shall be substantially in the form attached to this Resolution and is authorized to be executed and issued on behalf of the Issuer by the Mayor and attested by the City Clerk and delivered to the Original Purchaser.

Section 5. Source of Payment. The Series 2018D Notes herein authorized shall constitute a Senior Bond as defined in Section 8.3 of the Master Resolution, and the interest thereon shall be payable solely and only out of the net earnings of the System and shall be a first lien on the future Net Revenues of the System. The Series 2018D Notes shall not be general obligations of the Issuer nor shall they be payable in any manner by taxation and the Issuer shall be in no manner liable by reason of the failure of the said Net Revenues to be sufficient for the payment of the Series 2018D Notes. The Series 2018D Notes shall not be secured by the Debt Service Reserve Fund established under Section 6.6 of the Master Resolution.

Section 6. Note Details. Sewer Revenue Capital Loan Notes, Series 2018D, of the Issuer in the amount of \$6,093,000, shall be issued to evidence the obligations of the Issuer under the Agreement pursuant to the provisions of Sections 384.24A, 384.82 and 384.83 of the City Code of Iowa for the aforesaid purpose. The Series 2018D Note shall be designated "SEWER REVENUE CAPITAL LOAN NOTE, SERIES 2018D", be dated the date of delivery, and bear interest at the rate of 1.75% per annum from the date of each advancement made under the Agreement, until payment thereof, at the office of the Paying Agent, said interest payable on December 1, 2018, and semi-annually thereafter on the 1st day of December and June in each year until maturity as set forth on the Debt Service Schedule attached to the Agreement and incorporated herein by this reference. As set forth on said Debt Service Schedule, principal shall be payable on June 1, 2020 and annually thereafter on the 1st day of June in the amounts set forth therein until principal and interest are fully paid, except that the final installment of the entire balance of principal and interest, if not sooner paid, shall become due and payable on



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June 1, 2039. Notwithstanding the foregoing or any other provision hereof, principal and interest shall be payable as shown on said Debt Service Schedule until completion of the Project, at which time the final Debt Service Schedule shall be determined by the Trustee based upon actual advancements, final costs and completion of the Project, all as provided in the administrative rules governing the Program. Payment of principal and interest on the Notes shall at all times conform to said Debt Service Schedule and the rules of the Program.

The Notes shall be executed by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the Clerk, and impressed or imprinted with the seal of the City and shall be fully registered as to both principal and interest as provided in this Resolution; principal, interest and premium, if any, shall be payable at the office of the Paying Agent by mailing of a check, wire transfer or automated clearing house system transfer to the registered owner of the Note. The Notes shall be in the denomination of \$1,000 or multiples thereof and may at the request of the Original Purchaser be initially issued as a single Note in the denomination of \$6,093,000 and numbered R-1.

Section 7. Initiation Fee and Servicing Fee. In addition to the payment of principal of and interest on the Series 2018D Notes, the Issuer also agrees to pay the Initiation Fee and the Servicing Fee as defined and in accordance with the terms of the Agreement.

Section 8. Redemption. The Notes are subject to optional redemption at a price of par plus accrued interest (i) on any date upon receipt of written consent of the Original Purchaser or (ii) in the event that all or substantially all of the Project is damaged or destroyed. Any optional redemption of the Notes may be made from any funds regardless of source, in whole or from time to time in part, in inverse order of maturity, by giving not less than thirty (30) days' notice of redemption by certified or registered mail to the Original Purchaser (or any other registered owner of the Note). The terms of redemption shall be par, plus accrued interest to date of call. The Notes are also subject to mandatory redemption as set forth in Section 5 of the Agreement.

Section 9. Registration of Series 2018D Notes; Appointment of Registrar. The ownership of Series 2018D Notes may be transferred only by the making of an entry upon the



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books kept for the registration and transfer of ownership of the Series 2018D Notes, and in no other way. The Finance Director is hereby appointed as Series 2018D Note Registrar under the terms of this Series Resolution. Registrar shall maintain the books of the Issuer for the registration of ownership of the Series 2018D Notes for the payment of principal of and interest on the Series 2018D Notes as provided in this Series Resolution. All Series 2018D Notes shall be negotiable as provided in Article 8 of the Uniform Commercial Code and shall be subject to the provisions for registration and transfer contained in the Series 2018D Notes and in the Master Resolution.

Section 10. Execution, Authentication and Delivery of the Series 2018D Notes. Upon the adoption of this Series Resolution, the Mayor and City Clerk shall execute and deliver the Series 2018D Notes to the Registrar, who shall authenticate the Series 2018D Notes and deliver the same to or upon order of the Original Purchaser. No Series 2018D Note shall be valid or obligatory for any purpose or shall be entitled to any right or benefit hereunder unless the Registrar shall duly endorse and execute on such Series 2018D Note a Certificate of Authentication substantially in the form of the Certificate herein set forth. Such Certificate upon any Series 2018D Note executed on behalf of the Issuer shall be conclusive evidence that the Series 2018D Note so authenticated has been duly issued under this Resolution and that the holder thereof is entitled to the benefits of this Series Resolution.

Section 11. Application of Series 2018D Note Proceeds - Construction Fund. Proceeds of the Series 2018D Notes shall be credited to the Construction Fund and expended therefrom for the purposes of issuance. Any amounts on hand in the Construction Fund shall be available for the payment of the principal of or interest on the Series 2018D Notes at any time that other funds of the System shall be insufficient to the purpose, in which event such funds shall be repaid to the Construction Fund at the earliest opportunity. Any balance on hand in the Construction Fund and not immediately required for its purposes may be invested not inconsistent with limitations provided by law, the Internal Revenue Code and this Series Resolution.



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Section 12. Form of Note: The Series 2018D Note shall be printed in substantial compliance with standards proposed by the American Standards Institute substantially in the form attached hereto as Exhibit "A".

Section 13. Disposition of Proceeds; Arbitrage Not Permitted. The Issuer reasonably expects and covenants that no use will be made of the proceeds from the issuance and sale of the Series 2018D Notes issued hereunder which will cause any of the Series 2018D Notes to be classified as arbitrage bonds within the meaning of Section 148(a) and (b) of the Internal Revenue Code of the United States, and that throughout the term of said Series 2018D Notes it will comply with the requirements of said statute and regulations issued thereunder.

To the best knowledge and belief of the Issuer, there are no facts or circumstances that would materially change the foregoing statements or the conclusion that it is not expected that the proceeds of the Series 2018D Notes will be used in a manner that would cause the Series 2018D Notes to be arbitrage bonds. Without limiting the generality of the foregoing, the Issuer hereby agrees to comply with the provisions of the Tax Exemption Certificate and the provisions of the Tax Exemption Certificate are hereby incorporated by reference as part of this Series Resolution. The Finance Director is hereby directed to make and insert all calculations and determinations necessary to complete the Tax Exemption Certificate in all respects and to execute and deliver the Tax Exemption Certificate at issuance of the Series 2018D Notes to certify as to the reasonable expectations and covenants of the Issuer at that date.

The Issuer covenants that it will treat as Yield Restricted any proceeds of the Series 2018D Notes remaining unexpended after three years from the issuance and any other funds required by the Tax Exemption Certificate to be so treated. If any investments are held with respect to the Series 2018D Notes and other obligations, the Issuer shall treat the same for the purpose of restricted yield as held in proportion to the original principal amounts of each issue.

The Issuer covenants that it will exceed any investment yield restriction provided in this Series Resolution only in the event that it shall first obtain an opinion of recognized bond counsel that the proposed investment action will not cause the Series 2018D Notes to be



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classified as arbitrage bonds under Section 148(a) and (b) the Internal Revenue Code or regulations issued thereunder.

The Issuer covenants that it will proceed with due diligence to spend the proceeds of the Series 2018D Notes for the purpose set forth in this Series Resolution. The Issuer further covenants that it will make no change in the use of the proceeds available for the construction of facilities or change in the use of any portion of the facilities constructed therefrom by persons other than the Issuer or the general public unless it has obtained an opinion of bond counsel or a revenue ruling that the proposed project or use will not be of such character as to cause interest on any of the Series 2018D Notes not to be exempt from federal income taxes in the hands of holders other than substantial users of the project, under the provisions of Section 142(a) of the Internal Revenue Code of the United States, related statutes and regulations.

Section 14. Approval of Tax Exemption Certificate. Attached hereto is a form of Tax Exemption Certificate stating the Issuer's reasonable expectations as to the use of the proceeds of the Notes. The form of Tax Exemption Certificate is approved. The Issuer hereby agrees to comply with the provisions of the Tax Exemption Certificate and the provisions of the Tax Exemption Certificate are hereby incorporated by reference as part of this Resolution. The Finance Director is hereby directed to make and insert all calculations and determinations necessary to complete the Tax Exemption Certificate at issuance of the Note to certify as to the reasonable expectations and covenants of the Issuer at that date.

Section 15. Additional Covenants, Representations and Warranties of the Issuer. The Issuer certifies and covenants with the purchasers and holders of the Series 2018D Notes from time to time outstanding that the Issuer through its officers, (a) will make such further specific covenants, representations and assurances as may be necessary or advisable; (b) comply with all representations, covenants and assurances contained in the Tax Exemption Certificate, which Tax Exemption Certificate shall constitute a part of the contract between the Issuer and the owners of the Series 2018D Notes; (c) consult with bond counsel (as defined in the Tax Exemption Certificate); (d) pay to the United States, as necessary, such sums of money representing required rebates of excess arbitrage profits relating to the Series 2018D Notes; (e) file such forms, statements and supporting documents as may be required and in a timely



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manner; and (f) if deemed necessary or advisable by its officers, to employ and pay fiscal agents, financial advisors, attorneys and other persons to assist the Issuer in such compliance.

Section 16. Severability. If any section, paragraph, or provision of this Series 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.

Section 17. Repeal of Conflicting Ordinances or Resolutions and Effective Date. All other ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Series Resolution are, to the extent of such conflict, hereby repealed; and this Series Resolution shall be in effect from and after its adoption.

Section 18. Rule of Construction. This Series Resolution and the terms and conditions of the Series 2018D Notes authorized hereby shall be construed whenever possible so as not to conflict with the terms and conditions of the Master Resolution or the Loan and Disbursement Agreement. In the event such construction is not possible, or in the event of any conflict or inconsistency between the terms hereof and those of the Master Resolution or the Loan and Disbursement Agreement, the terms of the Loan and Disbursement Agreement shall prevail and be given effect to the extent necessary to resolve any such conflict or inconsistency.

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Roll Call Number

Agenda Item Number

40 A

Date September 24, 2018

(Council Communication No. 18- 472)

MOVED by _____ to adopt.

FORM APPROVED:

Lawrence McDowell
Deputy City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, WESTERGAARD, BOESEN, MANDELBAUM, and TOTAL.

MOTION CARRIED APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk