



Roll Call Number

22-1262

Agenda Item Number

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A RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SECURING THE PAYMENT OF \$18,660,000 STORMWATER MANAGEMENT UTILITY REVENUE BONDS, SERIES 2022B, OF THE CITY OF DES MOINES, STATE OF IOWA, UNDER THE PROVISIONS OF THE CODE OF IOWA, AND PROVIDING FOR A METHOD OF PAYMENT OF THE BONDS; APPROVAL OF THE TAX EXEMPTION CERTIFICATE AND CONTINUING DISCLOSURE CERTIFICATE

WHEREAS, the City Council of the City of Des Moines, State of 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 the Net Revenues are available for the payment of Revenue Bonds, subject to the following premises; and

WHEREAS, Issuer proposes to issue its Revenue Bonds to the extent of \$18,660,000 for the purpose of defraying the costs of the project as set forth in Section 3 of this Resolution; and

WHEREAS, there have been heretofore issued certain Stormwater Management Utility Revenue Bonds, part of which remain outstanding and are a lien on the Net Revenues of the System (defined herein as the "Outstanding Obligations"); and

WHEREAS, in the Prior Resolutions it is provided that Additional Obligations may be issued on a parity with the Senior Parity Obligations, for the costs of future improvements and extensions to the System or refunding outstanding obligations, provided that there has been procured and placed on file with the City Clerk, a statement complying with the conditions and limitations therein imposed upon the issuance of Parity Obligations; and

WHEREAS, a statement of PFM Financial Advisors LLC, an Independent Financial Consultant not in the regular employ of Issuer, has been placed on file in the office of the City Clerk, showing the conditions and limitations of the Prior Resolutions with regard to the sufficiency of the Net Revenues of the System to permit the issuance of Additional Obligations ranking on a parity with the Senior Parity Bonds to have been met and satisfied as required; and

WHEREAS, a notice of intention of Issuer to take action for the issuance of not to exceed \$22,000,000 Stormwater Management Utility Revenue Bonds has heretofore been duly published and no objections to such proposed action have been filed; and the Issuer desires to proceed with the issuance of \$18,660,000 of said Bonds:

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:



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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 issued on a parity with, or subordinate to, the Bonds in accordance with the provisions of this Resolution.
- "Authorized Denominations" shall mean \$5,000 or any integral multiple thereof.
- "Beneficial Owner" shall mean the person in whose name such Bond is recorded as the beneficial owner of a Bond by a Participant on the records of such Participant or such person's subrogee.
- "Bonds" shall mean \$18,660,000 Stormwater Management Utility Revenue Bonds, Series 2022B, authorized to be issued by this Resolution.
- "Cede & Co." shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds.
- "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.
- "Continuing Disclosure Certificate" shall mean that certain Continuing Disclosure Certificate approved under the terms of this Resolution and to be executed by the Issuer and dated the date of issuance and delivery of the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.
- "Depository Bonds" shall mean the Bonds as issued in the form of one global certificate for each maturity, registered in the Registration Books maintained by the Registrar in the name of DTC or its nominee.
- "DTC" shall mean The Depository Trust Company, New York, New York, a limited purpose trust company, or any successor book-entry securities depository appointed for the Bonds.
- "Fiscal Year" shall mean the twelve-month 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. 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



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and include any payment of principal or interest falling due on the first day of the succeeding Fiscal Year, except to the extent of any conflict with the terms of the Outstanding Obligations while the same remain outstanding.

- "Governing Body" shall mean the City Council of the City, 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, State of Iowa.
- "Net Revenues" shall mean gross earnings of the System after deduction of Current Expenses; "Current Expenses", but shall exclude any funds received by the System under the Iowa Flood Mitigation Program; "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 Bonds and any Parity Obligations or payments to the various funds established herein; capital costs, depreciation and interest or principal payments are not System expenses.
- "Original Purchaser" shall mean the purchaser of the Bonds 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 (as amended by resolution dated May 4, 2020); the Stormwater Management Utility Revenue Capital Loan Notes, Series 2018G (Subordinate), dated October 12, 2018, issued in accordance with a resolution adopted 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 May 4, 2020; the Stormwater Management Utility Revenue Bonds, Series 2020F, dated September 28, 2020, issued in accordance with a resolution adopted September 14, 2020; the Stormwater Management Utility Revenue Capital Loan Notes, Series 2021E (Subordinate), dated June 25, 2021, issued in accordance with a resolution



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adopted June 14, 2021; and the Stormwater Management Utility Revenue Bonds, Series 2021H, dated September 30, 2021, issued in accordance with a resolution adopted September 13, 2021, a portion of which of which bonds 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 Resolutions and this Resolution.
- "Participants" shall mean those broker-dealers, banks and other financial institutions for which DTC holds Bonds as securities depository.
- "Paying Agent" shall mean the Finance Director of the City of Des Moines, Iowa, 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 Bonds 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
 - repurchase agreements whose underlying collateral consists of the investments set out above if the Issuer takes delivery of the collateral either



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



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- 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 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 adopted on September 12, 2026, 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, Roll Call Number 20-0765 adopted on May 4, 2020, authorizing the issuance of the Stormwater Management Utility Revenue Capital Loan Notes, Series 2020C (Subordinate), dated May 22, 2020, 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; Roll Call Number 21-0888 adopted on June 14, 2021, authorizing the issuance of the Stormwater Management Utility Revenue Capital Loan notes, Series 2021E (Subordinate), dated June 25, 2021; and Roll Call Number 21-1431 adopted on September 13, 2021, authorizing the issuance of the Stormwater Management Utility Revenue Bonds, Series 2021H, dated September 30, 2021.
- "Project Fund" shall mean, the proceeds to acquisition, construction, reconstruction, extending, remodeling, improving, repairing and equipping all or part of the Stormwater Management Utility, including city-wide stormwater utility improvement projects, Closes Creek watershed improvements, flood mitigation and protection system improvements, and Hamilton Drainage area improvements.



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- "Registrar" shall mean the Finance Director of Des Moines, Iowa, 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 Bonds. Unless otherwise specified, the Registrar shall also act as Transfer Agent for the Bonds.
- "Representation Letter" shall mean the Blanket Issuer Letter of Representations executed and delivered by the Issuer to DTC on file with DTC.
- "Reserve Fund Requirement" shall mean an amount equal to the lesser of (a) the maximum annual amount of the principal and interest coming due on the Bonds and Senior Parity Obligations; (b) 10% of the stated principal amount of the Bonds and Senior Parity Obligations or (c) 125% of the average annual principal and interest coming due on the Bonds and Senior Parity Obligations. For purposes of this definition: "issue price" shall be substituted for "stated principal amount" for this issue as the original issue premium is more than a de minimus amount.
- "Resolution" shall mean this resolution authorizing the issuance of the Bonds.
- "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, the Stormwater Management Utility Revenue Bonds, Series 2020F, dated September 28, 2020, and the Stormwater Management Utility Revenue Bonds, Series 2021H dated September 30, 2021, and the Bonds authorized herein, 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, the Stormwater Management Utility Revenue Capital Loan Notes, Series 2020C (Subordinate), dated May 22, 2020, and the Stormwater Management Utility Revenue Capital Loan Notes, Series 2021E (Subordinate), dated June 25, 2021, and Additional Obligations payable solely from the Net Revenues of the System 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



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of the Bonds or Parity Obligations remain outstanding; all real and personal property; and all appurtenances, contracts, leases, franchises and other intangibles.

- "Tax Exemption Certificate" shall mean the Tax Exemption Certificate approved under the terms of this Resolution and to be executed by the Finance Director and delivered at the time of issuance and delivery of the Bonds.
- "Treasurer" shall mean the Finance Director or such other officer as shall succeed to the same duties and responsibilities with respect to the recording and payment of the Bonds issued hereunder.
- "Yield Restricted" shall mean required to be invested at a yield that is not materially higher than the yield on the Bonds under section 148(a) of the Internal Revenue Code or regulations issued thereunder.

Section 2. Authority. The Bonds authorized by this Resolution shall be issued pursuant to Subchapter V, Chapter 384 of the Code of Iowa, and in compliance with all applicable provisions of the Constitution and laws of the State of Iowa.

Section 3. Authorization and Purpose. There are hereby authorized to be issued, negotiable, serial, fully registered Stormwater Management Utility Revenue Bonds of the City, in the Counties of Polk and Warren, State of Iowa, Series 2022B, in the aggregate amount of \$18,660,000 for the purpose of paying costs of acquisition, construction, reconstruction, extending, remodeling, improving, repairing and equipping all or part of the Stormwater Management Utility, including city-wide stormwater utility improvement projects, Cluses Creek watershed improvements, flood mitigation and protection system improvements, and Hamilton Drainage area improvements.

Section 4. Source of Payment. The Bonds herein authorized and Senior Parity Obligations and the interest thereon shall be payable solely and only out of the Net Revenues of the System and shall be a first lien on the future Net Revenues of the System. The Bonds 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 Net Revenues to be sufficient for the payment of the Bonds.



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Section 5. Bond Details. Stormwater Management Utility Revenue Bonds, Series 2022B of the City in the amount of \$18,660,000 shall be issued pursuant to the provisions of Section 384.84A of the Code of Iowa for the aforesaid purpose. The Bonds shall be designated "STORMWATER MANAGEMENT UTILITY REVENUE BONDS, SERIES 2022B", be dated August 24, 2022, and bear interest from the date thereof, until payment thereof, at the office of the Paying Agent, the interest payable on June 1, 2023 and semiannually thereafter on the 1st day of June and December in each year until maturity at the rates hereinafter provided.

The Bonds shall be executed by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk, and impressed or printed 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 to the registered owner of the Bond. The Bonds shall be in the denomination of \$5,000 or multiples thereof. The Bonds shall mature and bear interest as follows:

| Principal Amount | Interest Rate | Maturity June 1 st |
|------------------|---------------|-------------------------------|
| \$ 630,000 | 5.000% | 2024 |
| \$ 660,000 | 5.000% | 2025 |
| \$ 690,000 | 5.000% | 2026 |
| \$ 725,000 | 5.000% | 2027 |
| \$ 760,000 | 5.000% | 2028 |
| \$ 800,000 | 5.000% | 2029 |
| \$ 840,000 | 5.000% | 2030 |
| \$ 885,000 | 5.000% | 2031 |
| \$ 925,000 | 5.000% | 2032 |
| \$ 975,000 | 5.000% | 2033 |
| \$1,020,000 | 5.000% | 2034 |
| \$1,075,000 | 3.500% | 2035 |
| \$1,110,000 | 3.500% | 2036 |
| \$1,150,000 | 3.625% | 2037 |
| \$1,190,000 | 3.625% | 2038 |
| \$1,235,000 | 3.750% | 2039 |
| \$1,280,000 | 3.750% | 2040 |
| \$1,330,000 | 3.875% | 2041 |
| \$1,380,000 | 3.875% | 2042 |

Section 6. Redemption. Bonds maturing after June 1, 2030, may be called for redemption by the Issuer and paid before maturity on such date or any date thereafter, from any



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funds regardless of source, in whole or from time to time in part, in any order of maturity and within an annual maturity by lot. The terms of redemption shall be par, plus accrued interest to date of call.

Thirty days' written notice of redemption shall be given to the registered owner of the Bond. Failure to give such notice to any registered owner of the Bonds or any defect therein shall not affect the validity of any proceedings for the redemption of the Bonds. All Bonds or portions thereof called for redemption will cease to bear interest after the specified redemption date, provided funds for their redemption are on deposit at the place of payment.

If selection by lot within a maturity is required, the Registrar shall designate the Bonds to be redeemed by random selection of the names of the registered owners of the entire annual maturity until the total amount of Bonds to be called has been reached.

Section 7. Issuance of Bonds in Book-Entry Form; Replacement Bonds.

(a) Notwithstanding the other provisions of this Resolution regarding registration, ownership, transfer, payment and exchange of the Bonds, unless the Issuer determines to permit the exchange of Depository Bonds for Bonds in the Authorized Denominations, the Bonds shall be issued as Depository Bonds in denominations of the entire principal amount of each maturity of Bonds (or, if a portion of the principal amount is prepaid, the principal amount less the prepaid amount); and such Depository Bonds shall be registered in the name of Cede & Co., as nominee of DTC. Payment of semi-annual interest for any Depository Bond shall be made by wire transfer or New York Clearing House or equivalent next day funds to the account of Cede & Co. on the interest payment date for the Bonds at the address indicated in or pursuant to the Representation Letter.

(b) With respect to Depository Bonds, neither the Issuer nor the Paying Agent shall have any responsibility or obligation to any Participant or to any Beneficial Owner. Without limiting the immediately preceding sentence, neither the Issuer nor the Paying Agent shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC or its nominee or of any Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Participant, any Beneficial Owner or any other person, other than DTC or its nominee, of any notice with respect to the Bonds, (iii) the payment to any Participant, any Beneficial Owner or any other person, other than DTC or its nominee, of any amount with respect to the principal of, premium, if any, or interest on the Bonds, or (iv) the failure of DTC to provide any information or notification on behalf of any Participant or Beneficial Owner.

The Issuer and the Paying Agent may treat DTC or its nominee as, and deem DTC or its nominee to be, the absolute owner of each Bond for the purpose of payment of the principal of, premium, if any, and interest on such Bond, for the purpose of all other matters with respect to



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such Bond, for the purpose of registering transfers with respect to such Bonds, and for all other purposes whatsoever (except for the giving of certain Bondholder consents, in accordance with the practices and procedures of DTC as may be applicable thereto). The Paying Agent shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the Bondholders as shown on the Registration Books, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal of, premium, if any, and interest on the Bonds to the extent so paid. Notwithstanding the provisions of this Resolution to the contrary (including without limitation those provisions relating to the surrender of Bonds, registration thereof, and issuance in Authorized Denominations), as long as the Bonds are Depository Bonds, full effect shall be given to the Representation Letter and the procedures and practices of DTC thereunder, and the Paying Agent shall comply therewith.

(c) Upon (i) a determination by the Issuer that DTC is no longer able to carry out its functions or is otherwise determined unsatisfactory, or (ii) a determination by DTC that the Bonds are no longer eligible for its depository services or (iii) a determination by the Paying Agent that DTC has resigned or discontinued its services for the Bonds, if such substitution is authorized by law, the Issuer shall (A) designate a satisfactory substitute depository as set forth below or, if a satisfactory substitute is not found, (B) provide for the exchange of Depository Bonds for replacement Bonds in Authorized Denominations.

(d) To the extent authorized by law, if the Issuer determines to provide for the exchange of Depository Bonds for Bonds in Authorized Denominations, the Issuer shall so notify the Paying Agent and shall provide the Registrar with a supply of executed unauthenticated Bonds to be so exchanged. The Registrar shall thereupon notify the owners of the Bonds and provide for such exchange, and to the extent that the Beneficial Owners are designated as the transferee by the owners, the Bonds will be delivered in appropriate form, content and Authorized Denominations to the Beneficial Owners, as their interests appear.

(e) Any substitute depository shall be designated in writing by the Issuer to the Paying Agent. Any such substitute depository shall be a qualified and registered "clearing agency" as provided in Section 17A of the Securities Exchange Act of 1934, as amended. The substitute depository shall provide for (i) immobilization of the Depository Bonds, (ii) registration and transfer of interests in Depository Bonds by book entries made on records of the depository or its nominee and (iii) payment of principal of, premium, if any, and interest on the Bonds in accordance with and as such interests may appear with respect to such book entries.

Section 8. Registration of Bonds; Appointment of Registrar; Transfer; Ownership; Delivery; and Cancellation.

(a) Registration. The ownership of Bonds may be transferred only by the making of an entry upon the books kept for the registration and transfer of ownership of the



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Bonds, and in no other way. The Finance Director is hereby appointed as Bond Registrar under the terms of this Resolution. Registrar shall maintain the books of the Issuer for the registration of ownership of the Bonds for the payment of principal of and interest on the Bonds as provided in this Resolution. All Bonds shall be negotiable as provided in Article 8 of the Uniform Commercial Code and Section 384.83(5) of the Code of Iowa, subject to the provisions for registration and transfer contained in the Bonds and in this Resolution.

(b) Transfer. The ownership of any Bond may be transferred only upon the Registration Books kept for the registration and transfer of Bonds 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 Bond (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 Bond, a new fully registered Bond, 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 Bond, 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 Bonds. In all cases of the transfer of the Bonds, the Registrar shall register, at the earliest practicable time, on the Registration Books, the Bonds, in accordance with the provisions of this Resolution.

(d) Ownership. As to any Bond, 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 Bonds 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 Bond, including the interest thereon, to the extent of the sum or sums so paid.

(e) Cancellation. All Bonds which have been redeemed shall not be reissued but shall be cancelled by the Registrar. All Bonds 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 Bonds to the Issuer.



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(f) Non-Presentation of Bonds. In the event any payment check representing payment of principal of or interest on the Bonds is returned to the Paying Agent or is not presented for payment of principal at the maturity or redemption date, if funds sufficient to pay such principal of or interest on Bonds 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 Bonds 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 Bonds 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 Bonds. 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 Bonds of whatever nature shall be made upon the Issuer.

Section 9. Reissuance of Mutilated, Destroyed, Stolen or Lost Bonds. In case any outstanding Bond shall become mutilated or be destroyed, stolen or lost, the Issuer shall at the request of Registrar authenticate and deliver a new Bond of like tenor and amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond to Registrar, upon surrender of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, upon filing with the Registrar evidence satisfactory to the Registrar and Issuer that such Bond 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 Bond, 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 Bonds to the extent of the payments so made. Payment of principal shall only be made upon surrender of the Bond to the Paying Agent.

Section 11. Execution, Authentication and Delivery of the Bonds. Upon the adoption of this Resolution, the Mayor and Clerk shall execute and deliver the Bonds to the Registrar, who shall authenticate the Bonds and deliver the same to or upon order of the Original Purchaser. No Bond 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 Bond a Certificate of



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Authentication substantially in the form of the Certificate herein set forth. Such Certificate upon any Bond executed on behalf of the Issuer shall be conclusive evidence that the Bond 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 Bondholder.

Section 13. Form of Bond. Bonds shall be printed in substantial compliance with standards proposed by the American Standards Institute substantially in the form as follows:

"STATE OF IOWA"
"COUNTIES OF POLK AND WARREN"
"CITY OF DES MOINES"
"STORMWATER MANAGEMENT UTILITY REVENUE
BOND"
"SERIES 2022B"

Rate: _____
Maturity: _____
Bond Date: August 24, 2022
CUSIP No.: _____
"Registered"
Certificate No. _____
Principal Amount: \$ _____

The City of Des Moines, State of Iowa, a municipal corporation organized and existing under and by virtue of the Constitution and laws of the State of Iowa (the "Issuer"), for value received, promises to pay from the source and as hereinafter provided, on the maturity date indicated above, to

(Registration panel to be completed by Registrar or Printer with name of Registered Owner).

or registered assigns, the principal sum of (principal amount written out) THOUSAND DOLLARS in lawful money of the United States of America, on the maturity date shown above, only upon presentation and surrender hereof at the office of the Finance Director, City of Des Moines, Iowa, Paying Agent of this issue, or its successor, with interest on the sum from the date hereof until paid at the rate per annum specified above, payable on June 1, 2023, and semiannually thereafter on the 1st day of June and December in each year.



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Interest and principal shall be paid to the registered holder of the Bond as shown on the records of ownership maintained by the Registrar as of the 15th day of the month preceding such interest payment date. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

This Bond is issued pursuant to the provisions of Section 384.84A of the Code of Iowa, as amended, for the purpose of paying costs of acquisition, construction, reconstruction, extending, remodeling, improving, repairing and equipping all or part of the Stormwater Management Utility, including city-wide stormwater utility improvement projects, Closes Creek watershed improvements, flood mitigation and protection system improvements, and Hamilton Drainage area improvements, in conformity to a Resolution of the Council of the City duly passed and approved.

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a limited purpose trust company ("DTC"), to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other Issuer as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Bonds maturing after June 1, 2030, may be called for redemption by the Issuer and paid before maturity on such date or any date thereafter, from any funds regardless of source, in whole or from time to time in part, in any order of maturity and within an annual maturity by lot. The terms of redemption shall be par, plus accrued interest to date of call.

Thirty days' written notice of redemption shall be given to the registered owner of the Bond. Failure to give such notice to any registered owner of the Bonds or any defect therein shall not affect the validity of any proceedings for the redemption of the Bonds. All Bonds or portions thereof called for redemption will cease to bear interest after the specified redemption date, provided funds for their redemption are on deposit at the place of payment.

If selection by lot within a maturity is required, the Registrar shall designate the Bonds to be redeemed by random selection of the names of the registered owners of the entire annual maturity until the total amount of Bonds to be called has been reached.

Ownership of this Bond may be transferred only by transfer upon the books kept for such purpose by the Finance Director, City of Des Moines, Iowa, the Registrar. Such transfer on the books shall occur only upon presentation and surrender of this Bond at the office of the Registrar



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as designated below, together with an assignment duly executed by the owner hereof or his duly authorized attorney in the form as shall be satisfactory to the Registrar. Issuer reserves the right to substitute the Registrar and Paying Agent but shall, however, promptly give notice to registered Bondholders of such change. All Bonds shall be negotiable as provided in Article 8 of the Uniform Commercial Code and Section 384.83(5) of the Code of Iowa, subject to the provisions for registration and transfer contained in the Bond Resolution.

This Bond and the series of which it forms a part, and Senior Parity Obligations, and Additional Obligations which may be hereafter issued and outstanding from time to time on a parity with the Bonds, as provided in the Resolution of which notice is hereby given and is hereby made a part hereof, are payable from and secured by a pledge of the Net Revenues of the Stormwater Management Utility (the "System"), as defined and provided in the Resolution. There has heretofore been established and the City covenants and agrees that it will maintain just and equitable rates or charges for the use of and service rendered by the System in each year for the payment of the proper and reasonable expenses of operation and maintenance of the System and for the establishment of a sufficient sinking fund to meet the principal of and interest on this series of Bonds, and other Bonds ranking on a parity therewith, as the same become due. This Bond is not payable in any manner by taxation and under no circumstances shall the City be in any manner liable by reason of the failure of the Net Revenues to be sufficient for the payment hereof.

And it is hereby represented and certified that all acts, conditions and things requisite, according to the laws and Constitution of the State of Iowa, to exist, to be had, to be done, or to be performed precedent to the lawful issue of this Bond, have been existent, had, done and performed as required by law.

IN TESTIMONY WHEREOF, the City by its City Council has caused this Bond to be signed by the manual signature of its Mayor and attested by the manual signature of its Clerk, with the seal of the City impressed hereon, and authenticated by the manual signature of an authorized representative of the Registrar, the Finance Director, Des Moines, Iowa.

Date of authentication: August 24, 2022

This is one of the Bonds described in the within mentioned Resolution, as registered by the Finance Director

FINANCE DIRECTOR, Registrar

By: _____
Authorized Signature



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Registrar and Transfer Agent: Finance Director
Paying Agent: Finance Director

SEE REVERSE FOR CERTAIN DEFINITIONS

(Seal)

CITY OF DES MOINES, STATE OF IOWA

By: (manual signature) Mayor

ATTEST:

By: (manual signature) City Clerk

(Assignment Block)
(Information Required for Registration)

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto (Social Security or Tax Identification No.) the within Bond and does hereby irrevocably constitute and appoint attorney in fact to transfer the said Bond on the books kept for registration of the within Bond, with full power of substitution in the premises.

Dated:

(Person(s) executing this Assignment sign(s) here)

SIGNATURE)
GUARANTEED)



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IMPORTANT - READ CAREFULLY

The signature(s) to this Power must correspond with the name(s) as written upon the face of the certificate(s) or Bond(s) in every particular without alteration or enlargement or any change whatever. Signature guarantee must be provided in accordance with the prevailing standards and procedures of the Registrar and Transfer Agent. Such standards and procedures may require signature to be guaranteed by certain eligible guarantor institutions that participate in a recognized signature guarantee program.

INFORMATION REQUIRED FOR REGISTRATION OF TRANSFER

Name of Transferee(s) _____
 Address of Transferee(s) _____
 Social Security or Tax Identification _____
 Number of Transferee(s) _____
 Transferee is a(n):
 Individual* _____ Corporation _____
 Partnership _____ Trust _____

*If the Bond is to be registered in the names of multiple individual owners, the names of all such owners and one address and social security number must be provided.

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though written out in full according to applicable laws or regulations:



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TEN COM - as tenants in common
TEN ENT - as tenants by the entireties
JT TEN - as joint tenants with rights of survivorship and not as tenants in common
IA UNIF TRANS MIN ACT - Custodian (Cust) (Minor) Under Iowa Uniform Transfers to Minors Act (State)

ADDITIONAL ABBREVIATIONS MAY ALSO BE USED THOUGH NOT IN THE ABOVE LIST

Section 14. Equality of Lien. The timely payment of principal of and interest on the Bonds and Senior Parity Obligations shall be secured equally and ratably by 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 to all respect to the Outstanding Obligations and the terms and conditions of the Prior Resolutions.

Section 15. Application of Bond Proceeds. Proceeds of the Bonds (\$18,660,000 plus \$1,208,635.20 premium) less Underwriter's Discount of \$9,135.60 shall be applied as follows:

- An amount equal to \$79,530.97 shall be held by the Finance Director and applied to pay the costs of issuance of the Bonds (with any excess to be available for the Project Fund or the Bond Fund).
An amount equal to \$18,700,000 shall be deposited to the Project Fund.
An amount equal to \$1,079,968.63 shall be deposited into the Reserve Fund (along with existing funds of \$8,205,406.03) to satisfy the Reserve Fund Requirement.

The Project Fund shall be invested in accordance with Section 19 of this Resolution. Earnings on investments of the Project Fund shall be deposited in and expended from the Project Fund. Any amounts on hand in the Project Fund shall be available for the payment of the principal of or interest on the Bonds 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. Any excess proceeds remaining on hand after completion of the purpose of issuance shall be used to call or otherwise retire Bonds.



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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. The 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. So long as the Bonds are outstanding and unpaid the rates or charges to consumers of services of the System shall be sufficient in each year for the payment of the proper and reasonable expenses of operation and maintenance of the System and for the payment of principal and interest on the Bonds and Parity Obligations as the same fall due, and to provide for the creation of reserves as hereinafter provided.

Any revenues 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 Bonds, and as long as any of the Bonds or Parity Obligations shall be outstanding and unpaid either as to principal or as to interest, or until all of the Bonds 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:

Funds Created Under Prior Resolutions. Money in the Revenue Fund shall first be disbursed to make all required deposits into the several funds created under the Prior Resolutions, including, in order of priority, the Operation and Maintenance Fund, and Sinking Fund created thereunder. The provisions of the Prior 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 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 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.

At such time as the Outstanding Obligations are paid, and so long as the Bonds 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:



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(a) 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.

(b) Sinking Fund. Money in the Revenue Fund shall next be disbursed to make deposits into a separate and special fund to pay the principal and interest on the Bonds and Senior Parity Obligations (including any reasonable reserves imposed therefor). The fund shall be known as the Stormwater Management Utility Revenue Bond 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 Bonds and Senior Parity Obligations, plus 1/12th of the installment of principal coming due on such Bonds and Senior Parity Obligations 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 Bonds and Senior Parity Obligations as the same shall become due and payable.



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(c) Reserve Fund. Money in the Revenue Fund shall next be disbursed to maintain a debt service reserve in an amount equal to the Reserve Fund Requirement. Such fund shall be known as the Stormwater Management Utility Revenue Debt Service Reserve Fund (the "Reserve Fund"). In each month there shall be deposited in the Reserve Fund an amount equal to 25 percent of the amount required by this Resolution to be deposited in such month in the Sinking Fund; provided, however, that when the amount on deposit in the Reserve Fund shall be not less than the Reserve Fund Requirement, no further deposits shall be made into the Reserve Fund except to maintain such level, and when the amount on deposit in the Reserve Fund is greater than the balance required above, such additional amounts shall be withdrawn and paid into the Revenue Fund. Money in the Reserve Fund shall be used solely for the purpose of paying principal at maturity of or interest on the Bonds and Senior Parity Obligations secured by the Reserve Fund, for the payment of which insufficient money shall be available in the Sinking Fund. Whenever it shall become necessary to so use money in the Reserve Fund, the payments required above shall be continued or resumed until it shall have been restored to the required minimum amount.

(d) Subordinate Obligations. Money in the Revenue Fund may next be used to pay principal of and interest on (including reasonable reserves therefor) any other obligations which by their terms shall be payable from the Net Revenues of the System, but subordinate to the Bonds and Senior Parity Obligations.

(e) 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, may be used to pay for extraordinary repairs or replacements to the System, or may be used to pay or redeem the Bonds or Parity Obligations or any of them, or for any lawful purpose.

Money in the Revenue Fund shall be allotted and paid into the various funds and accounts hereinbefore referred to in the order in which the funds are listed, on a cumulative basis on the 10th day of each month, or on the next succeeding business day when the 10th shall not be a business day; and if in any month the money in the Revenue Fund shall be insufficient to deposit or transfer the required amount in any of the funds or accounts, the deficiency shall be made up in the following month or months after payments into all funds and accounts enjoying a prior claim to the revenues shall have been met in full. The provisions of this Section shall not be construed to require the Issuer to maintain separate bank accounts for the funds created by this Section; except the Sinking Fund and the Reserve Fund shall be maintained in a separate account but may be invested in conjunction with other funds of the City but designated as a trust fund on the books and records of the City.

Section 18. Outstanding Obligations. Nothing in this Resolution shall be construed to impair the rights vested in the Outstanding Obligations. The amounts herein required to be paid



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into the various funds named in this Resolution shall be inclusive of payments required in respect to the Outstanding Obligations. The provisions of the Prior 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 resolution first adopted shall prevail until such time as the Bonds authorized by the resolution have been paid in full or otherwise satisfied as therein provided at which time the provisions of this Resolution shall again prevail.

Section 19. Investments. 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 in 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 Chapter 12C of the Code of Iowa, as amended, or otherwise by a valid pledge of direct obligations of the United States Government having an equivalent market value. All such interim 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 but in no event maturing in more than three years in the case of the Reserve Fund.

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 20. Covenants Regarding the Operation of the System. The Issuer hereby covenants and agrees with each and every holder of the Bonds 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.



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(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 System determined to be sufficient to produce Net Revenues for the next succeeding Fiscal Year are (i) adequate to pay principal and interest requirements thereof and create and 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 charges 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 Bondholders 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 the Revenue Fund.

(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 annually, or as otherwise required by law, by an Independent Auditor. The holders of any of the Bonds 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 the revenues to the funds specified in this Resolution.



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(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 Bonds and Parity Obligations shall have been provided for in the manner provided in this Resolution; provided, however, that 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 therefor, and provided further that the proceeds of the disposition of such property shall be placed in a revolving fund and 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 Bonds or Parity Obligations shall not be used to pay principal or interest on the Bonds and Parity Obligations or for payments into the Sinking Fund or Reserve Fund.

(g) Fidelity Bond. 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 provided to the holders of any of the Bonds upon request.

Section 21. Remedies of Bondholders. Except as herein expressly limited the holder or holders of the Bonds 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 Bonds and interest thereon, and of the pledge of the revenues made hereunder, and of all covenants of the Issuer hereunder.

Section 22. Prior Lien and Parity Obligations. The Issuer will issue no other 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 having priority over the Bonds or Senior Parity Obligations.

Additional Obligations may be issued on a parity and equality of rank with the Bonds with respect to the lien and claim of such Additional Obligations to the Net Revenues of the



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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 Bonds or Senior Parity Obligations, 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 the Bonds, Senior Parity Bonds or general obligation Bonds outstanding, (for other than as outlined in (a) above), 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 or independent financial consultant or a consulting engineer, 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 Bonds or Senior Parity Obligations for both principal of and interest on all Bonds or Senior 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 Auditor or independent financial consultant or a consulting engineer, not a regular employee of the Issuer, 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 Bonds herein authorized.

(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.



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(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 of them 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 23. Subordinate Obligations. The Issuer reserves the right to issue obligations from time to time payable from the Net Revenues of the System and ranking on a subordinated basis with the Bonds and Outstanding Senior Parity Obligations.

Subordinate obligations may be issued for the purposes of improvements and extensions to the System or to retire or refund Bonds or Senior Parity Obligations or Subordinate Parity Obligations in advance of maturity, or to pay for extraordinary repairs or replacements to the System.

In the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, reorganization, or other similar proceedings in connection therewith, relative to the Issuer or to its creditors, as such, or to its property, and in the event of any proceedings for voluntary liquidation, dissolution, or other winding up of the Issuer, whether or not involving insolvency or bankruptcy, the owners of all Bonds or Senior Parity Obligations then outstanding shall be entitled to receive payment in full of all principal and interest due on all such Bonds or Senior Parity Obligations before the owners of the Subordinate Parity Obligations are entitled to receive any payment from the Net Revenues or the amounts held in the funds and accounts created under the Resolution.

If any Event of Default shall have occurred and be continuing (under circumstances when the provisions of the above paragraph are not applicable), the owners of all Bonds or Senior Parity Obligation then outstanding shall be entitled to receive payment in full of all principal and interest then due on all such Bonds or Senior Parity Obligations before the owners of the Subordinate Parity Obligations are entitled to receive any payment from the Net Revenues or the amounts held in the funds and accounts created under the Resolution.

Any series of Subordinate Obligations may have such rank or priority with respect to any other series of Subordinate Obligations as may be provided in the resolution authorizing such series of Subordinate Obligations and may contain such other provisions as are not in conflict with the provisions of this Resolution.



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Section 24. Disposition of Bond 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 Bonds issued hereunder which will cause any of the Bonds 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 the Bonds it will comply with the requirements of the 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 Bonds will be used in a manner that would cause the Bonds 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 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 Bonds 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 Bonds 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 Bonds 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 Bonds to be classified as arbitrage bonds under Section 148(a) and (b) of the Internal Revenue Code or regulations issued thereunder.

The Issuer covenants that it will proceed with due diligence to spend the proceeds of the Bonds 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 Bonds 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.



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Section 25. 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 Bonds. 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 Bonds to certify as to the reasonable expectations and covenants of the Issuer at that date.

Section 26. Additional Covenants, Representations and Warranties of the Issuer. The Issuer certifies and covenants with the purchasers and holders of the Bonds 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 Bonds; (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 Bonds; (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 27. Amendment of Resolution to Maintain Tax Exemption. This Resolution may be amended without the consent of any owner of the Bonds if, in the opinion of bond counsel, such amendment is necessary to maintain tax exemption with respect to the Bonds under applicable Federal law or regulations.

Section 28. Discharge and Satisfaction of Bonds. The covenants, liens and pledges entered into, created or imposed pursuant to this Resolution may be fully discharged and satisfied with respect to the Bonds and Parity Obligations, or any of them, in any one or more of the following ways:

(a) By paying the Bonds or Parity Obligations when the same shall become due and payable; and

(b) By depositing in trust with the Finance Director, or with a corporate trustee designated by the Governing Body for the payment of the 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 the obligations may be redeemed, all of such obligations outstanding at the time, together with the interest



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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 Bonds or Parity Obligations 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 29. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the Issuer and the holder or holders of the Bonds and Parity Obligations, and after the issuance of any of the Bonds 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 Bonds and Parity Obligations, and interest due thereon, shall have been satisfied and discharged as provided in this Resolution.

Section 30. Amendment of Resolution Without Consent. The Issuer may, without the consent of or notice to any of the holders of the Bonds and Parity Obligations, 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 Bonds or Parity Obligations; or to comply with any application 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 Bonds or Parity Obligations;

(b) to change the terms or provisions of this Resolution to the extent necessary to prevent the interest on the Bonds or Parity Obligations 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 Bonds or Parity Obligations any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the holders of the Bonds;

(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



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

Section 31. 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 Bonds and Parity Obligations at any time outstanding (not including in any case any Bonds 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 Bonds 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 Bonds, or modify the terms of payment of principal of or interest on the Bonds 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 Bonds and Parity Obligations then outstanding; and

(c) Reduce the percentage of the principal amount of Bonds, 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 Bond 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.

Whenever at any time within one year from the date of the mailing of the 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 Bonds then outstanding as in this Section defined, which instrument or instruments shall refer to the proposed amendatory Resolution described in the 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 Bonds and Parity Obligations.

Any consent given by the holder of a Bond 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 Bond during such period. Such consent may be revoked at any time after six months from the date of such instrument by



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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 Bonds 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 Bonds described in such certificate.

Section 32. 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 33. Continuing Disclosure. The Issuer hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate, and the provisions of the Continuing Disclosure Certificate are hereby approved and incorporated by reference as part of this Resolution and made a part hereof and the Mayor and the City Clerk are hereby authorized to execute and deliver the same at issuance of the Bonds. Notwithstanding any other provision of this Resolution, failure of the Issuer to comply with the Continuing Disclosure Certificate shall not be considered an event of default under this Resolution; however, any holder of the Bonds or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Issuer to comply with its obligations under the Continuing Disclosure Certificate. For purposes of this Section, "Beneficial Owner" means any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

Section 34. 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 Resolution are, to the extent of such conflict, hereby repealed; and this Resolution shall be in effect from and after its adoption



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MOVED by Gatto to adopt.

Second by Boesen.

FORM APPROVED:

Thomas G. Fisher Jr. Deputy City Attorney

02077139-1\10387-333

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|----------|--------|
| COWNIE | ✓ | | | |
| BOESEN | ✓ | | | |
| GATTO | ✓ | | | |
| MANDELBAUM | ✓ | | | |
| SHEUMAKER | ✓ | | | |
| VOSS | ✓ | | | |
| WESTERGAARD | ✓ | | | |
| TOTAL | 7 | | | |
| MOTION CARRIED | | | APPROVED | |

CERTIFICATE

I, LAURA BAUMGARTNER, 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.

T.M. Franklin Cownie Mayor

Laura Baumgartner City Clerk