



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

A RESOLUTION APPROVING AND AUTHORIZING A FORM OF LOAN AND DISBURSEMENT AGREEMENT BY AND BETWEEN THE CITY OF DES MOINES, IOWA AND THE IOWA FINANCE AUTHORITY, AND AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SECURING THE PAYMENT OF \$3,623,000 STORMWATER MANAGEMENT UTILITY REVENUE CAPITAL LOAN NOTES, SERIES 2021E (SUBORDINATE), OF THE CITY OF DES MOINES, IOWA, UNDER THE PROVISIONS OF THE 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 Stormwater Management Utility, sometimes hereinafter referred to as the "System", and said revenues are available for the payment of Stormwater Management Utility Revenue Capital Loan Notes, Series 2021E (Subordinate), subject to the following premises; and

WHEREAS, pursuant to the Prior Note Resolutions, there have been heretofore issued the Outstanding Obligations, part of which remain outstanding and are a lien on the Net Revenues of the System. In the Prior Note Resolutions, it is provided that additional revenue notes or bonds may be issued and payable from the Net Revenues of the System, that are subordinate to the Senior Parity Obligations; and

WHEREAS, the Issuer has submitted a Construction Loan Application to the Iowa Finance Authority; and

WHEREAS, Issuer proposes to issue its Stormwater Management Utility Revenue Capital Loan Notes, Series 2021E (Subordinate), to the extent of \$3,623,000, 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 \$3,623,000 Stormwater Management Utility Revenue Capital Loan Notes, Series 2021E (Subordinate), has



Date June 14, 2021

heretofore been duly published, no objections or petition related to such proposed action was filed, and the Issuer has taken additional action for issuance.

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

Section 1. Definitions. The following terms shall have the following meanings in this Resolution unless the text expressly or by necessary implication requires otherwise:

- ◆ "Additional Obligations" shall mean any Stormwater Management Utility revenue bonds or notes or other obligations issued, having priority over, or on a parity with, the Notes in accordance with the provisions of Section 21 hereof.
- ◆ "Agreement" shall mean a Loan and Disbursement Agreement dated as of the Closing between the City and the Original Purchaser relating to the Loan made to the City under the Program.
- ◆ "City Clerk" shall mean the City Clerk or such other officer of the successor Governing Body as shall be charged with substantially the same duties and responsibilities.
- ◆ "Closing" shall mean the date of delivery of the Note to the Original Purchaser and the funding of the Loan.
- ◆ "Corporate Seal" shall mean the official seal of Issuer adopted by the Governing Body.
- ◆ "Finance Director" 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 Notes issued hereunder.
- ◆ "Fiscal Year" shall mean the twelve months' period beginning on July 1 of each year and ending on the last day of June of the following year, or any other consecutive twelve-month period adopted by the Governing Body or by law as the official accounting period of the System; provided, that the requirements of a fiscal year as expressed in this Resolution shall exclude any payment of principal or interest falling due on the first day of the fiscal year and include any payment of principal or interest falling due on the first day of the succeeding fiscal year.



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

- ◆ "Governing Body" shall mean the City Council, or its successor in function with respect to the operation and control of the System.
- ◆ "Independent Auditor" shall mean an Independent Financial Consultant, an independent firm of certified public accountants or the Auditor of State.
- ◆ "Issuer" and "City" shall mean the City of Des Moines, Iowa.
- ◆ "Loan" shall mean the principal amount allocated by the Original Purchaser to the City under the Program, equal in amount to the principal amount of the Notes.
- ◆ "Net Revenues" shall mean gross earnings of the System after deduction of Current Expenses; "Current Expenses" shall mean and include the reasonable and necessary cost of operating, maintaining, repairing and insuring the System, including purchases at wholesale, if any, salaries, wages, and costs of materials and supplies, but excluding depreciation and principal of and interest on the Notes and any Parity Obligations or payments to the various funds established herein; capital costs, depreciation and interest or principal payments are not System expenses.
- ◆ "Notes" or "Note" shall mean \$3,623,000 Stormwater Management Utility Revenue Capital Loan Notes, Series 2021E (Subordinate), authorized to be issued by this Resolution.
- ◆ "Original Purchaser" shall mean the Iowa Finance Authority, as the purchaser of the Notes from Issuer at the time of their original issuance.
- ◆ "Outstanding Obligations" shall mean the Stormwater Management Utility Revenue Bonds, Series 2016C, dated September 27, 2016 issued in accordance with a Resolution adopted September 12, 2016, the Stormwater Management Utility Revenue Refunding Bonds, Series 2016D, dated September 27, 2016, issued in accordance with a Resolution adopted September 12, 2016, the Stormwater Management Utility Revenue Capital Loan Notes, Series 2018C, dated August 1, 2018, issued in accordance with a Resolution adopted July 23, 2018, the Stormwater Management Utility Revenue Capital Loan Notes, Series 2018F (Subordinate), dated October 12, 2018, issued in accordance with a Resolution adopted September 24, 2018 (amended contemporaneously with the Notes); the Stormwater Management Utility Revenue Capital Loan Notes, Series 2018G (Subordinate), dated October 12, 2018, issued in accordance with a Resolution adopted



Roll Call Number

210888

Agenda Item Number

50

Date June 14, 2021

September 24, 2018; the Stormwater Management Utility Revenue Capital Loan Notes, Series 2020C (Subordinate), dated May 22, 2020; issued in accordance with a Resolution adopted on May 4, 2020; and Stormwater Management Utility Revenue Bonds, Series 2020F, dated September 28, 2020, issued in accordance with a Resolution adopted September 14, 2020, a portion of which obligations are still outstanding and unpaid and remain a lien on the Net Revenues of the System.

◆ "Parity Obligations" shall mean Senior Parity Obligations and the Subordinate Parity Obligations authorized to be issued under the terms of the Prior Note Resolutions and this Resolution.

◆ "Paying Agent" shall mean the 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 Notes as the same shall become due.

◆ "Permitted Investments" shall mean:

- direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America;
- cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the above paragraph);
- obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including:

- Export - Import Bank
- Farm Credit System Financial Assistance Corporation
- USDA - Rural Development
- General Services Administration
- U.S. Maritime Administration
- Small Business Administration
- Government National Mortgage Association (GNMA)
- U.S. Department of Housing & Urban Development (PHA's)
- Federal Housing Administration



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

- repurchase agreements whose underlying collateral consists of the investments set out above if the Issuer takes delivery of the collateral either directly or through an authorized custodian. Repurchase agreements do not include reverse repurchase agreements;
- senior debt obligations rated "AAA" by Standard & Poor's Corporation (S&P) or "Aaa" by Moody's Investors Service Inc. (Moody's) issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation;
- U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a rating on their short-term certificates of deposit on the date of purchase of "A-1" or "A-1+" by S&P or "P-1" by Moody's and maturing no more than 360 days after the date of purchase (ratings on holding companies are not considered as the rating of the bank);
- commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by S&P or "P-1" by Moody's and which matures not more than 270 days after the date of purchase;
- investments in a money market fund rated "AAAm" or "AAAm-G" or better by S&P;
- pre-refunded Municipal Obligations, defined as any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (a) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of S&P or Moody's or any successors thereto; or (b)(i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or direct obligations of the Department of the Treasury of the United States of America, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate; and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate;

- tax exempt bonds as defined and permitted by section 148 of the Internal Revenue Code and applicable regulations and only if rated within the two highest classifications as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A Code of Iowa;
- an investment contract rated within the two highest classifications as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A Code of Iowa; and
- Iowa Public Agency Investment Trust.

◆ "Prior Note Resolutions" shall mean the Roll Call Number 16-1564 of the City Council adopted on September 12, 2016, authorizing the issuance of the Stormwater Management Utility Revenue Bonds, Series 2016C, dated September 27, 2016, Roll Call Number 16-1565 authorizing the issuance of Stormwater Management Utility Revenue Refunding Bonds, Series 2016D, dated September 27, 2016, Roll Call Number 18-1270 adopted on July 23, 2018, authorizing the issuance of the Stormwater Management Utility Revenue Capital Loan Notes, Series 2018C, dated August 1, 2018, Roll Call Number 18-1610 adopted on September 24, 2018 (as amended by resolution dated May 4, 2020), authorizing the issuance of the Stormwater Management Utility Revenue Capital Loan Notes, Series 2018F (Subordinate), dated October 12, 2018, Roll Call Number 18-1611 adopted on September 24, 2018, authorizing the issuance of the Stormwater Management Utility Revenue Capital Loan Notes, Series 2018G (Subordinate), dated October 12, 2018, and Roll Call Number 20-0765 adopted on May 4, 2020, authorizing the issuance of the Stormwater Management Utility Revenue Bonds, Series 2020C (Subordinate), dated May 22, 2020 and Roll Call Number 20-1471 adopted on September 14, 2020, authorizing the issuance of the Stormwater Management Utility Revenue Bonds, Series 2020F, dated September 28, 2020.

◆ "Program" shall mean the Iowa Water Pollution Control Works Financing Program undertaken by the Original Purchaser.



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

- ◆ "Project" shall mean acquisition, construction, reconstruction, extending, remodeling, improving, repairing and equipping all or part of the Stormwater Utility, including those costs associated with the Near West Side Sewer Separation Project.
- ◆ "Project Fund" shall mean the Loan Account maintained under the Program for the benefit of the Issuer, into which the proceeds of the Loan and the Note shall be allocated and held until disbursed to pay Project costs.
- ◆ "Rebate Fund" shall mean the fund so defined in and established pursuant to the Tax Exemption Certificate.
- ◆ "Registrar" shall be the 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 Notes. Unless otherwise specified, the Registrar shall also act as Transfer Agent for the Notes.
- ◆ "Senior Parity Obligations" shall mean the Stormwater Management Utility Revenue Bonds, Series 2016C, dated September 27, 2016, the Stormwater Management Utility Revenue Refunding Bonds, Series 2016D, dated September 27, 2016, the Stormwater Management Utility Revenue Capital Loan Notes, Series 2018C, dated August 1, 2018, and the Stormwater Management Utility Revenue Bonds, Series 2020F, dated September 28, 2020 enjoying a first lien on the Net Revenues of the System, above the lien of the Subordinate Parity Obligations.
- ◆ "Subordinate Parity Obligations" shall mean the Stormwater Management Utility Revenue Capital Loan Notes, Series 2018F (Subordinate), dated October 12, 2018 (as amended by resolution dated May 4, 2020), the Stormwater Management Utility Revenue Capital Loan Notes, Series 2018G (Subordinate), dated October 12, 2018, Stormwater Management Utility Revenue Capital Loan Notes, Series 2020C (Subordinate), dated May 22, 2020, the Notes, and Additional Obligations payable solely from the Net Revenues of the System on an equal basis with the Notes herein authorized to be issued payable only after the Senior Parity Obligations.
- ◆ "System" shall mean the Stormwater Management Utility of the Issuer and all properties of every nature hereinafter owned by the Issuer comprising part of or used as a part of the System, including all improvements and extensions made by Issuer while any of the Notes or Parity Bonds remain outstanding; all real and personal property; and all appurtenances, contracts, leases, franchises and other intangibles.



Roll Call Number

21-0888

Agenda Item Number

56

Date June 14, 2021

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

Section 2. Authority. The Agreement and the Notes authorized by this Resolution shall be issued, subject to final approval of the Construction Loan Application, pursuant to Sections 384.24A and 384.84A of the Code of Iowa, and in compliance with all applicable provisions of the Constitution and laws of the State of Iowa. 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.

Section 3. Authorization and Purpose. There are hereby authorized to be issued, negotiable, serial, fully registered Revenue Notes of the City of Des Moines, in the Counties of Polk and Warren, Iowa, each to be designated as "Stormwater Management Utility Revenue Capital Loan Note, Series 2021E (Subordinate)", in the aggregate amount of \$3,623,000, for the purpose of paying costs of the Project. The City Council, pursuant to Sections 384.24A and 384.84A of the Code of Iowa, hereby finds and determines that it is necessary and advisable to issue said Notes authorized by the Agreement and this Resolution.

Section 4. Source of Payment. The Notes herein authorized and Subordinate Parity Obligations and the interest thereon shall be payable solely and only out of the Net Revenues of the System and shall be a subordinated lien on the future Net Revenues of the System. The 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 Notes. Payment of the principal of and interest on the Notes shall be subordinate in right of payment and in all other respects to the payment of the principal of, premium, if any, and interest on the Outstanding Obligations and to the terms and conditions of the Prior Note Resolutions, and no payments with respect to the principal of or interest on the Notes herein authorized shall be made if the effect thereof, in the judgment of the Governing Body, would result in a default in any respect under the terms and conditions of the



Date June 14, 2021

Prior Note Resolutions. Notwithstanding anything herein to the contrary, the Issuer may, at its sole discretion, file a Notice of Conversion together with a statement in compliance with Section 22 respecting the conversion, and upon such filing the Notes shall convert to first lien Notes on a parity and equality of rank with the Outstanding Obligations. Said conversion shall occur without any further act of the Issuer. Said subordinate rank shall also cease upon retirement of all Outstanding Obligations.

Section 5. Note Details. Stormwater Management Utility Revenue Capital Loan Notes, Series 2021E (Subordinate), of the City in the amount of \$3,623,000, shall be issued to evidence the obligations of the Issuer under the Agreement pursuant to the provisions of Sections 384.24A and 384.84A of the Code of Iowa for the aforesaid purpose. The Notes shall be designated "STORMWATER MANAGEMENT UTILITY REVENUE CAPITAL LOAN NOTE, SERIES 2021E (SUBORDINATE)", 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, 2021, and semi-annually thereafter on the 1st day of June and December 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, 2022 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 June 1, 2041. 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 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 \$3,623,000 and numbered R-1.



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

Section 6. Initiation Fee and Servicing Fee. In addition to the payment of principal of and interest on the 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 7. 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 8. Registration of Notes; Appointment of Registrar; Transfer; Ownership; Delivery; and Cancellation.

(a) Registration. The ownership of Notes may be transferred only by the making of an entry upon the books kept for the registration and transfer of ownership of the Notes, and in no other way. The Finance Director is hereby appointed as Note Registrar under the terms of this Resolution. Registrar shall maintain the books of the Issuer for the registration of ownership of the Notes for the payment of principal of and interest on the Notes as provided in this Resolution. All Notes shall be negotiable as provided in Article 8 of the Uniform Commercial Code subject to the provisions for registration and transfer contained in the Notes and in this Resolution.

(b) Transfer. The ownership of any Note may be transferred only upon the Registration Books kept for the registration and transfer of Notes and only upon surrender thereof at the office of the Registrar together with an assignment duly executed by the holder or his duly authorized attorney in fact in such form as shall be satisfactory to the Registrar, along with the address and social security number or federal employer identification number of such transferee (or, if registration is to be made in the name of multiple individuals, of all such transferees). In the event that the address of the registered owner of a Note (other than a registered owner which is the nominee of the broker or dealer in question) is that of a broker or dealer, there must be disclosed on the Registration Books the information pertaining to the registered owner required above. Upon the transfer of any such Note, a new fully registered Note, of any denomination or denominations permitted by this Resolution in aggregate principal amount equal to the unmatured and unredeemed principal amount of such transferred fully registered Note,



Date June 14, 2021

and bearing interest at the same rate and maturing on the same date or dates shall be delivered by the Registrar.

(c) Registration of Transferred Notes. In all cases of the transfer of the Notes, the Registrar shall register, at the earliest practicable time, on the Registration Books, the Notes, in accordance with the provisions of this Resolution.

(d) Ownership. As to any Note, the person in whose name the ownership of the same shall be registered on the Registration Books of the Registrar shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of any such Notes and the premium, if any, and interest thereon shall be made only to or upon the order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note, including the interest thereon, to the extent of the sum or sums so paid.

(e) Cancellation. All Notes which have been redeemed shall not be reissued but shall be cancelled by the Registrar. All Notes which are cancelled by the Registrar shall be destroyed and a Certificate of the destruction thereof shall be furnished promptly to the Issuer; provided that if the Issuer shall so direct, the Registrar shall forward the cancelled Notes to the Issuer.

(f) Non-Presentation of Notes. In the event any payment check representing payment of principal of or interest on the Notes is returned to the Paying Agent or if any note is not presented for payment of principal at the maturity or redemption date, if funds sufficient to pay such principal of or interest on Notes shall have been made available to the Paying Agent for the benefit of the owner thereof, all liability of the Issuer to the owner thereof for such interest or payment of such Notes shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the owner of such Notes who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Resolution or on, or with respect to, such interest or Notes. The Paying Agent's obligation to hold such funds shall continue for a period equal to two years and six months following the date on which such interest or principal became due, whether at maturity, or at the date fixed for redemption thereof, or otherwise, at which time the Paying Agent, shall surrender any remaining funds so held to the Issuer, whereupon any claim under this Resolution by the Owners of such interest or Notes of whatever nature shall be made upon the Issuer.



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

Section 9. Reissuance of Mutilated, Destroyed, Stolen or Lost Notes. In case any outstanding Note shall become mutilated or be destroyed, stolen or lost, the Issuer shall at the request of Registrar authenticate and deliver a new Note of like tenor and amount as the Note so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Note to Registrar, upon surrender of such mutilated Note, or in lieu of and substitution for the Note destroyed, stolen or lost, upon filing with the Registrar evidence satisfactory to the Registrar and Issuer that such Note has been destroyed, stolen or lost and proof of ownership thereof, and upon furnishing the Registrar and Issuer with satisfactory indemnity and complying with such other reasonable regulations as the Issuer or its agent may prescribe and paying such expenses as the Issuer may incur in connection therewith.

Section 10. Record Date. Payments of principal and interest, otherwise than upon full redemption, made in respect of any Note, shall be made to the registered holder thereof or to their designated Agent as the same appear on the books of the Registrar on the 15th day of the month preceding the payment date. All such payments shall fully discharge the obligations of the Issuer in respect of such Notes to the extent of the payments so made. Upon receipt of the final payment of principal, the holder of the Note shall surrender the Note to the Paying Agent.

Section 11. Execution, Authentication and Delivery of the Notes. Upon the adoption of this Resolution, the Mayor and City Clerk shall execute the Notes by their manual or authorized signature and deliver the Notes to the Registrar, who shall authenticate the Notes and deliver the same to or upon order of the Original Purchaser. No 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 Note a Certificate of Authentication substantially in the form of the Certificate herein set forth. Such Certificate upon any Note executed on behalf of the Issuer shall be conclusive evidence that the Note so authenticated has been duly issued under this Resolution and that the holder thereof is entitled to the benefits of this Resolution.

Section 12. Right to Name Substitute Paying Agent or Registrar. Issuer reserves the right to name a substitute, successor Registrar or Paying Agent upon giving prompt written notice to each registered noteholder.

Section 13. Form of Note. Notes shall be printed in substantial compliance with standards proposed by the American Standards Institute substantially in the form set out on Exhibit "A" attached hereto.



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

Section 14. Equality of Lien. The timely payment of principal of and interest on the Notes and Subordinate Parity Obligations shall be secured equally and ratably by a subordinate pledge of the Net Revenues of the System without priority by reason of number or time of sale or delivery; and the Net Revenues of the System are hereby irrevocably pledged to the timely payment of both principal and interest as the same become due, subject in all respects to the Outstanding Obligations and the terms and conditions of the Prior Note Resolutions.

Section 15. Application of Note Proceeds - Project Fund. Proceeds of the Notes shall be credited to the Project Fund and expended therefrom for the purposes of issuance. Any amounts on hand in the Project Fund shall be available for the payment of the principal of or interest on the 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 Project Fund at the earliest opportunity. Any balance on hand in the Project Fund and not immediately required for its purposes may be invested not inconsistent with limitations provided by law, the Internal Revenue Code and this Resolution.

Section 16. User Rates. There has heretofore been established and published as required by law, just and equitable rates or charges for the use of the service rendered by the System. Said rates or charges shall be paid by the owner of each and every lot, parcel of real estate, or building that is connected with and uses the System, by or through any part of the System or that in any way uses or is served by the System.

Any revenue paid and collected for the use of the System and its services by the Issuer or any department, agency or instrumentality of the Issuer shall be used and accounted for in the same manner as any other revenues derived from the operations of the System.

Section 17. Application of Revenues. From and after the delivery of any Notes, and as long as any of the Notes or Parity Obligations shall be outstanding and unpaid either as to principal or as to interest, or until all of the Notes and Parity Obligations then outstanding shall have been discharged and satisfied in the manner provided in this Resolution, the entire income and revenues of the System shall be deposited as collected in a fund to be known as the Stormwater Management Utility Revenue Fund (the "Revenue Fund"), and shall be disbursed only as follows:

(a) Funds Created Under Prior Note Resolutions. The Notes and Subordinate Parity Obligations are Subordinate Obligations under the terms of the Prior Note Resolutions. Money in the Revenue Fund shall first be disbursed to make all required deposits into the several funds created under the Prior Note Resolutions, including, in order of priority, the Operation and Maintenance Fund, and Sinking Fund created



Roll Call Number

210888

Agenda Item Number

50

Date June 14, 2021

thereunder. The provisions of the Prior Note Resolutions are hereby ratified and confirmed in all respects. Nothing in this Resolution shall be construed to impair the rights vested in the Outstanding Obligations. The amounts herein required to be paid into the various funds named in this Section shall be inclusive of payments required in respect to the Outstanding Obligations. The provisions of the Prior Note Resolutions and the provisions of this Resolution are to be construed wherever possible so that the same will not be in conflict. In the event such construction is not possible, the provisions of the Prior Note Resolutions shall prevail until such time as the Outstanding Obligations have been paid in full or otherwise satisfied as therein provided at which time the provisions of this Resolution shall prevail. The Notes authorized herein shall be deemed to be "Subordinate Obligations" as provided in the Prior Note Resolutions and money in the Revenue Fund shall be applied to the payment thereof only after the terms and conditions of the Prior Note Resolutions have been satisfied in all respects. Notwithstanding anything herein to the contrary, the Issuer may, at its sole discretion, file a Notice of Conversion together with a statement in the form set forth in Section 22 but respecting the Outstanding Obligations, and upon such filing the Notes shall convert to first lien Notes on a parity and equality of rank with the Outstanding Obligations. Said conversion shall occur without any further act of the Issuer. Said subordinate rank shall also cease upon retirement of all Outstanding Obligations and any obligation issued on a first lien basis pursuant to Section 21 herein.

(b) Subordinate Obligations. Money in the Revenue Fund shall next be disbursed to make deposits into a separate and special fund to pay the principal and interest requirements of the Notes and Subordinate Parity Obligations. The fund shall be known as the Stormwater Management Utility Revenue Note and Interest Sinking Fund (Subordinate) (the "Subordinate Sinking Fund"). The required amount to be deposited in the Sinking Fund in any month shall be the monthly amount necessary to pay in full the installment of principal and interest coming due on the next payment date on the then outstanding Notes. If for any reason the amount on hand in the Subordinate Sinking Fund exceeds the required amount, the excess shall forthwith be withdrawn and paid into the Revenue Fund. Money in the Subordinate Sinking Fund shall be used solely for the purpose of paying principal of and interest on the Notes as the same shall become due and payable.

(c) Surplus Revenue. All money thereafter remaining in the Revenue Fund at the close of each month may be deposited in any of the funds created by this Resolution, to pay for extraordinary repairs or replacements to the System, or may be used to pay or redeem the Notes or Parity Obligations, any of them, or for any lawful purpose.



Roll Call Number

210888

Agenda Item Number

50

Date June 14, 2021

At such time as the Outstanding Obligations, and all obligations issued on a first lien basis pursuant to Section 21 herein, are paid and so long as the Notes or Parity Obligations remain outstanding and unpaid the same are discharged and satisfied in the manner provided in this Resolution, the entire income and revenues of the system shall be deposited and collected in a fund to be known as the Revenue Fund, and shall be disbursed only as follows:

- Operation and Maintenance Fund. Money in the Revenue Fund shall first be disbursed to make deposits into a separate and special fund to pay current expenses. The fund shall be known as the Stormwater Management Utility Revenue Operation and Maintenance Fund (the "Operation and Maintenance Fund"). There shall be deposited in the Operation and Maintenance Fund each month an amount sufficient to meet the current expenses of the month plus an amount equal to 1/12th of expenses payable on an annual basis such as insurance. After the first day of the month, further deposits may be made to this account from the Revenue Fund to the extent necessary to pay current expenses accrued and payable to the extent that funds are not available in the Surplus Fund.
- Sinking Fund. Money in the Revenue Fund shall next be disbursed to make deposits into a separate and special fund to pay principal of and interest on the Notes and Parity Obligations (including any reasonable reserves imposed therefor). The fund shall be known as the Stormwater Management Utility Revenue Note Principal and Interest Sinking Fund (the "Sinking Fund"). The required amount to be deposited in the Sinking Fund in any month shall be an amount equal to 1/6th of the installment of interest coming due on the next interest payment date on the then outstanding Notes and Parity Obligations, plus 1/12th of the installment of principal coming due on such Notes on the next succeeding principal payment date until the full amount of such installment is on hand. If for any reason the amount on hand in the Sinking Fund exceeds the required amount, the excess shall forthwith be withdrawn and paid into the Revenue Fund. Money in the Sinking Fund shall be used solely for the purpose of paying principal of and interest on the Notes and Parity Obligations as the same shall become due and payable.
- Subordinate Obligations. Money in the Revenue Fund may next be used to pay principal of and interest on (including any reasonable reserves imposed therefor) any other obligations which by their terms shall be payable from the Net Revenues of the System, but subordinate to the Senior Parity Obligations, and which have been issued for the purposes of extensions and improvements to the System or to retire the Senior Parity



Date June 14, 2021

Obligations in advance of maturity, or to pay for extraordinary repairs or replacements to the System.

- Surplus Revenue. All money thereafter remaining in the Revenue Fund at the close of each month may be deposited in any of the funds created by this Resolution, to pay for extraordinary repairs or replacements to the System, or may be used to pay or redeem the Notes or Parity Obligations, any of them, or for any lawful purpose.

Section 18. Investments. Moneys on hand in the Project Fund and all of the funds provided by this Resolution may be invested only in Permitted Investments or deposited in financial institutions which are members of the Federal Deposit Insurance Corporation, or its equivalent successor, and the deposits of which are insured thereby and all such deposits exceeding the maximum amount insured from time to time by FDIC or its equivalent successor in any one financial institution shall be continuously secured in compliance with Iowa Code chapter 12C, or otherwise by a valid pledge of direct obligations of the United States Government having an equivalent market value. All investments shall mature before the date on which the moneys are required for the purposes for which the fund was created or otherwise as herein provided. The provisions of this Section shall not be construed to require the Issuer to maintain separate accounts for the funds created by this Resolution.

The Sinking Fund shall be segregated in a separate account but may be invested in the same manner as other funds of the Issuer but designated as a trust fund on the books and records of the Issuer. The Sinking Fund shall not be available for any other purposes other than those specified in this Resolution.

All income derived from such investments shall be deposited in the Revenue Fund and shall be regarded as revenues of the System. Investments shall at any time necessary be liquidated and the proceeds thereof applied to the purpose for which the respective fund was created.

Section 19. Covenants Regarding the Operation of the System. The Issuer hereby covenants and agrees with each and every holder of the Notes and Parity Obligations:

- (a) Maintenance and Efficiency. The Issuer will maintain the System in good condition and operate it in an efficient manner and at reasonable cost.
- (b) Sufficiency of Rates. On or before the beginning of each Fiscal Year the Governing Body will adopt or continue in effect rates for all services rendered by the



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

System determined to be sufficient to produce Net Revenues for the next succeeding Fiscal Year which are (i) adequate to pay the principal and interest requirements thereof and to create or maintain the reserves as provided in this Resolution, and (ii) not less than 110 percent of the principal and interest requirements of the next succeeding Fiscal Year. No free use of the System by the Issuer or any department, agency or instrumentality of the Issuer shall be permitted except upon the determination of the Governing Body that the rates and changes otherwise in effect are sufficient to provide Net Revenues at least equal to the requirements of this subsection.

(c) Insurance. The Issuer shall maintain insurance for the benefit of the Noteholders on the insurable portions of the System of a kind and in an amount which normally would be carried by private companies engaged in a similar kind of business. The proceeds of any insurance, except public liability insurance, shall be used to repair or replace the part or parts of the System damaged or destroyed, or if not so used shall be placed in an improvement fund for the benefit of the System.

(d) Accounting and Audits. The Issuer will cause to be kept proper books and accounts adapted to the System and in accordance with generally accepted accounting practices and will diligently act to cause the books and accounts to be audited and reported upon by an Independent Auditor and will provide copies of the audit report to the Department, all as provided in the Agreement. The Original Purchaser and holders of any of the Notes and Parity Obligations shall have at all reasonable times the right to inspect the System and the records, accounts and data of the Issuer relating thereto.

(e) State Laws. The Issuer will faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the State of Iowa, including the making and collecting of reasonable and sufficient rates for services rendered by the System as above provided, and will segregate the revenues of the System and apply said revenues to the funds specified in this Resolution.

(f) Property. The Issuer will not sell, lease, mortgage or in any manner dispose of the System, or any capital part thereof, including any and all extensions and additions that may be made thereto, until satisfaction and discharge of all of the Notes and Parity Obligations shall have been provided for in the manner provided in this Resolution; provided, however, this covenant shall not be construed to prevent the disposal by the Issuer of property which in the judgment of its Governing Body has become inexpedient or unprofitable to use in connection with the System, or if it is to the advantage of the System that other property of equal or higher value be substituted



Date June 14, 2021

therefor, and provided further that the proceeds of the disposition of such property shall be placed in a revolving fund to be used in preference to other sources for capital improvements to the System. Any such proceeds of the disposition of property acquired with the proceeds of the Notes or Parity Obligations shall not be used to pay principal or interest on the Notes and Parity Obligations or for payments into the Sinking or Reserve Funds.

(g) Fidelity Bond. That the Issuer shall maintain fidelity bond coverage in amounts which normally would be carried by private companies engaged in a similar kind of business on each officer or employee having custody of funds of the System.

(h) Additional Charges. The Issuer will require proper connecting charges and/or other security for the payment of service charges.

(i) Budget. The Governing Body of the Issuer shall approve and conduct operations pursuant to a system budget of revenues and current expenses for each Fiscal Year. Such budget shall take into account revenues and current expenses during the current and last preceding Fiscal Years. Copies of such budget and any amendments thereto shall be mailed to the Original Purchaser and to the Noteholders upon request.

(j) Loan and Disbursement Agreement. The Issuer will comply with the terms and conditions of the Loan and Disbursement Agreement and perform as provided thereunder.

Section 20. Remedies of Noteholders. Except as herein expressly limited the holder or holders of the Notes and Parity Obligations shall have and possess all the rights of action and remedies afforded by the common law, the Constitution and statutes of the State of Iowa, and of the United States of America, for the enforcement of payment of their Notes and interest thereon, and of the pledge of the Net Revenues made hereunder, and of all covenants of the Issuer hereunder.

Section 21. Prior Lien and Parity Obligations. The Issuer may issue other notes, bonds or obligations of any kind or nature payable from or enjoying a lien or claim on the property or Net Revenues of the System enjoying a first lien and having priority over the Notes or Subordinate Parity Obligations (as Senior Parity Obligations).

Additional Obligations may be issued having priority over the Notes and Subordinate Parity Obligations or on a parity and equality of rank with the Notes with respect to the lien and



Date June 14, 2021

claim of such Additional Obligations to the Net Revenues of the System and the money on deposit in the funds adopted by this Resolution, for the following purposes and under the following conditions, but not otherwise:

(a) For the purpose of refunding any of the Outstanding Obligations, other first lien obligations, Notes or Parity Obligations, which shall have matured or which shall mature not later than three months after the date of delivery of such refunding obligation and for the payment of which there shall be insufficient money in the Sinking Fund and the Reserve Fund;

(b) For the purpose of making extensions, additions, improvements or replacements to the System, or refunding any Outstanding Obligations (for other than as outlined in (a) above), outstanding first lien obligation, Notes or Parity Obligations issued for such extensions, additions and improvements, if all of the following conditions shall have been met:

(i) before any such Additional Obligations ranking on a parity are issued, there will have been procured and filed with the Clerk, a statement of an Independent Auditor, not a regular employee of the Issuer, reciting the opinion based upon necessary investigations that the Net Revenues of the System for the preceding Fiscal Year (with adjustments as hereinafter provided) were equal to at least 1.10 times the maximum amount that will be required in any Fiscal Year prior to the longest maturity of any of the then Outstanding Obligations, outstanding first lien obligations, Notes or Parity Obligations for both principal of and interest on all Outstanding Obligations, first lien obligations, Notes or Parity Obligations then outstanding which are payable from the Net Revenues of the System and the Additional Obligations then proposed to be issued.

For the purpose of determining the Net Revenues of the System for the preceding Fiscal Year as aforesaid, the amount of the gross revenues for such year may be adjusted by an independent consulting engineer or by the Independent Auditor, so as to reflect any changes in the amount of such revenues which would have resulted had any revision of the schedule of rates or charges imposed at or prior to the time of the issuance of any such Additional Obligations been in effect during all of such preceding Fiscal Year.

(ii) the Additional Obligations must be payable as to principal and as to interest on the same month and day as the Notes herein authorized.



Date June 14, 2021

(iii) for the purposes of this Section, principal and interest falling due on the first day of a Fiscal Year shall be deemed a requirement of the immediately preceding Fiscal Year.

(iv) for the purposes of this Section, general obligation bonds or notes shall be refunded only upon a finding of necessity by the Governing Body and only to the extent the general obligation bonds or notes were issued or the proceeds thereof were expended for the System.

(v) for purposes of this Section, "preceding Fiscal Year" shall be the most recently completed Fiscal Year for which audited financial statements prepared by a certified public accountant are issued and available, but in no event a Fiscal Year which ended more than eighteen months prior to the date of issuance of the Additional Obligations.

Section 22. Conversion.

For the purpose of converting the Notes to a lien ranking on parity with the Outstanding Obligations, all of the following conditions must have been met:

- (a) there will have been procured and filed with the Clerk, a statement of an Independent Auditor, not a regular employee of the Issuer, reciting the opinion based upon necessary investigations that the Net Revenues of the System for the preceding Fiscal Year (with adjustments as hereinafter provided) were equal to at least 1.10 times the maximum amount that will be required in any Fiscal Year prior to the longest maturity of any of the then outstanding Notes, Outstanding Obligations and any Parity Obligations then being converted to a parity with the Outstanding Obligations, for both principal of and interest on all Notes, Outstanding Obligations and any Parity Obligations then being converted to a parity with the Outstanding Obligations which are payable from the Net Revenues of the System.

For the purpose of determining the Net Revenues of the System for the preceding Fiscal Year as aforesaid, the amount of the gross revenues for such year may be adjusted by an independent consulting engineer or by the Independent Auditor, so as to reflect any changes in the amount of



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

such revenues which would have resulted had any revision of the schedule of rates or charges imposed at or prior to the time of the conversion of the Notes been in effect during all of such preceding Fiscal Year.

- (b) for the purposes of this Section, "preceding fiscal year" shall be the most recently completed Fiscal Year for which audited financial statements prepared by a certified public accountant are issued and available, but in no event a Fiscal Year which ended more than eighteen months prior to the date of conversion.

Section 23. 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 Notes issued hereunder which will cause any of the 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 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 Notes will be used in a manner that would cause the 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 Resolution. The Treasurer 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 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 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 Notes and Parity 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 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 Notes to be classified as arbitrage bonds under Section 148(a) and (b) the Internal Revenue Code or regulations issued thereunder.



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

The Issuer covenants that it will proceed with due diligence to spend the proceeds of the Notes for the purpose set forth in this 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 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 24. 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 25. Additional Covenants, Representations and Warranties of the Issuer. The Issuer certifies and covenants with the purchasers and holders of the 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 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 Notes; (e) file such forms, statements and supporting documents as may be required and in a timely 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 26. Amendment of Resolution to Maintain Tax Exemption. This Resolution may be amended without the consent of any owner of the Notes if, in the opinion of bond counsel, such amendment is necessary to maintain tax exemption with respect to the Notes under applicable Federal law or regulations.



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

Section 27. Discharge and Satisfaction of Notes. The covenants, liens and pledges entered into, created or imposed pursuant to this Resolution may be fully discharged and satisfied with respect to the Notes, or any of them, in any one or more of the following ways:

- (a) By paying the Notes when the same shall become due and payable; and
- (b) By depositing in trust with the Treasurer, or with a corporate trustee designated by the Governing Body, for the payment of said obligations and irrevocably appropriated exclusively to that purpose an amount in cash or direct obligations of the United States the maturities and income of which shall be sufficient to retire at maturity, or by redemption prior to maturity on a designated date upon which said obligations may be redeemed, all of such obligations outstanding at the time, together with the interest thereon to maturity or to the designated redemption date, premiums thereon, if any that may be payable on the redemption of the same; provided that proper notice of redemption of all such obligations to be redeemed shall have been previously published or provisions shall have been made for such publication.

Upon such payment or deposit of money or securities, or both, in the amount and manner provided by this Section, all liability of the Issuer with respect to the Notes shall cease, determine and be completely discharged, and the holders thereof shall be entitled only to payment out of the money or securities so deposited.

Section 28. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the Issuer and the holder or holders of the Notes, and after the issuance of any of the Notes no change, variation or alteration of any kind in the provisions of this Resolution shall be made in any manner, except as provided in the next succeeding Section, until such time as all of the Notes, and interest due thereon, shall have been satisfied and discharged as provided in this Resolution.

Section 29. Amendment of Resolution Without Consent. The Issuer may, without the consent of or notice to any of the holders of the Notes, amend or supplement this Resolution for any one or more of the following purposes:

- (a) to cure any ambiguity, defect, omission or inconsistent provision in this Resolution or in the Notes or Parity Obligations; or to comply with any applicable provision of law or regulation of federal or state agencies; provided, however, that such action shall not materially adversely affect the interests of the holders of the Notes;



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

(b) to change the terms or provisions of this Resolution to the extent necessary to prevent the interest on the Notes from being includable within the gross income of the holders thereof for federal income tax purposes;

(c) to grant to or confer upon the holders of the Notes any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the holders of the Notes;

(d) to add to the covenants and agreements of the Issuer contained in this Resolution other covenants and agreements of, or conditions or restrictions upon, the Issuer or to surrender or eliminate any right or power reserved to or conferred upon the Issuer in this Resolution; or

(e) to subject to the lien and pledge of this Resolution additional pledged revenues as may be permitted by law.

Section 30. Amendment of Resolution Requiring Consent. This Resolution may be amended from time to time if such amendment shall have been consented to by holders of not less than two-thirds in principal amount of the Notes at any time outstanding (not including in any case any Notes which may then be held or owned by or for the account of the Issuer, but including such refunding obligations as may have been issued for the purpose of refunding any of such Notes if such refunding obligations shall not then be owned by the Issuer); but this Resolution may not be so amended in such manner as to:

(a) Make any change in the maturity or interest rate of the Notes, or modify the terms of payment of principal of or interest on the Notes or any of them or impose any conditions with respect to such payment;

(b) Materially affect the rights of the holders of less than all of the Notes then outstanding; and

(c) Reduce the percentage of the principal amount of Notes, the consent of the holders of which is required to effect a further amendment.

Whenever the Issuer shall propose to amend this Resolution under the provisions of this Section, it shall cause notice of the proposed amendment to be filed with the Original Purchaser and to be mailed by certified mail to each registered owner of any Note as shown by the records of the Registrar. Such notice shall set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory Resolution is on file in the office of the City Clerk.



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

Whenever at any time within one year from the date of the mailing of said notice there shall be filed with the City Clerk an instrument or instruments executed by the holders of at least two-thirds in aggregate principal amount of the Notes then outstanding as in this Section defined, which instrument or instruments shall refer to the proposed amendatory Resolution described in said notice and shall specifically consent to and approve the adoption thereof, thereupon, but not otherwise, the Governing Body of the Issuer may adopt such amendatory Resolution and such Resolution shall become effective and binding upon the holders of all of the Notes.

Any consent given by the holder of a Note pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the instrument evidencing such consent and shall be conclusive and binding upon all future holders of the same Note during such period. Such consent may be revoked at any time after six months from the date of such instrument by the holder who gave such consent or by a successor in title by filing notice of such revocation with the City Clerk.

The fact and date of the execution of any instrument under the provisions of this Section may be proved by the certificate of any officer in any jurisdiction who by the laws thereof is authorized to take acknowledgments of deeds within such jurisdiction that the person signing such instrument acknowledged before him the execution thereof, or may be proved by an affidavit of a witness to such execution sworn to before such officer.

The amount and numbers of the Notes held by any person executing such instrument and the date of his holding the same may be proved by an affidavit by such person or by a certificate executed by an officer of a bank or trust company showing that on the date therein mentioned such person had on deposit with such bank or trust company the Notes described in such certificate.

Notwithstanding anything in this Section to the contrary, the holder or holders of 100% of the Notes and Parity Obligations may consent to any amendment of this Resolution, or waive any notices required hereunder, on such terms and under such conditions as said holders shall determine to be appropriate.

Section 31. 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.

Section 32. 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



Roll Call Number

21-0888

Agenda Item Number

50

Date June 14, 2021

Resolution are, to the extent of such conflict, hereby repealed; and this Resolution shall be in effect from and after its adoption.

Section 33. Rule of Construction. This Resolution and the terms and conditions of the Notes authorized hereby shall be construed whenever possible so as not to conflict with the terms and conditions of 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 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

21-0888

Agenda Item Number

50

Date June 14, 2021

MOVED by Gatto to adopt.

FORM APPROVED:

/s/ Lawrence R. McDowell
Lawrence McDowell
Deputy City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL (7). Includes MOTION CARRIED and APPROVED signatures.

CERTIFICATE

I, P. KAY CMELIK, 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.

Signature of P. Kay Cmelik

City Clerk