



Date March 8, 2018

RESOLUTION APPROVING AND AUTHORIZING A FORM OF  
LOAN AGREEMENT AND AUTHORIZING AND PROVIDING  
FOR THE ISSUANCE OF CAPITAL LOAN NOTES AND  
PROVIDING FOR A METHOD OF PAYMENT OF THE NOTES,  
AND APPROVAL OF A TAX EXEMPTION CERTIFICATE

WHEREAS, the City of Des Moines, State of Iowa (the "City") did heretofore adopt the Metro Center Urban Renewal Plan, as amended (the "Urban Renewal Plan"), in which plan there is to be carried out an urban renewal project designated as the IEC Hotel Project (the "Project"); and

WHEREAS, the City, Polk County, Iowa and IEC Hotel Corporation are parties to an Amended and Restated Development Agreement for the development of a full-service convention center hotel and meeting space, which was filed with the Polk County, Iowa Recorder on April 1, 2016 (the "Development Agreement"); and

WHEREAS, the Development Agreement provides that the City shall obtain a loan (defined therein as "City's Series IRA Bonds") in a principal amount of \$4,000,000 and use the proceeds of the loan to fund a portion of the cost of the Project; and

WHEREAS, after due notice and hearing, the City approved the issuance of City's Series IRA Bonds in an amount not to exceed \$5,000,000 for the Project; and

WHEREAS, Iowa Code Section 403.17(7) defines "Bonds" to include notes and other forms of indebtedness; and

WHEREAS, Iowa Code Section 403.9 provides for the issuance of notes payable solely from revenues and other funds derived from or held in connection with the undertaking and carrying out of urban renewal projects; and

WHEREAS, the Iowa Economic Development Authority has agreed to pay funds to the City under Contract Number 15-RD-003 (the "IRA Revenues") in connection with the undertaking and carrying out of the Project; and

WHEREAS, pursuant to Sections 403.17(7) and 384.24A of the Code of Iowa, the City has determined that it will issue the Urban Renewal Revenue Capital Loan Notes provided for in this Resolution; and

WHEREAS, the City desires to obtain a loan and shall evidence its obligation to repay the loan with Notes that are payable from and secured solely and only by a senior lien upon the

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IRA Revenues held by the Trustee in the IRA Revenue Fund under the IRA Trust Indenture derived from and held in connection with the Project; and

WHEREAS, it is deemed necessary and advisable that the City should provide for the authorization of eight Loan Agreements and the corresponding provision of eight Urban Renewal Revenue Capital Loan Notes, to the aggregate amount of \$4,000,000 for the purpose of borrowing funds to pay costs of carrying out this essential corporate purpose project pursuant to the provisions of Sections 15A.1, 384.24A, 403.9(1) and 403.17(7) of the Code of Iowa, payable solely from the IRA Revenue Fund as provided in Article II of the IRA Trust Indenture in connection with the undertaking and carrying out of the Project, all pursuant to the Metro Center Urban Renewal Plan Area and the Development Agreement as described herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, 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:

- ◆ "City" shall mean the City of Des Moines, Iowa.
- ◆ "Corporate Seal" shall mean the official seal of City adopted by the governing body.
- ◆ "County" shall mean Polk County, Iowa.
- ◆ "Development Agreement" shall mean an Amended and Restated Development Agreement by and between the Project Parties, filed with the Polk County, Iowa, Recorder on April 1, 2016, as amended from time to time, providing for the development of the Project.
- ◆ "Fiscal Year" shall mean the twelve-month period beginning on July 1st 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 Project. 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.
- ◆ "Governing Body" shall mean the City Council of the City, or its successor in function.



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◆ "IDEA Contract" shall mean that certain contract Number 15-RD-003, as amended from time to time, under which IRA Revenues are paid to the City, deposited into the IRA Revenue Fund, held and dispensed pursuant to the IRA Trust Indenture and used to pay the costs of the Project.

◆ "IEC" shall mean IEC Hotel Corporation, a Domestic Non-Profit Corporation operating pursuant to Iowa Code chapter 504 and having its principle place of business in Iowa and issuing certain obligations on behalf of Polk County, Iowa, the proceeds of which will be used to fund a portion of the Project.

◆ "IRA Revenues" shall mean payments from the Iowa Economic Development Authority to the City under Contract Number 15-RD-003 which are deposited into IRA Revenue Fund by the City pursuant to and in accordance with the Development Agreement, as amended, and held and disbursed in accordance with Article II of the IRA Trust Indenture.

◆ "IRA Revenue Fund" shall mean the fund established pursuant to and held in accordance with the Development Agreement, as amended, and the IRA Trust Indenture.

◆ "IRA Trust Indenture" shall mean that certain trust agreement, dated March 21, 2018, under which the IRA Revenues received by the City are held and dispersed to pay the costs of the Project.

◆ "Loan" shall mean the funds borrowed in the aggregate principal amount of \$4,000,000 as authorized under this Resolution and as evidenced by the Urban Renewal Revenue Capital Loan Notes.

◆ "Loan Agreement" shall mean a Loan Agreement between the City and each original Purchaser evidencing the City's obligation to repay the Loan in substantially the form attached to and approved by this Resolution.

◆ "Note" shall mean each respective Note issued under this Resolution and part of the Series of the Notes.

◆ "Notes" shall mean eight Term Notes evidencing the City's obligation to repay the Loan as set forth in Section 5 of this Resolution and known as the "Urban Renewal Revenue Capital Loan Notes, Series 2018", authorized by this Resolution.

◆ "Original Purchasers" shall mean the purchasers of the Notes from City at the time of their original issuance.

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♦ "Parity Obligations" shall mean the Series D Certificates described in and payable from the IRA Revenue Fund on a parity, pro-rata basis with the Notes as to current principal and interest due and payable under the terms of the Notes and Parity Obligations, but not as to the Reserve Fund established in this Resolution or otherwise, pursuant to Article II of the IRA Trust Indenture.

♦ "Paying Agent" shall mean the Trustee, or such successor as may be approved as provided herein and who shall carry out the duties prescribed herein as City'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 "Investment Securities" as defined in the IRA Trust Indenture.

♦ "Project" shall mean the joint development and financing of a full-service convention center hotel and meeting space as described in the Development Agreement, the IRA Trust Indenture, the Urban Renewal Plan and the IEDA Contract.

♦ "Project Fund" shall mean the IRA Revenue Fund.

♦ "Rebate Fund" shall mean the fund so defined in and established pursuant to this Resolution and funded as set forth in Article II of the IRA Trust Indenture.

♦ "Registrar" or "Registrars" shall mean the City Finance Director and the Trustee acting jointly, or such successor as may be approved by the Project Parties 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 Trustee shall also act as Transfer Agent for the Notes.

♦ "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 Notes (but not with respect to the Parity Obligations, the Reserve Fund established herein not securing the Parity Obligations); (b) 10 % of the stated principal amount of the Notes or (c) 125% of the average annual principal and interest coming due on the Notes. For purposes of this definition: (1) "issue price" shall be substituted for "stated principal amount" for issues with original issue discount or original issue premium of more than a de minimus amount and (2) stated principal amount shall not include any portion of an issue refunded or advance refunded by a subsequent issue

♦ "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.



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♦ "Treasurer" shall mean the City Treasurer 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.

♦ "Trustee" shall mean Bankers Trust Company or any successor thereto under the IRA Trust Indenture.

♦ "Urban Renewal Plan" shall mean the Metro Center Urban Renewal Plan, as amended.

♦ "Urban Renewal Revenue Capital Loan Notes" shall mean the Notes evidencing the City's obligation to repay the Loan pursuant to this Resolution.

♦ "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 Loan Agreements and the Notes authorized by this Resolution are authorized pursuant to Sections 15A.1, 384.24A, 403.9 and 403.17(7) of the Code of Iowa, and in compliance with all applicable provisions of the Constitution and laws of the State of Iowa. The Loan Agreements shall be substantially in the form attached to this Resolution and are authorized to be executed and delivered on behalf of the City by the Mayor and attested by the Clerk.

Section 3. Authorization and Purpose. There are hereby authorized to be issued eight fully registered Urban Renewal Revenue Capital Loan Notes, Series 2018 of the City of Des Moines, County of Polk, State of Iowa, in the aggregate amount of \$4,000,000 as set forth in Section 5 of this Resolution to evidence the Loan, the proceeds of which will be used for the purpose of paying costs of aiding in the planning, undertaking, and carrying out of an urban renewal project under the authority of chapter 403, specifically to pay the costs of the Project.

Section 4. Source of Payment. As provided and required by Section 403.9 of the Code of Iowa, the Loan and the interest thereon shall be payable solely from the IRA Revenue Fund under Article II of the IRA Trust Indenture. The Loan and Notes authorized pursuant to this Resolution are declared to be for an essential public and governmental purpose and together with interest thereon and income therefrom, shall be exempted from all taxes. The Notes shall recite in substance that they evidence a loan made in connection with an urban renewal project as defined in Chapter 403 of the Code of Iowa, and in any suit, action or proceeding involving the validity or enforceability of any Note issued hereunder or the security therefor, such Notes shall be conclusively deemed to have been issued for such purpose and such project shall be



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conclusively deemed to have been planned, located and carried out in accordance with the provisions of Chapter 403 of the Code of Iowa.

Section 5. Note Details. Urban Renewal Revenue Capital Loan Notes, Series 2018, of the City in the aggregate amount of \$4,000,000 shall be delivered as eight separate term notes pursuant to the provisions of Sections 15A.1, 384.24A, 403.9 and 403.17(7) of the Code of Iowa for the aforesaid purpose. Each Note shall be designated "URBAN RENEWAL REVENUE CAPITAL LOAN NOTE, SERIES 2018", be dated the date of delivery

The Notes shall be executed by the facsimile or manual signature of the Mayor and attested by the facsimile or manual 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 and interest on the Loan shall be payable at the office of the Paying Agent by mailing of a check to the registered owner of each Note. Each Note shall mature on June 1, 2024, shall bear interest at four percent (4.00%) per annum, and will evidence the City's obligation to repay a portion of the Loan equal to the amounts set forth below.

Term Note #1	\$ 200,000	Pioneer Hi-Bred International, Inc.
Term Note #2	\$1,000,000	Principal Financial Group
Term Note #3	\$1,900,000	West Bank
Term Note #4	\$ 100,000	III Ag LLC
Term Note #5	\$ 200,000	JSC Trust
Term Note #6	\$ 200,000	Wm C Knapp, L.C.
Term Note #7	\$ 200,000	Employers Mutual Casualty Company
Term Note #8	\$ 200,000	The Weitz Company, LLC

Section 6. Mandatory and Optional Redemption.

i. Mandatory Payment and Redemption of Term Notes. Each Note is subject to mandatory redemption prior to maturity and is due and payable at a price equal to the portion of the principal amount of the Loan set forth below plus accrued interest at the redemption date on June 1st of each of the years set forth below. Each Note shall be "due and payable" under Article II of the IRA Trust Indenture under the following schedule:

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## Term Note #1 – Pioneer Hi-Bred International, Inc.

<u>Principal Amount</u>	<u>Payment Date June 1st</u>
\$28,000	2020
\$36,850	2021
\$38,700	2022
\$42,000	2023
\$54,450	2024*

\*Note Matures

## Term Note #2 –Principal Financial Group

<u>Principal Amount</u>	<u>Payment Date June 1st</u>
\$140,000	2020
\$184,250	2021
\$193,500	2022
\$210,000	2023
\$272,250	2024*

\* Note Matures

## Term Note #3 – West Bank

<u>Principal Amount</u>	<u>Payment Date June 1st</u>
\$266,000	2020
\$350,075	2021
\$367,650	2022
\$399,000	2023
\$517,275	2024*

\* Note Matures



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Term Note #4 – III Ag LLC

Principal Amount	Payment Date June 1st
\$14,000	2020
\$18,425	2021
\$19,350	2022
\$21,000	2023
\$27,225	2024*

\* Note Matures

Term Note #5 – JSC Trust

Principal Amount	Payment Date June 1st
\$28,000	2020
\$36,850	2021
\$38,700	2022
\$42,000	2023
\$54,450	2024*

\* Note Matures



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## Term Note #6 – Wm C Knapp, L.C.

<u>Principal Amount</u>	<u>Payment Date June 1st</u>
\$28,000	2020
\$36,850	2021
\$38,700	2022
\$42,000	2023
\$54,450	2024*

\* Note Matures

## Term Note #7 – Employers Mutual Casualty Company

<u>Principal Amount</u>	<u>Payment Date June 1st</u>
\$28,000	2020
\$36,850	2021
\$38,700	2022
\$42,000	2023
\$54,450	2024*

\* Note Matures

## Term Note #8 – The Weitz Company, LLC

<u>Principal Amount</u>	<u>Payment Date June 1st</u>
\$28,000	2020
\$36,850	2021
\$38,700	2022
\$42,000	2023
\$54,450	2024*

\* Note Matures

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ii. Optional Redemption. All or a portion of the Notes may be called for redemption by the Trustee as provided in the IRA Trust Indenture and repaid at any time, from any funds regardless of source, in whole or from time to time in part. 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 each Note. Failure to give such notice by mail to any registered owner of the Notes or any defect therein shall not affect the validity of any proceedings for the redemption of the Notes. All of the Notes 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.

Section 7. Registration of Note; Appointment of Registrar; Transfer; Ownership; Delivery; and Cancellation.

(a) Registration. The ownership of a Note may be transferred only in accordance with the terms of the Loan Agreements which shall be recorded by the making of an entry upon the books kept for the registration and transfer of ownership of the Note, and in no other way. The Finance Director and Trustee are hereby appointed Joint Note Registrars under the terms of this Resolution. Registrars shall maintain the books of the City for the registration of ownership of the Note for the payment of principal of and interest on the Note as provided in this Resolution. The Note 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 Note and in this Resolution.

(b) Transfer. The ownership of any Note may be transferred only in accordance with the applicable Loan Agreement and upon the Registration Books kept for the registration and transfer of Notes and only upon surrender thereof at the office of the Trustee 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, and bearing interest at the same rate and maturing on the same date or dates shall be provided by the Registrars.

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

(d) Ownership. For each Note, the ownership of the same shall be registered on the Registration Books of the Registrars, the owner shown by such registration 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 Note 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 repayment of the Loan and 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 canceled by the Registrars. All Notes which are canceled by the Registrars shall be destroyed and a certificate of the destruction thereof shall be furnished promptly to the City; provided that if the City shall so direct, the Registrars shall forward the canceled Notes to the City.

(f) Non-Presentation of Note. In the event any payment check representing payment of principal of or interest on the Note 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 Note shall have been made available to the Paying Agent for the benefit of the owner thereof, all liability of the City to the owner thereof for such interest or payment of such Note 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 Note 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 Note. The Paying Agent's obligation to hold such funds shall continue for a period equal to two years 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 City, whereupon any claim under this Resolution by the Owners of such interest or Note of whatever nature shall be made upon the City.

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Section 8. Reissuance of Mutilated, Destroyed, Stolen or Lost Note. In case any outstanding Note shall become mutilated or be destroyed, stolen or lost, the City shall at the request of Registrars 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 Registrars, upon surrender of such mutilated Note, or in lieu of and substitution for the Note destroyed, stolen or lost, upon filing with the Registrars evidence satisfactory to the Registrars and City that such Note has been destroyed, stolen or lost and proof of ownership thereof, and upon furnishing the Registrars and City with satisfactory indemnity and complying with such other reasonable regulations as the City or its agent may prescribe and paying such expenses as the City may incur in connection therewith.

Section 9. Record Date. Payments of principal and interest on the Loan, otherwise than upon full redemption, made in respect of the Note, shall be made to the registered holder thereof or to their designated agent as the same appear on the books of the Registrars on the 15th day of the month preceding the payment date. All such payments shall fully discharge the obligations of the City in respect of such Note to the extent of the payments so made.

Section 10. Execution, Authentication and Delivery of the Note. Upon the adoption of this Resolution, the Mayor and Clerk shall execute and deliver the Notes to the Registrars, who shall authenticate the Notes and deliver the same to or upon order of the Purchasers. No Note shall be valid or obligatory for any purpose or shall be entitled to any right or benefit hereunder unless the Registrars 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 the Note executed on behalf of the City 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 11. Right to Name Substitute Paying Agent or Registrar. City reserves the right to name a substitute, successor Registrar or Paying Agent upon giving prompt written notice to each registered Noteholder.



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Section 12. Form of Notes. The Notes shall be printed in substantial compliance with standards proposed by the American Standards Institute substantially in the form as follows:

(6)	(6)		
(7)	(8)		
(1)			
(2)	(3)	(4)	(5)
(9)			
(9a)			
(10) (Continued on the back of this Note)			
(11)(12)(13)	(14)	(15)	

FIGURE 1  
(Front)



Roll Call Number

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(10) (Continued)		(16)
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FIGURE 2  
(Back)

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The text of the Notes to be located thereon at the item numbers shown shall be as follows:

Item 1, figure 1= "STATE OF IOWA"  
"COUNTY OF POLK"  
"CITY OF DES MOINES"  
"URBAN RENEWAL REVENUE CAPITAL LOAN NOTE"  
"SERIES 2018"

Item 2, figure 1 = Rate: 4.00%  
Item 3, figure 1 = Maturity: June 1, 2024  
Item 4, figure 1 = Note Date: \_\_\_\_\_  
Item 5, figure 1 = CUSIP No.: N/A  
Item 6, figure 1 = "Registered"  
Item 7, figure 1 = Note No. \_\_\_\_\_  
Item 8, figure 1 = Principal Amount: \$ \_\_\_\_\_

Item 9, figure 1 = 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 "City"), for value received in the form of a loan (the "Loan") in the principal amount set forth above, and other good and valuable consideration, promises to pay from the source and as hereinafter provided, on the maturity date indicated above, to

Item 9A, figure 1 = (Registration panel to be completed by Registrar or Printer with name of Registered Owner).

Item 10, figure 1 = or registered assigns, the principal sum of (PRINCIPAL AMOUNT WRITTEN OUT) THOUSAND DOLLARS in lawful money of the United States of America, in accordance with the attached schedule marked "Exhibit A", upon presentation and surrender hereof at the office of the Trustee, Paying Agent, or its successor, with interest on the remaining principal amount of the Loan from the date hereof until paid at the rate per annum specified above, payable on June 1, 2019 and semiannually thereafter on the 1st day of June and December in each year.

Interest and principal shall be paid to the registered holder of the Note as shown on the records of ownership maintained by the Registrars as of the 15th day of the month preceding such interest payment date.

This Note is issued pursuant to the provisions of Sections 15A.1, 384.24A, 403.9 and 403.17(7) of the Code of Iowa, as amended, to evidence the City's obligation to repay the Loan, the proceeds of which will be used for the purpose of paying costs of aiding in the planning,

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undertaking and carrying out of an Urban Renewal Project, under the authority of chapter 403, and in order to evidence the obligations of the City under a certain Loan Agreement dated March 20, 2018, in conformity to a Resolution of the Council of said City duly passed and approved. The Note has been issued by the City in connection with an urban renewal project as defined in Chapter 403 of the Code of Iowa, and in any suit, action or proceeding involving the validity or enforceability of any Note issued hereunder or the security therefor, such Note shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of Chapter 403 of the Code of Iowa.

The Note is subject to mandatory payment and shall be "due and payable" under Article II of the IRA Trust Indenture as set forth on the attached schedule, but may also be prepaid before the Note matures in excess of the payments on any date from any funds regardless of source, in whole or from time to time in part. The terms of pre-payment shall be par, plus accrued interest to date of call.

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

Ownership of this Note may be transferred only by transfer upon the books kept for such purpose by the Registrars. Such transfer on the books shall occur only upon presentation and surrender of this Note at the offices of the Registrars 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 Registrars. City reserves the right to substitute the Registrars and Paying Agent but shall, however, promptly give notice to registered Noteholders of such change. The Note 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 Note Resolution and the limitations and requirements set forth in the Loan Agreement.

This Note and the series of which it forms a part, and the Parity Obligations are issued on a parity basis and are payable on a pro-rata basis from the IRA Revenue Fund as to current payment of principal and interest, but not as the Reserve Fund or otherwise, under Article II of the IRA Trust Agreement, and as provided in the Note Resolution and Loan Agreement of which notice is hereby given and is hereby made a part hereof. The City covenants and agrees that it will maintain in force the IRA Trust Indenture and will deposit IRA Revenues received by the City and comprising the IRA Revenue Fund held and dispensed under the terms of the IRA Trust Indenture to pay the principal of and interest on the Loan evidenced by this Note and the Parity



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Obligations as the same become due and payable by their terms. The Loan evidenced by this Note 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 said IRA Revenue Fund to be sufficient for the payment hereof.

This Note is NOT a "qualified tax-exempt obligation" designated by the City for purposes of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

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 delivery of this Note, have been existent, had, done and performed as required by law.

IN TESTIMONY WHEREOF, the City by its Council has caused this Note 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 the Finance Director, Des Moines, Iowa.

Item 11, figure 1 = Date of Authentication:  
 Item 12, figure 1 = This is one of the Notes described in the within mentioned Resolution, as registered by the Finance Director.

FINANCE DIRECTOR  
 Des Moines, Iowa

By: \_\_\_\_\_  
 Authorized Signature

Item 13, figure 1 = Registrar and Transfer Agent: \_\_\_\_\_  
 Paying Agent: \_\_\_\_\_

SEE REVERSE FOR CERTAIN DEFINITIONS

Item 14, figure 1 = (Seal)  
 Item 15, figure 1 = (Signature Block)

CITY OF DES MOINES, STATE OF IOWA

By: \_\_\_\_\_ (manual signature)  
 Mayor

ATTEST:



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By: (manual signature)  
City Clerk

Item 17, figure 1 = (Assignment Block)  
(Information Required for Registration)

### ASSIGNMENT

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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

SIGNATURE )  
GUARANTEED )

### 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 Note(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.

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## INFORMATION REQUIRED FOR REGISTRATION OF TRANSFER

Dated of City Consent \_\_\_\_\_

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 \_\_\_\_\_

## ATTACH INVESTMENT LETTER

- \* If the Note 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 Note, shall be construed as though written out in full according to applicable laws or regulations:

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 13. Equality of Lien. The timely payment of current principal of and interest on the Loan and each Note (but not as to the Reserve Fund or otherwise) shall be secured equally and ratably with each Note in the series of Notes and the Parity Obligations from the IRA Revenue Fund as provided under the IRA Trust Indenture without priority by reason of number or time of sale or delivery; and the IRA Revenue Fund is hereby irrevocably pledged to the timely payment of both principal and interest on the Loan as the same becomes due and payable.



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Section 14. Application of Loan Proceeds – Project Fund. Proceeds of the Bonds shall be applied as follows:

- ◆ An amount sufficient to meet the Reserve Fund Requirement shall be deposited in the Reserve Fund.
- ◆ The balance of the proceeds shall be deposited with the Trustee and expended therefrom under the IRA Trust Indenture.

Section 15. Application of IRA Revenue Fund. From and after the delivery of the 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 IRA Revenues of the Project shall be deposited in the IRA Reserve Fund and shall be disbursed only as provided by the IRA Trust Indenture.

Section 16. Investments. Moneys on hand in the IRA Revenue Fund and all of the funds provided by this Resolution may be invested only as provided in the IRA Trust Indenture.

Section 17. Covenants Regarding the Project. The City hereby covenants and agrees with each and every holder of the Note:

(a) Maintenance in Force. That the City will cause the IRA Revenues to be collected under the IEDA Agreement and deposited and applied as provided in the Urban Renewal Plan, the Development Agreement, the IRA Trust Agreement and this Resolution.

(b) Accounting. The City will cause to be kept proper books and accounts adapted to the Project and in accordance with generally accepted accounting practices.

(c) State Laws. The City will faithfully and punctually perform all duties with reference to the Project required by the Constitution and laws of the State of Iowa, as above provided, and will deposit the IRA Trust Revenues with the Trustee as specified in this Resolution and the IRA Trust Indenture.

(d) Compliance. The City will at all times comply with its obligations under the Development Agreement, the IRA Trust Indenture, and the IDEA Contract, and will faithfully enforce the terms thereof.

(e) Amendments. The City reserves the right to amend the Project, the Development Agreement, the Urban Renewal Plan, the IEDA Contract and the IRA Trust Indenture at any time; provided however that, if the amendment could in any way

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adversely affect the rights of the holders of the Notes (including their security for the Loan), no such amendment may be made without the written consent of the holders of the Notes.

Section 18. Remedies of Noteholders. Except as herein expressly limited the holder or holders of the Notes 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 on the Loan evidenced by their Note and interest thereon, and of the pledge of the revenues made hereunder, and of all covenants of the City hereunder.

Section 19. Additional Obligations. Except as provided herein, the City will issue no other Notes or obligations of any kind or nature payable from or enjoying a lien or claim on the IRA Revenue Fund having priority over the Notes.

Section 20. Disposition of Note Proceeds; Arbitrage Not Permitted. The City reasonably expects and covenants that no use will be made of the proceeds of the Loan evidenced by the Notes 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 City, 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 Note will be used in a manner that would cause the Note to be arbitrage bonds. Without limiting the generality of the foregoing, the City 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 delivery of the Note to certify as to the reasonable expectations and covenants of the City at that date.

The City 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, the City shall treat the same for the purpose of restricted yield as held in proportion to the original principal amounts of each issue.

The City 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

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the proposed investment action will not cause the Notes to be classified as arbitrage bonds under Section 148(a) and (b) of the Internal Revenue Code or regulations issued thereunder.

The City covenants that it will proceed with due diligence to spend the proceeds of the Notes for the purpose set forth in this Resolution. The City further covenants that it will make no change in the use of the proceeds, unless it has obtained the consent of the holders of the Notes and 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 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 21. Additional Covenants, Representations and Warranties of the City. The City certifies and covenants with the purchasers and holders of the Notes from time to time outstanding that the City 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 City 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 City in such compliance.

Section 22. Discharge and Satisfaction of Note. 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 repaying the Loan evidenced by the Notes when the same shall become due and payable; and

(b) By depositing in trust with the Trustee, with a corporate trustee, or in a separate fund for such purpose and designated by the governing body for the payment of said Loan 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 the Loan according to the terms of the Notes, or by pre-payment prior to maturity on a designated date, all of loan principal outstanding at the time, together with the interest thereon to maturity or to the designated redemption date.

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

Section 23. Resolution a Contract. The provisions of this Resolution shall constitute a contract between the City and the holder or holders of the Notes, and after the delivery of any of the Notes, except as herein provided, 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 the Loan, and interest due thereon, shall have been satisfied and discharged as provided in this Resolution.

Section 24. Amendment of Resolution Without Consent. The City may, without the consent of or notice to any of the holders of the Note, 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 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;

(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 Note;

(d) to add to the covenants and agreements of the City contained in this Resolution other covenants and agreements of, or conditions or restrictions upon, the City or to surrender or eliminate any right or power reserved to or conferred upon the City 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 25. 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 Loan evidenced by 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 City); but this Resolution may not be so amended in such manner as to:



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(a) Make any change in the maturity or interest rate of the Loan or modify the terms of payment of principal of or interest on the Loan 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 City 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 Purchasers and to be mailed by certified mail to each registered owner of any Notes 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 Clerk.

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 Note 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 City 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 Notes 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 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



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such person had on deposit with such bank or trust company the Notes described in such certificate.

Section 26. 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 27. Approval of Tax Exemption Certificate. Attached hereto is a form of Tax Exemption Certificate stating the City's reasonable expectations as to the use of the proceeds of the Loan. The form of Tax Exemption Certificate is approved. The City 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 closing of the Loan and delivery of the Notes to certify as to the reasonable expectations and covenants of the City at that date.

Section 28. Continuing Disclosure. This issue is exempt from continuing disclosure because it is a loan and not a security, will be issued in authorized denominations of \$100,000 or more and will be sold to 30 or fewer sophisticated investors having such knowledge and experience in financial matters that they are capable of evaluating the merits and risks of the investment and who have no intention of distributing the Notes.

Section 29. 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.



Roll Call Number

Agenda Item Number

EX 1A

Date March 8, 2018

( Council Communication No. 18- 122 )

MOVED by \_\_\_\_\_ to adopt.

FORM APPROVED:

\_\_\_\_\_  
Lawrence McDowell  
Deputy City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
WESTERGAARD				
BOESEN				
MANDELBAUM				
TOTAL				
MOTION CARRIED	APPROVED			

#### CERTIFICATE

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

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

\_\_\_\_\_  
Mayor

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