

MINUTES FOR MODIFICATION OF  
EXISTING CREDIT FACILITY AND  
ISSUANCE OF GENERAL OBLIGATION  
CORPORATE PURPOSE NOTE

439235-9

West Branch, Iowa

March 6, 2017

The City Council of the City of West Branch, Iowa, met on March 6, 2017, at 7:00 o'clock p.m., at the City Council Chambers, West Branch, Iowa.

The meeting was called to order by the Mayor, and the roll was called showing the following members of the City Council present and absent:

Present: Colton Miller, Jordan Ellyson, Mary Beth Stevenson and Tim Shields.

Absent: Brian Pierce

After due consideration and discussion, Council Member Ellyson introduced the following resolution and moved its adoption, seconded by Council Member Miller. The Mayor put the question upon the adoption of said resolution, and the roll being called, the following Council Members voted:

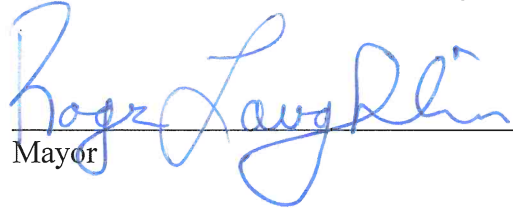
Ayes: Ellyson, Miller, Stevenson and Shields

Nays: None


Whereupon, the Mayor declared the resolution duly adopted, as hereinafter set out.

• • • •

At the conclusion of the meeting and upon motion and vote, the City Council adjourned.

  
\_\_\_\_\_  
Mayor

Attest:

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

RESOLUTION NO. 1584

Resolution modifying letter of credit and reauthorizing the City to enter into a loan agreement and to borrow funds thereunder in a principal amount not to exceed \$495,000

WHEREAS, the City of West Branch (the "City"), in Cedar County, State of Iowa, pursuant to the provisions of Section 384.24A of the Code of Iowa, heretofore proposed to enter into a loan agreement (the "Loan Agreement") and to borrow money thereunder in a principal amount not to exceed \$750,000 for the purpose of settling the judgment (the "Judgment") lodged against the City in the *Acciona Windpower North America, LLC v. City of West Branch* litigation, and pursuant to law and a notice duly published, the City Council has held a public hearing on such proposal on March 21, 2016; and

WHEREAS, under its authority to enter into the Loan Agreement, the City secured a letter of credit arrangement in connection with the legal appeal of the Judgment; and

WHEREAS, Community State Bank, West Branch, Iowa (the "Lender") issued an irrevocable Standby Letter of Credit (the "Letter of Credit") in favor of the City; the City and the Lender entered into a Letter of Credit Reimbursement Agreement (the "Reimbursement Agreement"); and the City issued a Promissory Note to the Lender in evidence of its obligations under the Reimbursement Agreement; and

WHEREAS, the legal appeal of the Judgment has been concluded and the Judgment has been entered against the City; and

WHEREAS, in order to modify the Letter of Credit transaction, it is now necessary for the City to make final approval of the Loan Agreement and to provide for the issuance of a General Obligation Judgment Settlement Note in evidence of the City's obligation under the Loan Agreement; and

NOW, THEREFORE, Be It Resolved by the City Council of the City of West Branch, Iowa, as follows:

Section 1. The City hereby determines to enter into the Loan Agreement with the Lender, providing for a loan to the City in the principal amount of \$495,000 for the purpose or purposes set forth in the preamble hereof.

The Mayor and City Clerk are hereby authorized and directed to sign the Loan Agreement on behalf of the City, and the Loan Agreement is hereby approved.

The Loan Agreement and the Note will hereby modify and replace the Letter of Credit, the Reimbursement Agreement and the Promissory Note as referenced in the preamble hereof.

Section 2. The Note is hereby authorized to be issued in evidence of the obligation of the City under the Loan Agreement in the principal amount of \$495,000, and shall be dated as of the date of its delivery to the Lender (anticipated to be March 7, 2017). Principal of the Note shall be payable in five annual installments of \$99,000 each, due on June 1 in each of the years 2019 through 2023, inclusive.

The Note bears interest at the rate of 3.25% per annum. Interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months. Accrued interest on the Note shall be payable semiannually on each June 1 and December 1, commencing June 1, 2017 and continuing to and including final maturity on June 1, 2023.

The City Clerk is hereby designated as the registrar and paying agent for the Note and may be hereinafter referred to as the "Registrar" or the "Paying Agent."

Payment of both principal of and interest on the Note shall be made to the registered owners appearing on the registration books of the City at the close of business on the fifteenth day of the month next preceding the interest payment date and shall be paid to the registered owners at the addresses shown on such registration books. Principal of the Note shall be payable in lawful money of the United States of America to the registered owners or their legal representatives upon presentation and surrender of the Note at the office of the Paying Agent.

The City reserves the right to prepay principal of the Note in whole or in part at any time prior to and in inverse order of maturity on terms of par and accrued interest. All principal so prepaid shall cease to bear interest on the prepayment date.

The Note shall be executed on behalf of the City with the official manual or facsimile signature of the Mayor and attested with the official manual or facsimile signature of the City Clerk and shall be a fully registered Note without interest coupons. In case any officer whose signature or the facsimile of whose signature appears on the Note shall cease to be such officer before the delivery of the Note, such signature or such facsimile signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

The Note shall be fully registered as to principal and interest in the name of the owner on the registration books of the City kept by the Registrar, and after such registration, payment of the principal thereof and interest thereon shall be made only to the registered owner or its legal representatives or assigns. The Note shall be transferable only upon the registration books of the City upon presentation to the Registrar, together with either a written instrument of transfer satisfactory to the Registrar or the assignment form thereon completed and duly executed by the registered owner or the duly authorized attorney for such registered owner.

The record and identity of any owners of the Note shall be kept confidential as provided by Section 22.7 of the Code of Iowa.

Section 3. The Note shall be in substantially the following form:

(Form of Note)

**UNITED STATES OF AMERICA  
STATE OF IOWA                      CEDAR COUNTY  
CITY OF WEST BRANCH**

**GENERAL OBLIGATION JUDGMENT SETTLEMENT NOTE**

\$495,000

|       |               |               |
|-------|---------------|---------------|
| RATE  | MATURITY DATE | NOTE DATE     |
| 3.25% | June 1, 2023  | March 7, 2017 |

The City of West Branch (the “City”), in Cedar County, State of Iowa, for value received, promises to pay in the manner hereinafter provided to

Community State Bank  
West Branch, Iowa

or registered assigns, the principal sum of FOUR HUNDRED NINETY-FIVE THOUSAND DOLLARS, together with interest on the outstanding principal hereof from the Note Date, or from the most recent payment date on which interest has been paid, except as the provisions hereinafter set forth with respect to prepayment prior to maturity may be or become applicable hereto.

Principal of this Note shall be payable in five equal annual installments in the amount of \$99,000 each, due on June 1 in each of the years 2019 through 2023, inclusive.

This Note bears interest at the rate of 3.25% per annum. Interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months. Accrued interest on this Note shall be payable semiannually on each June 1 and December 1, commencing June 1, 2017 and continuing to and including final maturity on June 1, 2023.

Both principal of and interest on this Note are payable to the registered owner appearing on the registration books of the City maintained by the City Clerk (hereinafter referred to as the “Registrar” or the “Paying Agent”) at the close of business on the fifteenth day of the month next preceding the payment date in lawful money of the United States of America to the registered owner at the address shown on such registration books; provided, however, that the final installment of principal and interest will be payable only upon presentation and surrender of this Note to the Paying Agent.

This Note is issued by the City to evidence its obligation under a certain Loan Agreement, dated as of the date hereof (the “Loan Agreement”) entered into by the City for the purpose of settling the judgment lodged against the City in the *Acciona Windpower North America, LLC v. City of West Branch* litigation.

This Note is issued pursuant to and in strict compliance with the provisions of Chapter 76 and Chapter 384 of the Code of Iowa, 2017, and all other laws amendatory thereof and supplemental thereto, and in conformity with a resolution of the City Council authorizing and approving the Loan Agreement and providing for the issuance and securing the payment of this Note (the "Resolution"), and reference is hereby made to the Resolution and the Loan Agreement for a more complete statement as to the source of payment of this Note and the rights of the owner of this Note.

The City reserves the right to prepay principal of this Note, in whole or in part, at any time prior to and in inverse order of maturity on terms of par and accrued interest. All principal so prepaid will cease to bear interest on the prepayment date.

This Note is fully negotiable but shall be fully registered as to both principal and interest in the name of the owner on the books of the City in the office of the Registrar, after which no transfer shall be valid unless made on said books and then only upon presentation of this Note to the Registrar, together with either a written instrument of transfer satisfactory to the Registrar or the assignment form hereon completed and duly executed by the registered owner or the duly authorized attorney for such registered owner.

The City, the Registrar and the Paying Agent may deem and treat the registered owner hereof as the absolute owner for the purpose of receiving payment of or on account of principal hereof, premium, if any, and interest due hereon and for all other purposes, and the City, the Registrar and the Paying Agent shall not be affected by any notice to the contrary.

And It Is Hereby Certified and Recited that all acts, conditions and things required by the laws and Constitution of the State of Iowa, to exist, to be had, to be done or to be performed precedent to and in the issue of this Note were and have been properly existent, had, done and performed in regular and due form and time; that provision has been made for the levy of a sufficient continuing annual tax on all the taxable property within the City for the payment of the principal of and interest on this Note as the same will respectively become due; and that the total indebtedness of the City, including this Note, does not exceed any constitutional or statutory limitations.

IN TESTIMONY WHEREOF, the City of West Branch, Iowa, by its City Council, has caused this Note to be executed by its Mayor and attested by its City Clerk, on the Note Date.

CITY OF WEST BRANCH, IOWA

By (DO NOT SIGN)  
Mayor

Attest:

(DO NOT SIGN)  
City Clerk

#### ABBREVIATIONS

The following abbreviations, when used in this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

|         |  |                                       |                    |
|---------|--|---------------------------------------|--------------------|
| TEN COM | - as tenants in common   | UTMA                                  | <u>(Custodian)</u> |
| TEN ENT | - as tenants by the entireties   | As Custodian for                      | <u>(Minor)</u>     |
| JT TEN  | - as joint tenants with<br>right of survivorship and<br>not as tenants in common | under Uniform Transfers to Minors Act | <u>(State)</u>     |

Additional abbreviations may also be used though not in the list above.

#### ASSIGNMENT

For valuable consideration, receipt of which is hereby acknowledged, the undersigned assigns this Note to

(Please print or type name and address of Assignee)

PLEASE INSERT SOCIAL SECURITY  
OR OTHER IDENTIFYING NUMBER OF  
ASSIGNEE

and does hereby irrevocably appoint \_\_\_\_\_,  
Attorney, to transfer this Note on the books kept for registration thereof with full power of  
substitution.

Dated: \_\_\_\_\_

Signature guaranteed:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTICE: The signature to this Assignment must correspond with the name of the registered owner as it appears on this Note in every particular, without alteration or enlargement or any change whatever.



Section. 4. The Note shall be executed as herein provided as soon after the adoption of this resolution as may be possible and thereupon shall be delivered to the Registrar for registration and delivery to or upon the direction of the Lender, upon receipt of the loan proceeds (the "Loan Proceeds"), and all action heretofore taken in connection with the Loan Agreement is hereby ratified and confirmed in all respects. To the extent that the date of closing (anticipated to be March 7, 2017) needs to be adjusted, the City Clerk, with advice from the Lender, and Bond Counsel to the City, is hereby authorized to make such adjustment and to modify the transaction documents accordingly.

The City shall deposit the Loan Proceeds, and any investment earnings thereon, in a separate, segregated fund and use them to settle the Judgment and to pay costs of issuance of the Note. Any Loan Proceeds remaining after the full payment of such costs shall be deposited in the Debt Service Fund and used to pay principal of and interest on the Note as the same become due. The City shall keep a detailed accounting of the investment and expenditures of such funds on the Project.

Section. 5. For the purpose of providing for the levy and collection of a direct annual tax sufficient to pay the principal of and interest on the Note as the same become due, there is hereby ordered levied on all the taxable property in the City, the following direct annual tax for collection in each of the following fiscal years:

For collection in the fiscal year beginning July 1, 2017,  
sufficient to produce the net annual sum of \$16,088; and

For collection in the fiscal year beginning July 1, 2018,  
sufficient to produce the net annual sum of \$115,088; and

For collection in the fiscal year beginning July 1, 2019,  
sufficient to produce the net annual sum of \$111,870; and

For collection in the fiscal year beginning July 1, 2020,  
sufficient to produce the net annual sum of \$108,652; and

For collection in the fiscal year beginning July 1, 2021,  
sufficient to produce the net annual sum of \$105,435; and

For collection in the fiscal year beginning July 1, 2022,  
sufficient to produce the net annual sum of \$102,218.

Section 6. A certified copy of this resolution shall be filed with the County Auditor of Cedar County, and the County Auditor is hereby instructed to enter for collection and assess the tax hereby authorized. When annually entering such taxes for collection, the County Auditor shall include the same as a part of the tax levy for Debt Service Fund purposes of the City and when collected, the proceeds of the taxes shall be converted into the Debt Service Fund of the City and set aside therein as a special account to be used solely and only for the payment of the principal of and interest on the Note hereby authorized and for no other purpose whatsoever.



Pursuant to the provisions of Section 76.4 of the Code of Iowa, each year while the Note remains outstanding and unpaid, any funds of the City which may lawfully be applied for such purpose including incremental property tax revenues, may be appropriated, budgeted and, if received, used for the payment of the principal of and interest on the Note as the same become due, and if so appropriated, the taxes for any given fiscal year as provided for in Section 5 of this Resolution, shall be reduced by the amount of such alternate funds as have been appropriated for such purpose, and evidenced in the City's budget. The Judgment relates to a dispute rooted in an authorized urban renewal project of the City for which the City has authority to apply incremental property tax revenues. The City hereby reaffirms its intent to claim, collect and utilize incremental property tax revenues for the payment of debt service on the Note.

Section 7. The interest or principal and both of them falling due in any year or years shall, if necessary, be paid promptly from current funds on hand in advance of taxes levied and when the taxes shall have been collected, reimbursement shall be made to such current funds to the sum thus advanced.

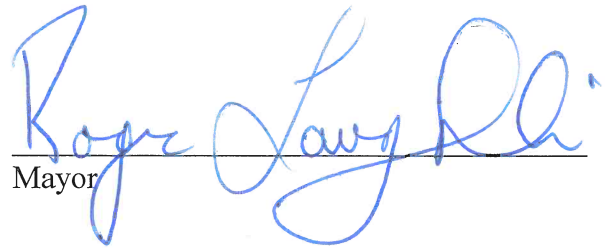
Section 8. It is the intention of the City that interest on the Note be and remain excluded from gross income for federal income tax purposes pursuant to the appropriate provisions of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations in effect with respect thereto (all of the foregoing herein referred to as the "Internal Revenue Code"). In furtherance thereof, the City covenants to comply with the provisions of the Internal Revenue Code as they may from time to time be in effect or amended and further covenants to comply with the applicable future laws, regulations, published rulings and court decisions as may be necessary to insure that the interest on the Note will remain excluded from gross income for federal income tax purposes. Any and all of the officers of the City are hereby authorized and directed to take any and all actions as may be necessary to comply with the covenants herein contained.

The City hereby designates the Note as a "Qualified Tax Exempt Obligation" as that term is used in Section 265(b)(3)(B) of the Internal Revenue Code.

Section 9. All resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 10. This resolution shall be in full force and effect immediately upon its adoption and approval, as provided by law.

Passed and approved on March 7, 2017.

  
\_\_\_\_\_  
Mayor

Attest:

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

**ATTESTATION CERTIFICATE:**


STATE OF IOWA  
COUNTY OF CEDAR  
CITY OF WEST BRANCH

SS:

I, the undersigned, City Clerk of the City of West Branch, do hereby certify that as such City Clerk I have in my possession or have access to the complete corporate records of the City and of its Council and officers and that I have carefully compared the transcript hereto attached with those corporate records and that the transcript hereto attached is a true, correct and complete copy of all the corporate records in relation to the adoption of a resolution entitled, "Resolution modifying letter of credit and reauthorizing the City to enter into a loan agreement and to borrow funds thereunder in a principal amount not to exceed \$495,000," and that the transcript hereto attached contains a true, correct and complete statement of all the measures adopted and proceedings, acts and things had, done and performed up to the present time with respect thereto.

I further certify that no appeal has been taken to the District Court from the decision of the City Council to enter into the Loan Agreement, to issue the Note or to levy the taxes to pay the principal of and interest thereon.

WITNESS MY HAND this 6<sup>th</sup> day of March, 2017.

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

**COUNTY FILING CERTIFICATE:**

STATE OF IOWA

SS:

COUNTY OF CEDAR

I, the undersigned, County Auditor of Cedar County, in the State of Iowa, do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2017, the City Clerk of the City of West Branch filed in my office a certified copy of a resolution of the City shown to have been adopted by the City Council and approved by the Mayor thereof on March 7, 2017, entitled: "Resolution modifying letter of credit and reauthorizing the City to enter into a loan agreement and to borrow funds thereunder in a principal amount not to exceed \$495,000 ," and that I have duly placed the copy of the resolution on file in my records.

I further certify that the taxes provided for in that resolution will in due time, manner and season be entered on the State and County tax lists of this County for collection in the fiscal year beginning July 1, 2017, and subsequent years as provided in the resolution.

WITNESS MY HAND this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
County Auditor

**COUNTY FILING CERTIFICATE:**

STATE OF IOWA

SS:

COUNTY OF CEDAR

I, the undersigned, County Auditor of Cedar County, in the State of Iowa, do hereby certify that on the 7<sup>th</sup> day of March, 2017, the City Clerk of the City of West Branch filed in my office a certified copy of a resolution of the City shown to have been adopted by the City Council and approved by the Mayor thereof on March 7, 2017, entitled: "Resolution modifying letter of credit and reauthorizing the City to enter into a loan agreement and to borrow funds thereunder in a principal amount not to exceed \$495,000," and that I have duly placed the copy of the resolution on file in my records.

I further certify that the taxes provided for in that resolution will in due time, manner and season be entered on the State and County tax lists of this County for collection in the fiscal year beginning July 1, 2017, and subsequent years as provided in the resolution.

WITNESS MY HAND this 7<sup>th</sup> day of March, 2017.

Cari Britton  
County Auditor

**COUNTY FILING CERTIFICATE:**

STATE OF IOWA

SS:

COUNTY OF JOHNSON

I, the undersigned, County Auditor of Johnson County, in the State of Iowa, do hereby certify that on the 7th day of March, 2017, the City Clerk of the City of West Branch filed in my office a certified copy of a resolution of the City shown to have been adopted by the City Council and approved by the Mayor thereof on March 7, 2017, entitled: "Resolution modifying letter of credit and reauthorizing the City to enter into a loan agreement and to borrow funds thereunder in a principal amount not to exceed \$495,000 ," and that I have duly placed the copy of the resolution on file in my records.

I further certify that the taxes provided for in that resolution will in due time, manner and season be entered on the State and County tax lists of this County for collection in the fiscal year beginning July 1, 2017, and subsequent years as provided in the resolution.

WITNESS MY HAND this 7th day of March, 2017.

Travis Weipert  
County Auditor

[Signature]  
Deputy

March 3, 2017

**Via Email**

Matt Muckler  
City Administrator/City Hall  
West Branch, Iowa

Re: \$495,000 General Obligation Judgment Settlement Loan Agreement  
Our File No. 439235-9

Dear Matt:

We have prepared and attach proceedings to be used at the City Council meeting on March 6, 2017, to enable the Council to adopt the resolution (the "Resolution") approving the Loan Agreement and providing for the issuance of a General Obligation Judgment Settlement Note (the "Note") as a modification of the existing Letter of Credit/Promissory Note a management with Community State Bank.

The proceedings attached include the following items:

1. Resolution authorizing and approving the Loan Agreement. The form of Note and Assignment set out in Section 3 of the Resolution should not be completed or executed.
2. Attestation Certificate with respect to the validity of the transcript.
3. County Filing Certificate relating to the filing of a certified copy of the Resolution in of the office of the County Auditor.

After it is adopted, a certified copy of the Resolution must be filed with the Cedar County Auditor. Please print an extra copy of the resolution for this purpose.

The County Auditor will have a mandatory duty to make a levy of taxes to pay principal of and interest on the Note unless the City's budget each year affirmatively shows that the tax should not be levied because other funds will be applied to the payment of the Note for that budget year. To the extent the City determines that property tax levies will be needed for payment in any year, the tax levy amounts needed must be certified for that year in the City's budget as part of the Debt Service Fund, and the funds derived from sources other than taxes must be shown on the appropriate budget document.

As these proceedings are completed, please return one fully executed copy to our office.



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If you have any questions, please contact Amy Bjork or me.

Best regards,

John P. Danos

Attachments

cc: Ed LaRew