

# City of Kalispell

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## MEMORANDUM

**TO:** Doug Russell, City Manager

**FROM:** Charles Harball, City Attorney

**SUBJECT:** Motion to Approve the Issuance of Water System Revenue Bonds through the DNRC Drinking Water State Revolving Loan Program

**MEETING DATE:** January 6, 2020 – Regular Council Meeting

**BACKGROUND:** This financing transaction serves two purposes. First, it provides financing for the 4 Mile Drive Water Main Transmission project. Second, it retires the 2004 Water Bonds, thereby simplifying city debt structure and freeing up a substantial amount of reserve requirements.

The portion of the transaction that will finance the 4 Mile Drive Water Main Transmission project shall be designated as the Series 2020B Bond that will finance up to \$2,598,000 of the project. The term of this bond shall be 20 years and bear a fixed rate of 2.5%.

The portion of the transaction that will retire the previous water bond debt shall be designated as the Series 2020A Bond and shall be in the amount of \$385,000 for the term of 5 years and fixed rate of 2.5%. The retired bonds were bearing a rate of 4.85% for the remaining life of the debt. This refinancing also freed up approximately \$200,000 of otherwise required reserve, a portion of which was applied to the original payoff of \$405,000 for these bonds.

**RECOMMENDATION:** It is recommended that the Council approve the issuance of the above described water bonds in order to fully fund the above described water project and to retire prior water project debt for more favorable terms.

**ALTERNATIVES:** The Council may discuss other alternatives with city staff regarding the financing of this project or the retirement of existing debt.

**ATTACHMENT:** Resolution 5959

## MEMORANDUM

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TO: Doug Russell

CC: Charlie Harball; Rick Wills; Courtney Ellis

FROM: Dan Semmens

DATE: January 3, 2020

RE: Amended and Restated Water System Revenue Bond Resolution

You have asked us, as bond counsel, for a summary explanation regarding amending and restating the water revenue bond resolutions of the City of Kalispell (the “City”).

This matter arises in connection with the City obtaining financing from the DNRC through the Drinking Water State Revolving Fund Program (the “Program”) to pay the costs of a project commonly known as the 4-Mile Drive project (the “Project”), which includes installation of water mains in the City’s upper pressure zone and related improvements. In the ordinary course, the City Council would adopt a supplemental bond resolution layered on top of existing bond resolutions and issue another series of water revenue bonds to the DNRC to finance the costs of the Project. However, the more we looked at the mix of the City’s outstanding water revenue debt, the more it became apparent that the City could benefit from restructuring its water revenue debt by refunding the City’s outstanding Series 2004 Bonds, thereby getting the full benefit of Program provisions and restating and cleaning up the terms and conditions governing the City’s water revenue debt.

The City currently has four series of water revenue bonds outstanding: Series 2001 Bond, Series 2004 Bonds, Series 2007B Bond, and Series 2017A Bond. The Series 2004 Bonds were sold to the public through D.A. Davidson & Co., while the other three series of water revenue bonds of the City that are outstanding are held by the DNRC through the Program. For some time, we have been asking the DNRC about the possibility of refunding the Series 2004 Bonds. After a number of calls and emails arguing in favor of Program eligibility, the DNRC and the DEQ agreed that refunding the Series 2004 Bonds is permissible under the Program.

There are many compelling reasons for the City to refund the Series 2004 Bonds in connection with the new Project financing. Below are some of the highlights:

1. The Series 2004 Bonds are outstanding in the principal amount of \$405,000 and bear interest at the rate of 4.85%. The interest rate under the Program is 2.50%. Based on information supplied by the DNRC, the dollar savings over the period ending July 1, 2024 (the final maturity of the Series 2004 Bonds) are meaningful, which is not surprising given that the interest rate is almost halved by the refunding.

2. Because the Series 2004 Bonds are held publicly, obtaining consent to amend the City's existing water revenue bond resolutions is not practical.
3. By refunding the Series 2004 Bonds through the Program, the DNRC will hold all of the City's water revenue bonds and will consent to amending and restating the existing water revenue bond resolution, thereby affording the City the benefits described under paragraphs 4 and 5 below.
4. With regard to its water system revenue bonds, the City currently has one original water revenue bond resolution, adopted on June 17, 1996, as amended and supplemented by six additional supplemental resolutions, the most recent being adopted June 5, 2017. The original resolution related to a publicly sold bond, as did the 2004 supplemental resolution, and the other five supplemental resolutions related to water revenue bonds privately placed with the DNRC. Accordingly, the existing resolutions contain outdated provisions, as well as terms and conditions that are sometimes hard to reconcile and that are overkill for bonds held by the DNRC. Thus, it makes sense to amend and restate the resolutions in their entirety and move forward with one bond resolution having terms and conditions aligned with bonds held by the DNRC.
5. By amending and restating the existing resolutions, the City is able to:
  - (i) significantly reduce the interest rate on the outstanding Series 2004 Bonds, as described in paragraph 1 above.
  - (ii) change the Reserve Requirement from maximum fiscal year debt service to one-half maximum fiscal year debt service, thereby freeing up about \$250,000 that the City will apply to paying down the debt service of the outstanding Series 2001 Bond, Series 2007B Bond, and Series 2017A Bond, and, with regard to the Series 2004 Bonds, to reducing the amount needed to be borrowed to prepay those bonds.
  - (iii) reduce the coverage requirement of its water system revenue bonds from Net Revenues equaling at least 125% of maximum fiscal year debt service to Net Revenues equaling at least 110% of maximum fiscal year debt service, thereby allowing more room before rate increases may be required.
  - (iv) enjoy assorted other simplifications and cost savings – such as not needing a report of an independent certified public accountant every time there is a water revenue bond issuance.
  - (v) have more flexibility to adjust its water revenue debt in the future, provided that any changes are consistent with the Program and the DNRC is amenable to the changes.

We hope this memorandum is helpful. We are happy to discuss it in further detail and to answer any questions you may have.

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Kalispell, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution No. 5959, entitled: "RESOLUTION AMENDING AND RESTATING RESOLUTION NOS. 4273, 4603, 4892, 5205, 5238, 5576, AND 5817 AUTHORIZING THE ISSUANCE OF WATER SYSTEM REVENUE BONDS OF THE CITY; AND AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS OF UP TO \$2,983,000 WATER SYSTEM REVENUE BONDS (DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM), CONSISTING OF UP TO \$385,000 SERIES 2020A REFUNDING BOND AND UP TO \$2,598,000 SERIES 2020B BOND" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on January 6, 2020, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: \_\_\_\_\_  
\_\_\_\_\_; voted against the same: \_\_\_\_\_; abstained from voting thereon: \_\_\_\_\_; or were absent: \_\_\_\_\_.

WITNESS my hand officially this \_\_\_\_ day of January, 2020.

[SEAL]

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

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AMENDING AND RESTATING RESOLUTION

AMENDING AND RESTATING RESOLUTION NOS. 4273, 4603, 4892, 5205, 5238, 5576,  
AND 5817 AUTHORIZING THE ISSUANCE OF WATER SYSTEM REVENUE BONDS

and relating to

\$2,983,000  
WATER SYSTEM REVENUE BONDS  
(DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM),  
CONSISTING OF UP TO \$385,000 SERIES 2020A REFUNDING BOND,  
AND UP TO \$2,598,000 SERIES 2020B BOND

CITY OF KALISPELL, MONTANA

Adopted: January 6, 2020

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RESOLUTION NO. 5959

RESOLUTION AMENDING AND RESTATING RESOLUTION NOS. 4273, 4603, 4892, 5205, 5238, 5576, AND 5817 AUTHORIZING THE ISSUANCE OF WATER SYSTEM REVENUE BONDS OF THE CITY; AND AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS OF UP TO \$2,983,000 WATER SYSTEM REVENUE BONDS (DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM), CONSISTING OF UP TO \$385,000 SERIES 2020A REFUNDING BOND AND UP TO \$2,598,000 SERIES 2020B BOND

RECITALS

WHEREAS, pursuant to the authority conferred by Montana Code Annotated, Title 7, Chapter 7, Parts 44 and 45, as amended (the “Act”), the City of Kalispell, Montana (the “Borrower”) has established and presently owns and operates a municipal water system (the “System”); and

WHEREAS, under the provisions the Act, the Borrower is authorized to issue and sell its revenue bonds payable during a term not exceeding forty years from their date of issue, to provide funds for the reconstruction, improvement, betterment and extension of the System or to refund bonds issued for such purposes, provided that the bonds and the interest thereon are to be payable solely out of the income and revenues to be derived from rates, fees and charges for the services, facilities and commodities furnished by the System, and are not to create any obligation for the payment of which taxes may be levied except to pay for services provided by the System to the Borrower; and

WHEREAS, pursuant to such authority and Resolution No. 4273, adopted by this Council on June 17, 1996, as amended and supplemented by Resolution Nos. 4603, 4892, 5205, 5238, 5576 and 5817, adopted by this Council on March 5, 2001, May 17, 2004, June 4, 2007, September 4, 2007, August 20, 2012 and June 5, 2017, respectively (collectively, the “Prior Resolution”), the Borrower has issued from time to time its Water System Revenue Bonds, of which its First Amended and Restated Water System Revenue Bond (DNRC Drinking Water Revolving Loan Program), Series 2001 (the “Series 2001 Bond”), its Water System Revenue and Refunding Bonds, Series 2004 (the “Series 2004 Bonds”), its First Amended and Restated Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2007B (the “Series 2007B Bond”), and its Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2017A (the “Series 2017A Bond”) are currently Outstanding; and

WHEREAS, pursuant to the Drinking Water State Revolving Fund Act, Montana Code Annotated, Title 75, Chapter 6, Part 2, as amended (the “State Act”), the State of Montana (the “State”) has established a revolving loan program (the “Program”) to be administered by the

DNRC, an agency of the State, and by the Department of Environmental Quality of the State of Montana, an agency of the State (the “DEQ”), and has provided that a drinking water state revolving fund (the “Revolving Fund”) be created within the state treasury and all federal, state and other funds for use in the Program be deposited into the Revolving Fund, including, but not limited to, all federal grants for capitalization of a state drinking water revolving fund under the federal Safe Drinking Water Act (the “Safe Drinking Water Act”), all repayments of assistance awarded from the Revolving Fund, interest on investments made on money in the Revolving Fund and payments of principal of and interest on loans made from the Revolving Fund; and

WHEREAS, the State Act provides that funds from the Program shall be disbursed and administered for the purposes set forth in the Safe Drinking Water Act and according to rules adopted by the DEQ and the Department of Natural Resources and Conservation of the State of Montana (the “DNRC”); and

WHEREAS, the Borrower has applied to the DNRC for the 2020 Loans (as hereinafter defined) from the Revolving Fund to enable the Borrower to refund the Series 2004 Bonds and to finance, refinance or reimburse itself for costs of the 2020 Project (as hereinafter defined), all of which will carry out the purposes of the Safe Drinking Water Act; and

WHEREAS, the Borrower is authorized under applicable laws, ordinances and regulations to adopt this Resolution and to issue the Series 2020 Bonds (as hereinafter defined) to evidence the 2020 Loans for the purposes set forth herein; and

WHEREAS, the Borrower reserved the right to amend the Prior Resolution with the consent of the holders of outstanding bonds issued thereunder; and

WHEREAS, the Borrower desires to amend the Prior Resolution to eliminate certain obsolete and onerous provisions and the Borrower has determined that it is more convenient and efficient for the Borrower to amend and restate the Prior Resolution in its entirety; and

WHEREAS, the DNRC is the holder of the Series 2001 Bond, the Series 2007B Bond, and the Series 2017A Bond, and the Series 2004 Bonds will be refunded and defeased by a series of water system revenue bonds authorized by this Resolution to be purchased by the DNRC; and

WHEREAS, the DNRC has consented in writing to the amendment and restatement of the Prior Resolution as set forth herein; and

WHEREAS, the DNRC will fund (i) the 2020A Loan (as hereinafter defined) solely with EPA Capitalization Grant funds, either directly or as Recycled Money (as hereinafter defined) consisting entirely of EPA Capitalization Grant funds, and (ii) the 2020B Loan (as hereinafter defined) in part, directly or indirectly, with proceeds of the State’s General Obligation Bonds (Drinking Water State Revolving Fund Program) (the “State Bonds”) and in part, directly or indirectly, with funds provided by the United States Environmental Protection Agency.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE BORROWER AS FOLLOWS:

ARTICLE I  
DEFINITIONS, RULES OF CONSTRUCTION AND APPENDICES

Section 1.1 Definitions. In this Resolution, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

“Accountant” or “Accountants” means an independent certified public accountant or a firm of independent certified public accountants satisfactory to the DNRC.

“Acquisition and Construction Account” means the account within the Fund established pursuant to Sections 13.1 and 13.2.

“Act” means Montana Code Annotated, Title 7, Chapter 7, Parts 44 and 45, as amended.

“Administrative Expense Surcharge” means, with respect to each Outstanding SRF Bond, the surcharge by that name charged by the DNRC to the Borrower, if any, at the rate per annum set forth in such Outstanding SRF Bond and, with respect to the Series 2020 Bonds, a surcharge equal to twenty-five hundredths of one percent (0.25%) per annum on the outstanding principal amount of the applicable Series 2020 Bond, in each case payable on the same dates that payments of interest on such Bonds are due.

“Authorized DNRC Officer” means the Director of the DNRC or his or her designee.

“Bond Counsel” means any firm of nationally recognized bond counsel experienced in matters relating to tax-exempt financing, selected by the Borrower and reasonably acceptable to the DNRC.

“Bond Register” means, with respect to Outstanding SRF Bonds, the registration books maintained by the Registrar pursuant to Section 6.3 hereof; with respect to the Series 2020 Bonds, the registration books maintained by the Registrar pursuant to Section 11.3 hereof; and, with respect to any other series of Bonds, the register to be maintained by the Registrar pursuant to the Supplemental Resolution authorizing the issuance of such Bonds.

“Bondholder” or “Holder” means, in respect of a Bond, the registered owner thereof as shown in the Bond Register.

“Bonds” means the Outstanding SRF Bonds, the Series 2020A Bond, the Series 2020B Bond, and any Additional Bonds to be issued on a parity therewith pursuant to Article XII, excluding Section 12.4 thereof.

“Borrower” means the City.

“Business Day” means any day which is not a Saturday or Sunday, a legal holiday in the State or a day on which banks in Montana are authorized or required by law to close.

“City” means the City of Kalispell, Montana, or any permitted successor or assign.

“Closing” means the date of delivery of the Series 2020 Bonds to the DNRC.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral Documents” means any security agreement, guaranty or other document or agreement delivered to the DNRC securing the obligations of the Borrower under this Resolution, the Outstanding SRF Bonds, the Series 2020A Bond, and the Series 2020B Bond. If no Collateral Documents secure such obligations, any reference to Collateral Documents in this Resolution shall be without effect.

“Committed Amount” means, collectively, the amount of the 2020A Committed Amount and the 2020B Committed Amount.

“Consultant” means a nationally recognized consultant or firm of consultants, or an independent engineer or firm of independent engineers, or an Accountant, which in any case is qualified and has skill and experience in the preparation of financial feasibility studies or projections for facilities similar to the System or any Project, selected by the Borrower and satisfactory to the DNRC.

“Council” means the City Council of the Borrower.

“DEQ” means the Department of Environmental Quality of the State of Montana, an agency of the State, or any successor to its powers, duties and obligations under the State Act or the EPA Agreements.

“DNRC” means the Department of Natural Resources and Conservation of the State of Montana, an agency of the State, and any successor to its powers, duties and obligations under the State Act.

“EPA” means the Environmental Protection Agency, an agency of the United States of America, and any successor to its functions under the Safe Drinking Water Act.

“EPA Agreements” means all capitalization grant agreements and other written agreements between the DEQ, the DNRC and the EPA concerning the Program.

“EPA Capitalization Grant” means a grant of funds to the State by the EPA under Section 1452 of the Safe Drinking Water Act.

“Fiscal Year” means the period commencing on the first day of July in any year and ending on the last day of June of the next year, or any other specified twelve-month period, authorized by law and specified by the Council as the Borrower’s fiscal year.

“Fund” means the Water System Fund established pursuant to Section 13.1.

“Government Obligations” means direct obligations of, or obligations the principal of and the interest on which are fully and unconditionally guaranteed as to payment by, the United States of America.

“Governmental Unit” means governmental unit as such term is used in Section 145(a) of the Code.

“Indenture” means the Indenture of Trust, dated as of May 1, 1998, between the Board of Examiners of the State and the Trustee, as such may be supplemented or amended from time to time in accordance with the provisions thereof, pursuant to which, among other things, the State Bonds are to be or have been issued.

“Loan Loss Reserve Surcharge” means, with respect to each Outstanding SRF Bond, a surcharge by that name charged by the DNRC to the Borrower, if any, at the rate per annum set forth in the Outstanding SRF Bond and, with respect to the Series 2020 Bonds, equal to twenty-five hundredths of one percent (0.25%) per annum on the outstanding principal amount of the applicable Series 2020 Bond, in each case payable on the same dates that payments of interest on such Bonds are due.

“Loan Repayments” means the periodic payments of principal of and interest on the Outstanding SRF Bonds, the Series 2020A Bond and the Series 2020B Bond, as set out more particularly herein.

“Net Revenues” means the entire amount of the gross revenues of the System (as described in Section 13.1) remaining upon each monthly apportionment, after crediting to the Operating Account the amount required hereby, including sums required to maintain the Operating Reserve in the minimum amount herein stated.

“Note” means any Note issued pursuant to the Resolution and payable from the Note Account.

“Note Account” means the account within the Fund established pursuant to Sections 13.1 and 13.8.

“Operating Account” means the account within the Fund established pursuant to Sections 13.1 and 13.3.

“Operating Expenses” means those expenses of the System defined as such in Section 13.3.

“Operating Reserve” means the reserve to be maintained in the Operating Account as required by Section 13.3.

“Opinion of Bond Counsel” means a written opinion of Bond Counsel.

“Outstanding” or (unless the context clearly requires otherwise) “outstanding” means, when used with reference to Bonds, as of the date of determination, all Bonds theretofore issued except:

(i) Bonds theretofore cancelled by the Borrower or the Registrar or delivered to the Borrower or Registrar for cancellation;

(ii) Bonds and portions of Bonds for whose payment or redemption money or Government Obligations (as provided in Section 16.4) shall have been theretofore deposited in trust for the Holders of such Bonds; provided, however, that if such Bonds are to be redeemed, notice of such redemption shall have been duly given pursuant to the Resolution or irrevocable instructions to call such Bonds for redemption at a stated redemption date shall have been given by the Borrower; and

(iii) Bonds in exchange for or in lieu of which other Bonds shall have been issued and delivered pursuant to the Resolution;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Bonds have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Bonds owned by the Borrower shall be disregarded and deemed not to be Outstanding.

“Outstanding SRF Bonds” means, collectively, the Series 2001 Bond, the Series 2007B Bond and the Series 2017A Bond.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization or Public Entity.

“Prior Loans” means, collectively, the 2001 Loan, the 2007B Loan, and the 2017A Loan.

“Prior Projects” means, collectively, the 2001 Project, the 2007 Project and the 2017 Project.

“Prior Resolution” has the meaning given such term in the Recitals.

“Program” means the Drinking Water State Revolving Fund Program established by the State Act.

“Project” means the costs of designing, engineering, acquiring, constructing, installing, improving, or enlarging the System, or any part thereof, financed, refinanced or the cost of which is being reimbursed to the Borrower in whole or in part with proceeds of the Bonds or other funds of the Borrower, including the Prior Projects, the 2004 Project, and the 2020 Project.

“Public Entity” means a State agency, city, town, municipality, irrigation district, county water and sewer district, a soil conservation district or other public body created pursuant to

State law or an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

“Rebate Account” means the account within in the Fund established pursuant to Sections 13.1 and 13.9.

“Recycled Money” means payments and prepayments of principal of any Loan, and any other amounts transferred to the Principal Subaccount in the Revenue Subaccount in the State Allocation Account.

“Refunded Bonds” means the Series 2004 Bonds currently Outstanding in the aggregate principal amount of \$405,000.

“Refunded Bonds Resolution” means Resolution No. 4892, adopted by the City Council on May 17, 2004, which authorizes the issuance of the Series 2004 Bonds.

“Refunding” means the refunding and redemption of the Refunded Bonds effected by the proceeds of the 2020A Loan, as more particularly described herein.

“Registrar” means, with respect to the Outstanding SRF Bonds and the Series 2020 Bonds, the City Finance Director or any successor appointed pursuant to this Resolution, and, with respect to any other series of Bonds, the Person or Persons designated as Registrar by or pursuant to the Supplemental Resolution pursuant to which such Bonds are issued.

“Regulations” means the Treasury Regulations, whether final, temporary or proposed, promulgated under the Code or otherwise applicable to the Bonds.

“Replacement and Depreciation Account” means the account within the fund established pursuant to Sections 13.1 and 13.6.

“Reserve Account” means the account within the Fund established pursuant to Sections 13.1 and 13.5.

“Reserve Requirement” means, as of the date of calculation, an amount equal to one-half the sum of the highest amount of principal of and interest payable on all outstanding Bonds in any one future fiscal year (giving effect to mandatory sinking fund redemption, if any).

“Resolution” means this Resolution as it may from time to time be amended or supplemented in accordance with its terms.

“Revenue Bond Account” means the account within the Fund established pursuant to Sections 13.1 and 13.4.

“Safe Drinking Water Act” means Title XIV of the Public Health Service Act, commonly known as the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., as amended, and all regulations, rules and interpretations issued by the EPA thereunder.



“Series 2001 Bond” means the First Amended and Restated Water System Revenue Bond (DNRC Drinking Water Revolving Loan Program), Series 2001, issued pursuant to the Prior Resolution, as then in effect.

“Series 2004 Bonds” means the Water System Revenue and Refunding Bonds, Series 2004, issued pursuant to the Prior Resolution, as then in effect.

“Series 2007B Bond” means the First Amended and Restated Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2007B, issued pursuant to the Prior Resolution, as then in effect.

“Series 2017A Bond” means the Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2017A, issued pursuant to the Prior Resolution.

“Series 2020 Bonds” means, collectively, the Series 2020A Bond and the Series 2020B Bond.

“Series 2020A Bond” means the up to \$385,000 Water System Revenue Refunding Bond (DNRC Drinking Water State Revolving Loan Program), Series 2020A, issued to the DNRC to evidence the 2020A Loan.

“Series 2020B Bond” means the \$2,598,000 Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2020B, issued to the DNRC to evidence the 2020B Loan.

“State” means the State of Montana.

“State Act” means Montana Code Annotated, Title 75, Part 6, Chapter 2, as amended from time to time.

“State Bonds” means the State’s General Obligation Bonds (Drinking Water State Revolving Fund Program), issued pursuant to the Indenture.

“Subordinate Obligations” means any subordinate obligations issued under Section 12.4.

“Supplemental Resolution” means any other resolution supplemental or amendatory to this Resolution.

“Surplus Account” means the account within the Fund established pursuant to Sections 13.1 and 13.7.

“Surplus Net Revenues” means that portion of the Net Revenues in excess of the current requirements of the Revenue Bond Account and the Reserve Account.

“System” means the existing municipal water system of the Borrower and all extensions, improvements and betterments thereof hereafter constructed and acquired, including, without limitation, the Prior Projects, the 2004 Project, and the 2020 Project.

“2001 Loan” means the loan made to the Borrower by the DNRC pursuant to the Program to provide funds to pay a portion of the costs of the 2001 Project, to fund deposits to the Reserve Account and to pay costs of issuing the Series 2001 Bond.

“2001 Project” means the facilities, improvements and activities financed, refinanced or the cost of which was reimbursed to the Borrower with proceeds of the Series 2001 Bond, described in Appendix A hereto.

“2004 Paying Agent” means U.S. Bank National Association, of Seattle, Washington, in its capacity as the paying agent for the Series 2004 Bonds.

“2004 Project” means the project financed in whole or part with the proceeds of the Series 2004 Bonds, as described more particularly in the Refunded Bonds Resolution and on the attached Appendix A.

“2007B Loan” means the loan made to the Borrower by the DNRC pursuant to the Program to provide funds to pay a portion of the costs of the 2007 Project, to fund deposits to the Reserve Account and to pay costs of issuing the Series 2007B Bond.

“2007 Project” means the facilities, improvements and activities financed, refinanced or the cost of which was reimbursed to the Borrower with proceeds of the Series 2007B Bond, described in Appendix A hereto.

“2017A Loan” means the loan made to the Borrower by the DNRC pursuant to the Program to provide funds to pay a portion of the costs of the 2017 Project, to fund deposits to the Reserve Account and to pay costs of issuing the Series 2017A Bond.

“2017A Project” means the facilities, improvements and activities financed, refinanced or the cost of which was reimbursed to the Borrower with proceeds of the Series 2017A Bond, described in Appendix A hereto.

“2020A Committed Amount” means the amount of the 2020A Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Resolution.

“2020B Committed Amount” means the amount of the 2020B Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Resolution, as such amount may be reduced pursuant to Sections 3.3 and 3.5 of this Resolution.

“2020 Loans” or “Loans” means, collectively, the 2020A Loan and the 2020B Loan.

“2020A Loan” means the loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the 2020A Committed Amount to provide funds to pay the

cost of the Refunding, to fund a deposit to the Reserve Account, and to pay costs of issuing the Series 2020A Bond.

“2020B Loan” means the loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the 2020B Committed Amount to provide funds to pay a portion of the costs of the 2020 Project, to fund a deposit to the Reserve Account, and to pay costs of issuing the Series 2020B Bond.

“2020 Project” means the facilities, improvements and activities financed, refinanced or the cost of which is being reimbursed to the Borrower with proceeds of the 2020B Loan, described in Appendix A hereto.

“Trustee” means U.S. Bank National Association, in Seattle, Washington, or any successor trustee under the Indenture.

Section 1.2 Other Rules of Construction. For all purposes of this Resolution, except where the context clearly indicates otherwise:

(a) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted government accounting standards.

(b) Terms in the singular include the plural and vice versa.

(c) All references to time shall refer to Helena, Montana time, unless otherwise provided herein.

(d) All references to mail shall refer to first-class mail postage prepaid.

(e) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(f) “Or” is not exclusive, but is intended to permit or encompass one, more or all of the alternatives conjoined.

Section 1.3 Appendices. Attached to this Resolution and hereby made a part hereof are the following Appendices:

Appendix A: a description of the Prior Projects and 2004 Project and a description and estimated budget for the 2020 Project;

Appendix B-1: the form of the Series 2020A Bond;

Appendix B-2: the form of the Series 2020B Bond; and

Appendix C: additional agreements and representations of the Borrower; and

Appendix D: the form of Escrow Agreement.

## ARTICLE II

### AUTHORIZATIONS, FINDINGS, REPRESENTATIONS AND COVENANTS

#### Section 2.1 Authorization and Findings.

(a) Authorization. Under the Act, the Borrower is authorized to issue and sell its revenue bonds payable during a term not exceeding forty years from their date of issue, to provide funds for the reconstruction, improvement, betterment and extension of a municipal water system or to refund bonds issued for such purposes, provided that the bonds and the interest thereon are to be payable solely out of the income and revenues to be derived from rates, fees and charges for the services, facilities and commodities furnished by such water system, and are not to create any obligation for the payment of which taxes may be levied except to pay for services provided by the water system to the Borrower. Under Section 7-7-4502, M.C.A., the Borrower must realize certain savings by the issuance of refunding bonds or certain other factors must be satisfied. As set forth in Section 2.1(f) below, the Borrower satisfies the requirements of Section 7-7-4502, M.C.A.

(b) The System. The Borrower, pursuant to the Act and other laws of the State has established and presently owns and operates the System.

(c) The 2020 Project. After investigation of the facts and as authorized by the Act, this Council has determined it to be necessary and desirable and in the best interests of the Borrower to acquire and construct the 2020 Project.

(d) Outstanding Bonds. Pursuant to the Act and the Prior Resolution, the Borrower issued and there are outstanding its Series 2001 Bond, Series 2004 Bonds, Series 2007B Bond and Series 2017A Bond. Other than the Series 2001 Bond, Series 2004 Bonds, Series 2007B Bond and Series 2017A Bond, no other bonds or indebtedness are outstanding that are payable from or secured by revenues of the System.

(e) Additional Bonds to Pay Costs of Projects. The Borrower has reserved the right under this Resolution to issue additional Bonds payable from the Revenue Bond Account on a parity with its Outstanding Bonds if the Net Revenues of the System for the last complete fiscal year preceding the date of issuance of such additional Bonds have equaled at least 110% of the maximum amount of principal and interest payable from said Revenue Bond Account in any subsequent fiscal year during the term of the Outstanding Bonds, on all Bonds then Outstanding and on the additional Bonds proposed to be issued, computed as provided in Section 12.3 hereof. Based on the revenues and expenses of the System for fiscal year 2019, it is hereby determined that the Borrower is authorized to issue the Series 2020B Bond as an additional Bond in the maximum principal amount of \$2,598,000 to pay costs of the 2020 Project, fund the Reserve Account, and pay costs of issuing the Series 2020B Bond. The Mayor, City Manager and City Finance Director are authorized and directed to execute and deliver a certificate to that effect.

(f) The Refunding and Related Matters. In and by the Prior Resolution as then in effect, the Borrower reserved the right to redeem the Series 2004 Bonds maturing July 1, 2015 and

thereafter on July 1, 2014 and any date thereafter at a price equal to the principal amount being redeemed plus accrued interest to the date of redemption, without premium. On the date hereof, the Series 2004 Bonds are Outstanding in the aggregate principal amount of \$405,000 and bear interest at a rate of 4.85% per annum.

On the Closing Date, the Borrower will deposit with the Escrow Agent pursuant to the Escrow Agreement proceeds of the Series 2020A Bond in an amount sufficient, together with \$91,809 on hand in the Reserve Account allocable to the Series 2004 Bonds (or such other amount as is ultimately determined), to pay, refund and redeem the Refunded Bonds at a price equal to the principal amount being redeemed plus accrued interest to the date of redemption. On or before the Closing Date, the Mayor, City Manager and City Finance Director shall execute on the part of the Borrower the Escrow Agreement, substantially in the form of attached hereto as Exhibit D, with such completions and changes as may be necessary or desirable. The form of the Escrow Agreement is hereby approved. In accordance with the provisions of the Prior Resolution, upon the deposit with the Escrow Agent of the amount sufficient to pay, refund and redeem the Refunded Bonds on the redemption date (expected to be March 5, 2020), the Refunded Bonds shall no longer be considered outstanding.

Remaining proceeds of the Series 2020A Bond will be used to fund a deposit to the Reserve Account on account of the Series 2020A Bond and pay costs of the refunding and costs of issuance of the Series 2020A Bond.

The Series 2020A Bond bears interest at the rate of 2.50% per annum, which is more than 3/8ths of one percent less than the average annual interest rate on the Refunded Bonds. Moreover, the Borrower hereby finds that as a result of issuing the Series 2020A Bond, including the total costs of refunding the Refunded Bonds and costs of funding the necessary deposit to the Reserve Account, there is a reduction of total debt service to the Borrower. The Borrower hereby finds that the Refunding complies with Section 7-7-4502 of the Act, complies with the provisions of the Prior Resolution, as amended and restated in Section 12.2 hereof, and is in the best interests of the Borrower and customers of the System.

(g) Recitals. All acts, conditions and things required by the Constitution and laws of the State to be done, to exist, to happen and to be performed prior to the issuance of the Series 2020A Bond have been done, do exist, have happened, and have been performed in due time, form and manner, wherefore it is now necessary for this Commission to establish the form and terms of the Series 2020A Bond, to provide for the security thereof and to issue the Series 2020A Bond forthwith.

Section 2.2 Representations. The Borrower represents as follows:

(a) Organization and Authority. The Borrower:

(i) is duly organized and validly existing as a municipal corporation and political subdivision of the State;

(ii) has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the System and to carry on its current activities with respect to the System, to adopt this Resolution and to enter into the Collateral Documents and to issue the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, and the Series 2020 Bonds and to carry out and consummate all transactions contemplated by this Resolution, the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, and the Series 2020 Bonds and the Collateral Documents;

(iii) is a Governmental Unit and a Public Entity; and

(iv) has taken all proper action to authorize the execution, delivery and performance of its obligations under this Resolution, the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, and the Series 2020 Bonds and the Collateral Documents and the incurrence of the Debt evidenced by the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, and the Series 2020 Bonds in the maximum amount of the Committed Amount.

(b) Litigation. There is no litigation or proceeding pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower in any court or before or by any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the existence, corporate or otherwise, of the Borrower, or the ability of the Borrower to make all payments and otherwise perform its obligations under this Resolution, the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, and the Series 2020 Bonds and the Collateral Documents, or the financial condition of the Borrower, or the transactions contemplated by this Resolution, the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, and the Series 2020 Bonds and the Collateral Documents or the validity and enforceability of this Resolution, the Series 2020 Bonds and the Collateral Documents. If any such litigation should be initiated or threatened, the Borrower will forthwith notify in writing the DNRC, and will furnish the DNRC a copy of all documents, including pleadings, in connection with such litigation. No referendum petition has been filed with respect to any resolution or other action of the Borrower relating to the Prior Projects, the Refunding, the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, the Series 2020 Bonds, or any Collateral Documents.

(c) Borrowing Legal and Authorized. The adoption of this Resolution, the execution and delivery of the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, the Series 2020 Bonds, and the Collateral Documents and the consummation of the transactions provided for in this Resolution, the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, the Series 2020 Bonds, and the Collateral Documents and compliance by the Borrower with the provisions of this Resolution, the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, the Series 2020 Bonds, and the Collateral Documents:

(i) are within the powers of the Borrower and have been duly authorized by all necessary action on the part of the Borrower; and

(ii) do not and will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Borrower pursuant to any resolution, indenture, loan agreement or other agreement or instrument (other than this Resolution and any Collateral Documents) to which the Borrower is a party or by which the Borrower or its property may be bound, nor will such action result in any violation of the provisions of the charter or similar document, if applicable, of the Borrower or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Borrower, its properties or operations are subject.

(d) No Defaults. No event has occurred and no condition exists that, upon execution and delivery of the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, the Series 2020 Bonds, and the Collateral Documents, would constitute a default under this Resolution or the Collateral Documents. The Borrower is not in violation of any term of any agreement, bond resolution, trust indenture, charter or other instrument to which it is a party or by which it or its property may be bound which violation would materially and adversely affect the transactions contemplated hereby or the compliance by the Borrower with the terms hereof or of the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, the Series 2020 Bonds, and the Collateral Documents.

(e) Governmental Consent. The Borrower has obtained or made all permits, findings and approvals required to the date of adoption of this Resolution by any governmental body or officer for the making and performance by the Borrower of its obligations under this Resolution, the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, the Series 2020 Bonds, the Collateral Documents, and for the Refunding or for the Prior Projects, the 2004 Project or the 2020 Project, the financing or refinancing thereof or the reimbursement of the Borrower for the costs thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the Borrower as a condition to adopting this Resolution, issuing the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, the Series 2020 Bonds or entering into the Collateral Documents and the performance of the Borrower's obligations hereunder and thereunder.

(f) Binding Obligation. This Resolution, the Outstanding SRF Bonds, the Series 2020 Bonds and any Collateral Document to which the Borrower is a party are the valid and binding special obligations and agreements of the Borrower, enforceable against the Borrower in accordance with their terms except to the extent that the enforceability thereof may be limited by laws relating to bankruptcy, moratorium, reorganization, insolvency or similar laws affecting creditors' rights and general principles of equity.

(g) The Prior Projects, the 2004 Project and the 2020 Project. The Prior Projects, the 2004 Project and the 2020 Project consist of the facilities, improvements and activities described in Appendix A, as such Appendix A may be amended from time to time in accordance with the provision of Article V of this Resolution. The Prior Projects, the 2004 Project and the 2020 Project comprise facilities of a type that, as determined by the EPA, will facilitate compliance

with the national primary drinking water regulations applicable to the System or will otherwise significantly further the health protection objectives of the Safe Drinking Water Act.

(h) The System. The System is a “community water system” within the meaning of the State Act and the Safe Drinking Water Act in that it is a public water system, comprising collection, treatment, storage and distribution facilities for the provision to the public of water for human consumption, that serves not less than 15 service connections used by year-round residents of the area served by the System or regularly serves not less than 25 year-round residents.

(i) Full Disclosure. There is no fact that the Borrower has not specifically disclosed in writing to the DNRC that materially and adversely affects or (so far as the Borrower can now foresee), except for pending or proposed legislation or regulations that are a matter of general public information, that will materially and adversely affect the properties, operations and finances of the System, the Borrower’s status as a Public Entity and Governmental Unit, its ability to own and operate the System in the manner it is currently operated or the Borrower’s ability to perform its obligations under this Resolution, the Outstanding SRF Bonds, the Series 2020 Bonds and the Collateral Documents and to pledge any revenues or other property pledged to the payment of the Outstanding SRF Bonds and the Series 2020 Bonds.

(j) Compliance With Law. The Borrower:

(i) is in compliance with all laws, ordinances, governmental rules and regulations and court or other governmental orders, judgments and decrees to which it is subject and which are material to the properties, operations and finances of the System or its status as a Public Entity and Governmental Unit; and

(ii) has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of the System and the operation thereof and agrees to obtain all such licenses, permits, franchises or other governmental authorizations as may be required in the future for the System and the operation thereof, which failure to obtain might materially and adversely affect the ability of the Borrower to conduct the operation of the System as presently conducted or the condition (financial or otherwise) of the System or the Borrower’s ability to perform its obligations under this Resolution, the Outstanding SRF Bonds, the Series 2020 Bonds and the Collateral Documents.

Section 2.3 Covenants.

(a) Right of Inspection and Notice of Change of Location. The DNRC, the DEQ and the EPA and their designated agents shall have the right at all reasonable times during normal business hours and upon reasonable notice to enter into and upon the property of the Borrower for the purpose of inspecting the System or any or all books and records of the Borrower relating to the System.



(b) Further Assurance. The Borrower shall execute and deliver to the DNRC all such documents and instruments and do all such other acts and things as may be necessary or required by the DNRC to enable the DNRC to exercise and enforce its rights under this Resolution, the Bond and the Collateral Documents and to realize thereon, and record and file and re-record and refile all such documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or required by the DNRC to validate, preserve and protect the position of the DNRC under this Resolution, the Outstanding SRF Bonds, the Series 2020 Bonds and the Collateral Documents.

(c) Maintenance of Security, if Any; Recordation of Interest.

(i) The Borrower shall, at its expense, take all necessary action to maintain and preserve the lien and security interest of this Resolution and the Collateral Documents so long as any amount is owing under this Resolution. the Outstanding SRF Bonds, the Series 2020 Bonds;

(ii) The Borrower shall forthwith cause this Resolution and any Collateral Documents granting a security interest in revenues or real or personal property and any financing statements or other notices or documents relating thereto to be filed, registered and recorded in such manner and in such places as may be required by law in order to perfect and protect fully the lien and security interest hereof and thereof and the security interest in them granted by this Resolution and, from time to time, shall perform or cause to be performed any other act required by law, including executing or causing to be executed any and all required continuation statements and shall execute or cause to be executed any further instruments that may be requested by the DNRC for such perfection and protection; and

(iii) Except to the extent it is exempt therefrom, the Borrower shall pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of the documents described in subparagraph (ii), and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Outstanding SRF Bonds, the Series 2020 Bonds and the Collateral Documents and the documents described in subparagraph (ii).

(d) Additional Agreements. The Borrower covenants to comply with all representations, covenants, conditions and agreements, if any, set forth in Exhibit C hereto.

(e) Financial Information. The Borrower agrees that for each fiscal year it shall furnish to the DNRC and the DEQ, promptly when available:

(A) the preliminary budget for the System, with items for the 2020 Project shown separately; and

(B) when adopted, the final budget for the System, with items for the 2020 Project shown separately.

The Borrower will cause proper and adequate books of record and account to be kept showing complete and correct entries of all receipts, disbursements and other transactions relating to the System, the monthly gross revenues derived from its operation, and the segregation and application of the gross revenues in accordance with this Resolution, in such reasonable detail as may be determined by the Borrower in accordance with generally accepted governmental accounting practice and principles. It will cause such books to be maintained on the basis of the same fiscal year as that utilized by the Borrower. The Borrower shall, within 270 days after the close of each fiscal year, cause to be prepared and supply to the DNRC a financial report with respect to the System for such fiscal year. The report shall be prepared at the direction of the financial officer of the Borrower in accordance with applicable generally accepted governmental accounting principles and, in addition to whatever matters may be thought proper by the financial officer to be included therein, shall include the following:

1. A statement in detail of the income and expenditures of the System for the fiscal year, identifying capital expenditures and separating them from operating expenditures;
2. A balance sheet as of the end of the fiscal year;
3. The number of premises connected to the System at the end of the fiscal year;
4. The amount on hand in each account of the Fund at the end of the fiscal year;
5. A list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bond; and
6. A determination that the report shows full compliance by the Borrower with the provisions of this Resolution during the fiscal year covered thereby, including proper segregation of the capital expenditures from operating expenses, maintenance of the required balance in the Revenue Bond Account (as hereinafter defined), and receipt of Net Revenues during each fiscal year at least equal to 110% of the maximum amount of principal and interest payable on outstanding Bonds in any subsequent fiscal year, or, if the report should reveal that the revenues have been insufficient for compliance with this Resolution, or that the methods used in accounting for such revenues were contrary to any provision of this Resolution, the report shall include a full explanation thereof, together with recommendations for such change in rates or accounting practices or in the operation of the System as may be required.

The Borrower shall also have prepared and supplied to the DNRC and the DEQ, within 270 days of the close of each fiscal year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting principles and practice with respect to the financial statements and records of the System. The audit report shall include an analysis of the Borrower's compliance with the provisions of this Resolution.

(f) Project Accounts. The Borrower shall maintain Project accounts in accordance with generally accepted government accounting standards.

(g) Records. After reasonable notice from the EPA or the DNRC, the Borrower shall make available to the EPA or the DNRC such records as the EPA or the DNRC reasonably requires to review and determine compliance with the Safe Drinking Water Act, as provided in Section 75-6-224(1)(d) of the State Act.

(h) Compliance with Safe Drinking Water Act. The Borrower has complied and shall comply with all conditions and requirements of the Safe Drinking Water Act pertaining to the Outstanding SRF Bonds, the Series 2020 Bonds, the Prior Projects, the 2004 Project, and the 2020 Project, and shall maintain sufficient financial, managerial and technical capability to continue to effect such compliance.

(i) Compliance with DEQ Requirements. The Borrower shall comply with plan, specification and other requirements for public water systems established by the DEQ, as required by Section 75-6-224(1)(h).

#### Section 2.4 Covenants Relating to the Tax-Exempt Status of the State Bonds.

(a) The Borrower covenants and agrees that it will not use or permit to be used any of the proceeds of the Outstanding SRF Bonds or the Series 2020 Bonds or any other funds of the Borrower in respect of the 2020 Project, the Prior Projects, or the 2004 Project, directly or indirectly, in a manner that would cause, or take any other action that would cause, any State Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code or would otherwise cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

(b) The Borrower agrees that it will not enter into, or allow any "related person" (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the State Bonds or any other obligations of the DNRC in an amount related to the amount of the 2020 Loans or the portion of the 2020 Loans derived directly or indirectly from proceeds of the State Bonds or that would otherwise cause any State Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code.

(c) The Borrower shall not use or permit the use of the Prior Projects, the 2004 Project or the 2020 Project directly or indirectly in any trade or business carried on by any Person who is not a Governmental Unit. For the purpose of this subparagraph, use as a member of the general

public (within the meaning of the Regulations) shall not be taken into account and any activity carried on by a Person other than a natural person shall be treated as a trade or business.

(d) Any portion of the Prior Projects, the 2004 Project and the 2020 Project financed, refinanced or the cost of which is being or was reimbursed by proceeds was acquired by and is now and shall, during the term of the Outstanding SRF Bonds and the Series 2020 Bonds, be owned by the Borrower and not by any other Person. Notwithstanding the previous sentence, the Borrower may transfer the 2020 Project or a portion thereof to another Governmental Unit which is also a Public Entity if such transfer is otherwise permitted under the Resolution and if such organization agrees with the DNRC to comply with Section 2.3(h), Section 2.3(i) and Section 2.4 of this Supplemental Resolution and if the DNRC receives an Opinion of Bond Counsel that such transfer will not violate the Act or the Safe Drinking Water Act or adversely affect the exclusion of interest on the State Bonds from gross income for purposes of federal income taxation. In addition, except as otherwise provided in the Resolution or in any Collateral Documents, the Borrower may sell or otherwise dispose of any portion of the 2020 Project which has become obsolete or outmoded or is being replaced or for other reasons is not needed by the Borrower or beneficial to the general public or necessary to carry out the purposes of the Safe Drinking Water Act.

(e) At the Closing of the 2020 Loans, the DNRC will, if necessary to obtain the Opinion of Bond Counsel described in Section 7.05(a) of the Indenture, deliver to the Borrower instructions concerning compliance by the Borrower with the arbitrage rebate requirements of Section 148 of the Code (the "Arbitrage Rebate Instructions"). The Borrower shall comply with the Arbitrage Rebate Instructions, if any, delivered to it by the DNRC at Closing, as such Instructions may be amended or replaced by the DNRC from time to time. The Arbitrage Rebate Instructions may be amended or replaced by new Arbitrage Rebate Instructions delivered by the DNRC and accompanied by an Opinion of Bond Counsel to the effect that the use of said amended or new Arbitrage Rebate Instructions will not adversely affect the excludability of interest on the State Bonds or any Additional State Bonds (except State Bonds the interest on which the State did not intend to be excluded from gross income for federal income tax purposes) from gross income of the recipients thereof for federal income tax purposes.

(f) The Borrower agrees that during the term of the Outstanding SRF Bonds and Series 2020 Bonds it will not contract with or permit any Private Person to manage the 2004 Project, Prior Projects, 2020 Project or any portion thereof except according to a written management contract and upon delivery to the DNRC of an opinion of Bond Counsel to the effect that the execution and delivery of such management contract will not violate the Act or the Safe Drinking Water Act or adversely affect the exclusion of interest on State Bonds from gross income or purposes of federal income taxation.

(g) The Borrower may not lease the 2004 Project, Prior Projects, 2020 Project or any portion thereof to any Person other than a Nonexempt Person which agrees in writing with the Borrower and the State not to cause any default to occur under the Resolution; provided the Borrower may lease all or any portion of the 2004 Project, Prior Projects, or 2020 Project to a Nonexempt Person pursuant to a lease which in the Opinion of Bond Counsel delivered to the

DNRC will not cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

(h) The Borrower shall not change the use or nature of the 2004 Project, Prior Projects, or 2020 Project if (i) such change will violate the Safe Drinking Water Act, or (ii) so long as the State Bonds are outstanding unless, in the Opinion of Bond Counsel delivered to the DNRC, such change will not result in the inclusion in gross income of interest on the State Bonds for federal income tax purposes.

### ARTICLE III USE OF PROCEEDS; THE REFUNDING AND THE 2020 PROJECT

Section 3.1 Use of Proceeds. The Borrower shall apply the proceeds of the 2020 Loans from the DNRC solely as follows:

(a) The Borrower shall apply the proceeds of the 2020A Loan solely to effect the Refunding, to fund a deposit to the Reserve Account, and to pay costs of issuing the Series 2020A Bond. The Borrower shall apply the proceeds of the 2020B Loan solely to the financing, refinancing or reimbursement of the costs of the costs of the 2020 Project, funding a deposit to the Reserve Account, and to pay costs of issuing the Series 2020B Bond, as set forth in Appendix A hereto. The 2020 Loans will be disbursed in accordance with Article IV hereof and Article VII of the Indenture. If the 2020 Project has not been completed prior to Closing, the Borrower shall, as quickly as reasonably possible, complete the 2020 Project and expend proceeds of the Series 2020B Bond to pay the costs of completing the 2020 Project.

(b) No portion of the proceeds of the 2020 Loans shall be used to reimburse the Borrower for costs paid prior to the date of adoption of this Resolution of a Project the construction or acquisition of which occurred or began earlier than June 1, 1993. In addition, if any proceeds of the 2020B Loan is to be used to reimburse the Borrower for 2020 Project costs paid prior to the date of adoption of this Resolution, the Borrower shall have complied in respect of such expenditures with the requirements of Section 1.150-2 of the Regulations, as amended or any successor regulation thereto.

(c) Any Debt to be refinanced with proceeds of the 2020 Loans was incurred after June 1, 1993 for a Project the construction or acquisition of which began after June 1, 1993. No proceeds of the 2020 Loans shall be used for the purpose of refinancing an obligation the interest on which is exempt from federal income tax or excludable from gross income for purposes of federal income taxation unless the DNRC has received an Opinion of Bond Counsel, satisfactory to it, to the effect that such refinancing will not adversely affect the exclusion of interest on the State Bonds from gross income for purposes of federal income taxation.

Section 3.2 2004 Project Representations and Covenants. The Borrower hereby represents to and covenants with the DNRC that:

(a) all construction of the 2004 Project complied with all federal and state standards, including, without limitation, EPA regulations and standards;

(b) the 2004 Project was a project of the type permitted to be financed under the Act, the State Act and the Program and Section 1452 of the Safe Drinking Water Act.

Section 3.3 The 2020 Project. Set forth in Appendix A to this Resolution is a description of the 2020 Project, which describes the property which has been or is to be acquired, installed, constructed or improved and the other activities, if any to be funded from the 2020B Loans (the 2020 Project may consist of more than one facility or activity), and an estimated budget relating to the 2020 Project. The 2020 Project may be changed and the description thereof in Appendix A may be amended from time to time by the Borrower but only after delivery to the DNRC of the following:

(a) A certificate of the Borrower setting forth the amendment to Appendix A and stating the reason therefor, including statements as to whether the amendment would cause an increase or decrease in the cost of the 2020 Project, an increase or decrease in the amount of proceeds of the 2020B Loan which will be required to complete the 2020 Project and whether the change will materially accelerate or delay the construction schedule for the 2020 Project;

(b) A written consent to such change in the 2020 Project by an Authorized DNRC Officer; and

(c) An Opinion or Opinions of Bond Counsel stating that the 2020 Project, as constituted after such amendment, is, and was at the time the State Bonds were issued, eligible for financing under the State Act and is, and was at the time the Series 2020B Bond was issued, eligible for financing under the Act, such amendment will not violate the State Act or the Act and such amendment will not adversely affect the exclusion of interest on the State Bonds or the Series 2020B Bond from gross income for purposes of federal income taxation. Such an Opinion of Bond Counsel shall not be required for amendments which do not affect the type of facility to be constructed or activity to be financed.

The Borrower acknowledges and agrees that an increase in the principal amount of the 2020B Loan may be made only upon an application to the DEQ, the DNRC and the Trustee, in such form as the DEQ shall specify, which is approved by the DEQ and the DNRC, in their sole and absolute discretion, and adoption by the governing body of the Borrower of a Supplemental Resolution authorizing the additional loan and delivery of written certifications by officers of the Borrower to the DEQ, the DNRC and the Trustee to the effect that all representations and covenants contained in this resolution as it may be so amended or supplemented are true as of the date of closing of the additional loan. No assurance can be given that any additional loan funds will be available under the Program at the time of any such application or thereafter. The Borrower acknowledges and agrees that neither the DEQ, the DNRC, the Trustee nor any of their agents, employees or representatives shall have any liability to the Borrower and have made no representations to the Borrower as to the sufficiency of the 2020B Loan to pay costs of the 2020 Project or as to the availability of additional funds under the Program to increase the principal amount of the 2020B Loan.

Section 3.4 2020 Project Representations and Covenants. The Borrower hereby represents to and covenants with the DNRC that:

(a) all construction of the 2020 Project has complied and will comply with all federal and state standards, including, without limitation, EPA regulations and standards;

(b) all future construction of the 2020 Project will be done only pursuant to fixed price construction contracts, and the Borrower shall obtain a performance and payment bond from the contractor for each construction contract in the amount of 100% of the construction price and ensure that such bond is maintained until construction is completed to the Borrower's, the DNRC's and the DEQ's satisfaction;

(c) all future construction of the 2020 Project will be done in accordance with plans and specifications on file with the DNRC and the DEQ, provided that changes may be made in such plans and specifications with the written consent of an Authorized DNRC Officer and the DEQ;

(d) all laborers and mechanics employed by contractors and subcontractors on the 2020 Project have been and will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code;

(e) the iron and steel products used in the 2020 Project comply with the "American Iron and Steel" requirements of Section 436 of the Consolidated Appropriations Act of 2014 (P.L. 113-76), as those requirements are further interpreted by applicable EPA guidance;

(f) the 2020 Project is a project of the type permitted to be financed under the Act, the State Act and the Program and Section 1452 of the Safe Drinking Water Act; and

(g) the Borrower has undertaken or will undertake the 2020 Project promptly after the Closing Date and will cause the 2020 Project to be completed as promptly as practicable with all reasonable dispatch, except only as completion may be delayed by a cause or event not reasonably within the control of the Borrower; it is estimated by the Borrower that the 2020 Project will be substantially completed by October 31, 2020.

Section 3.5 Completion or Cancellation or Reduction of Costs of the 2020 Project.

(a) Upon completion of the 2020 Project, the Borrower shall deliver to the DNRC a certificate stating that the 2020 Project is complete and stating the remaining amount, if any, of the Committed Amount. If Appendix A describes two or more separate projects as making up the 2020 Project, a separate completion certificate shall be delivered for each.

(b) If all or any portion of the 2020 Project is cancelled or reduced or its costs are reduced or for any other reason the Borrower will not require the full Committed Amount, the Borrower shall promptly notify the DNRC in writing of such fact and of the amount of the Committed Amount which will not be needed.

## ARTICLE IV

### THE 2020 LOANS

#### Section 4.1 The 2020 Loans; Disbursement of Loans.

(a) The DNRC has agreed to lend to the Borrower, from time as the requirements of this Section 4.1 are met, an amount of up to (a) \$385,000 (the “2020A Committed Amount”), and (ii) \$2,598,000 (the “2020B Committed Amount”) for the purposes of financing, refinancing, or reimbursing the Borrower for the costs of the Refunding, costs of the 2020 Project, funding deposits to the Reserve Account, and paying costs of issuance; provided the DNRC shall not be required to loan any proceeds of the State Bonds to the Borrower after December 31, 2020. The Committed Amount may be reduced as provided in Section 3.2 and Section 3.4 of this Resolution

(b) The DNRC intends to disburse the Loan through the Trustee. In consideration of the issuance of the Series 2020 Bonds by the Borrower, the DNRC shall make, or cause the Trustee to make, a disbursement of all or a portion of the 2020 Loans but only upon receipt of the following documents:

- (1) an Opinion of Bond Counsel as to the validity and enforceability of the Series 2020 Bonds and the security therefor and stating in effect that interest on the Series 2020 Bonds is not includable in gross income for purposes of federal income taxation, in form and substance satisfactory to the DNRC;
- (2) the Series 2020A Bond and the Series 2020B Bond, fully executed and authenticated;
- (3) a certified copy of this Resolution;
- (4) any other security instruments or documents required by the DNRC or DEQ as a condition to their approval of the 2020 Loans;
- (5) if all or part of a Loan is being made to refinance a Project or reimburse the Borrower for the costs of a Project paid prior to the Closing, evidence, satisfactory to the DNRC and the Bond Counsel referred to in (1) above, (A) that the acquisition or construction of the Project was begun no earlier than June 1, 1993 or the debt was incurred no earlier than June 1, 1993, (B) of the Borrower’s title to the Project, (C) of the costs of such Project and that such costs have been paid by the Borrower and (D) if such costs were paid prior to the date of adoption of this Resolution that the Borrower has complied with Section 1.150-2 of the Regulations;
- (6) the items required by the Indenture for the portion of the 2020 Loans to be disbursed at Closing; and



(7) such other certificates, documents and other information as the DNRC, the DEQ or the Bond Counsel giving the opinion referred to in subparagraph (1) may require (including any necessary arbitrage rebate instructions).

(c) In order to obtain a disbursement of a portion of the 2020 Loans to pay costs of the Refunding or the 2020 Project, the Borrower shall submit to the DNRC and the Trustee a signed request for disbursement on the form prescribed by the DNRC, with all attachments required by such form. The Borrower may obtain disbursements only for costs which have been legally incurred and are due and payable. All Loan disbursements will be made to the Borrower only upon proof that cost was incurred.

(d) From and after Closing, the 2020 Loans shall be disbursed, subject to the other terms and conditions of this Resolution.

(e) The Borrower shall submit the request for disbursements of the 2020 Loans in the form required by the DNRC so that it is received in sufficient time for the DNRC to process the information by the date desired by the Borrower for the making of such disbursements. The Borrower shall not be entitled to, and the DNRC shall have no obligation to make, any subsequent advance of amounts under the 2020A Loan or the 2020B Loan until such time as the Borrower shall have set aside and funded the Reserve Account in an amount then required to satisfy the Reserve Requirement.

(f) For refinancings, a disbursement schedule complying with the requirements of the Safe Drinking Water Act shall be established by the DNRC and the Borrower at Closing.

(g) If all or a portion of the 2020 Loans is made to reimburse a Borrower for Refunding costs and 2020 Project costs paid by it prior to Closing, the Borrower shall present at Closing the items required by Section 4.1(b) relating to such costs. The Trustee shall disburse such amounts to the Borrower pursuant to a disbursement schedule complying with the requirements of the Safe Drinking Water Act established by the DNRC and the Borrower at the Closing.

(h) Notwithstanding anything else provided herein, the Trustee shall not be obligated to disburse the 2020 Loans any faster or to any greater extent than it has available EPA Capitalization Grants, State Bond proceeds and other amounts available therefor in the Revolving Fund. The DNRC shall not be required to do "overmatching" pursuant to Section 5.04(b) of the Indenture, but may do so in its discretion. The Borrower acknowledges that if 2020 Project costs are incurred faster than the Borrower projected at Closing, there may be delays in making 2020 Loan disbursements for such costs because of the schedule under which EPA makes EPA Capitalization Grant money available to the DNRC. The DNRC will use its reasonable best efforts to obtain an acceleration of such schedule if necessary.

(i) Upon making each disbursement of the 2020A Loan and 2020B Loan, the Trustee shall note such disbursement on Schedule A to the Series 2020A Bond and Series 2020B Bond, respectively.

(j) The Borrower agrees that it will deposit in the Reserve Account upon receipt thereof, on the date of Closing and any subsequent disbursement dates, any proceeds of the 2020A Loan and the 2020B Loan borrowed for the purpose of causing the balance in the Reserve Account equal the Reserve Requirement. The Borrower further acknowledges and agrees that any portions of the 2020 Loans representing capitalized interest shall be advanced only on Payment Dates and shall be transferred by the Trustee on the Payment Date directly to the Revenue Bond Account. The amount of any such transfer shall be a credit against the interest payments due on the Series 2020 Bonds and interest thereon shall accrue only from the date of transfer.

(k) Compliance by the Borrower with its representations, covenants and agreements contained in this Resolution and the Collateral Documents shall be a further condition precedent to the disbursement of the 2020 Loans in whole or in part. The DNRC and the Trustee, in their sole and absolute discretion, may make one or more disbursements, in whole or in part, notwithstanding such noncompliance, and without liability to make any subsequent disbursement of the 2020 Loans.

Section 4.2 Commencement of Loan Term. The Borrower's obligations under this Resolution and the Collateral Documents shall commence on the date hereof unless otherwise provided in this Resolution. However, the obligation to make payments under Article V hereof shall commence only upon the first disbursement by the Trustee of 2020A Loan and 2020B Loan proceeds.

Section 4.3 Termination of Loan Term. The Borrower's obligations under this Resolution and the Collateral Documents in respect of the Series 2020 Bonds shall terminate upon payment in full of all amounts due under the Series 2020 Bonds and this Resolution; provided, however, that the covenants and obligations provided in Article IX and Sections 14.4, 14.5 and 14.6 of this Resolution shall survive the termination of this Resolution.

Section 4.4 Loan Closing Submissions. On or prior to the Closing, the Borrower will have delivered to the DNRC and the Trustee the closing submissions required by Section 7.05 of the Indenture.

## ARTICLE V REPAYMENT OF 2020 LOANS

Section 5.1 Repayment of 2020 Loans. The Borrower shall repay the amounts lent to it pursuant to Section 5.1 hereof, plus interest on the unpaid amounts lent at the rate of two and zero hundredths percent (2.00%) per annum, in semiannual Loan Repayments. In addition, the Borrower shall pay the Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal amounts of the 2020A Loan and the 2020B Loan. For purposes of this Resolution and the Program, the term "interest on the 2020 Loans" or "interest on the 2020A Loan" or "interest on the Series 2020B Loan" when not used in conjunction with a reference to any surcharges, shall include the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge. The Borrower shall pay all Loan Repayments and the Administrative Expense Surcharge and Loan Loss Reserve Surcharge in lawful money of the United States of America to

the DNRC. Interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge shall be calculated on the basis of a year of 360 days comprising 12 months of 30 days each.

5.1.1. Repayment of 2020A Loan. The Loan Repayments and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the 2020A Loan required by this Section 5.1 shall be payable on each January 1 and July 1, beginning on July 1, 2020, and concluding no later than July 1, 2024, and the amount of each principal payment shall be calculated on the basis of a substantially level debt service at a rate of 2.50% per annum; provided that principal of the 2020A Loan is payable only in amounts that are multiples of \$1,000.

5.1.2. Repayment of 2020B Loan. The Loan Repayments and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the 2020B Loan required by this Section 6.1 shall be due on each Payment Date, as follows:

(1) interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal balance of the 2020B Loan shall be payable on each January 1 and July 1, beginning on July 1, 2020 and concluding on January 1, 2040; and

(2) the principal of the 2020B Loan shall be payable on each January 1 and July 1, beginning on July 1, 2020, and concluding on January 1, 2040, and the amount of each principal payment shall be calculated on the basis of a substantially level debt service at a rate of 2.50% per annum; provided that principal of the 2020B Loan is payable only in amounts that are multiples of \$1,000.

5.1.3. Details Regarding 2020 Loan Repayments. Loan Repayments and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the 2020A Loan and the 2020B Loan shall be due on the dates specified above and on the dates and in the amounts shown in Schedule B to the Series 2020A Bond and the Series 2020B Bond, as such Schedule B shall be modified from time to time as provided below. Schedule B will first be attached to the Series 2020A Bond and the Series 2020B Bond at Closing. The portion of each such Loan Repayment consisting of principal and the portion consisting of interest and the amount of each Administrative Expense Surcharge and the amount of each Loan Loss Reserve Surcharge shall be set forth in Schedule B to the Series 2020A Bond and the Series 2020B Bond on and after Closing. Upon each disbursement of 2020 Loan amounts to the Borrower pursuant to Section 5.1 hereof, the Trustee shall enter or cause to be entered the amount advanced on Schedule A to the applicable Series 2020A Bond and the Series 2020B Bond under “Advances” and the total amount advanced under Section 5.1, including such disbursement, under “Total Amount Advanced.” Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on such advance shall accrue from the date the advance is made and shall be payable on each Payment Date thereafter. Once the completion certificate for the 2020 Project has been prepared and delivered to the DNRC pursuant to Section 3.5 of this Resolution, the Trustee shall revise Schedule B to the Series 2020B Bond in accordance with this Section 5.1 and the Trustee

shall send a copy of such Schedule B to the Borrower within one month after delivery of the completion certificate

Past-due payments of principal and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Any payment of principal, interest or Administrative Expense Surcharge or the Loan Loss Reserve Surcharge under this Section 5.1 shall also be credited against the same payment obligation under the each of the Series 2020A Bond and the Series 2020B Bond.

Section 5.2 Additional Payments. The Borrower shall also pay, within 30 days after receipt of a bill therefor, from any legally available funds therefor, including proceeds of the Loan, if the Borrower so chooses, all reasonable expenses of the DNRC and the Trustee in connection with the 2020 Loans, the Collateral Documents and the Series 2020 Bonds, including, but not limited to:

(a) the cost of reproducing this Resolution, the Collateral Documents and the Series 2020 Bonds;

(b) the fees and disbursements of Bond Counsel and other counsel utilized by the DNRC and the Trustee in connection with the Loan, this Resolution, the Collateral Documents and the Series 2020 Bonds and the enforcement thereof; and

(c) all taxes and other governmental charges in connection with the execution and delivery of the Collateral Documents or the Series 2020 Bonds, whether or not the Series 2020 Bond are then Outstanding, including all recording and filing fees relating to the Collateral Documents and the pledge of the State's right, title and interest in and to the Series 2020 Bonds, the Collateral Documents and this Resolution under the Board Resolution (and with the exceptions noted therein) and all expenses, including attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof or thereof.

Section 5.3 Prepayments. The Borrower may not prepay all or any part of the Outstanding principal amount of the Series 2020A Bond and the Series 2020B Bond unless (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2020 Bonds are prepaid in part pursuant to this Section 5.3, then in the discretion of the DNRC, (i) such prepayments may be applied to principal payments in inverse order of maturity, or (ii) the DNRC may reamortize the principal remaining upon such prepayment, together with interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge, over the then-remaining term in substantially equal semiannual payments.

Section 5.4 Obligations of Borrower Unconditional. The obligations of the Borrower to make the payments required by this Resolution and the Series 2020 Bonds and to perform its

other agreements contained in this Resolution, the Series 2020 Bonds and Collateral Documents shall be absolute and unconditional, except as otherwise provided herein or in such documents. The Borrower (a) shall not suspend or discontinue any payments provided for in this Resolution and the Series 2020 Bonds, (b) shall perform all its other agreements in this Resolution, the Series 2020 Bonds and the Collateral Documents and (c) shall not terminate this Resolution, the Series 2020 Bonds or the Collateral Documents for any cause, including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the 2020 Project or the System, commercial frustration of purpose, any dispute with the DNRC or the EPA, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the DNRC to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with this Resolution.

Section 5.5 Limited Liability. All payments of principal of and interest on the 2020 Loans and other payment obligations of the Borrower hereunder and under the Series 2020 Bonds shall be special, limited obligations of the Borrower payable solely out of the Net Revenues and shall not be payable out of any other revenues of the Borrower. The obligations of the Borrower under this Resolution and the Series 2020 Bonds shall never constitute an indebtedness of the Borrower within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Borrower or a charge against its general credit or taxing power. The taxing powers of the Borrower may not be used to pay principal of or interest on the Series 2020 Bonds, and, unless at the option of the Borrower in its sole discretion, no funds or property of the Borrower other than the Net Revenues may be used to pay principal of or interest on the Series 2020 Bonds.

## ARTICLE VI OUTSTANDING SRF BONDS

Section 6.1 Issuance and Sale of the Outstanding SRF Bonds. The Series 2001 Bond was issued in the maximum principal amount of \$404,000, and bears interest at the rate of two percent (2.00%) per annum. The Series 2007B Bond was issued in the maximum principal amount of \$1,340,000, and bears interest at the rate of two and one-quarter percent (2.25%) per annum. The Series 2017A Bond was issued in the maximum principal amount of \$2,984,000, and bears interest at the rate of two and one-half percent (2.50%) per annum. The Series 2001 Bond, the Series 2007B Bond, and the Series 2017A Bond were each issued and sold to the DNRC without public sale pursuant to Section 7-7-4433 of the Act. The terms of the Series 2001 Bond, the Series 2007B Bond, and the Series 2017A Bond are set forth herein and in the forms of such bonds and the Series 2001 Bond, the Series 2007B Bond, and the Series 2017A Bond shall be governed pursuant to this Resolution. The Council hereby authorizes the execution and delivery of forms of amended and restated Series 2001 Bond, Series 2007B Bond, and Series 2017A Bond contemporaneously with the execution and delivery of the Series 2020 Bonds to reflect the terms of this Resolution. Such amended and restated bonds, if delivered, will be exchanged for the corresponding Outstanding SRF Bonds.

Section 6.2 Terms. The Outstanding SRF Bonds were each issued as a single, fully registered bond, in the maximum principal amount, with the dated date and bearing interest at the

rate set forth in the Series 2001 Bond, the Series 2007B Bond, and the Series 2017A Bond. The principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge, if any, on the Outstanding SRF Bonds are each payable on the same dates and in the same amounts as the principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge, if any, on the corresponding Loan are payable, as shown on Schedule B to each of the Series 2001 Bond, the Series 2007B Bond, and the Series 2017A Bond. The Borrower may prepay the Outstanding SRF Bonds in whole or in part, only upon the terms and conditions under which it can prepay the corresponding Prior Loans, as set forth in Section 7.3 hereof and in the form of each of the Outstanding SRF Bonds.

Section 6.3 Negotiability, Transfer and Registration. Each of the Outstanding SRF Bonds were issued fully registered as to both principal and interest, and was initially registered in the name of and payable to the DNRC. While so registered, principal of and interest on the Outstanding SRF Bonds shall be payable to the DNRC at the Office of the Department of Natural Resources and Conservation, 1539 Eleventh Avenue, Helena, Montana 59620-2301 or such other place as may be designated by the DNRC in writing and delivered to the Borrower. The Outstanding SRF Bonds shall be negotiable, subject to the provisions for registration and transfer contained in this section. No transfer of the Outstanding SRF Bonds shall be valid unless and until (1) the holder, or its duly authorized attorney or legal representative, has executed the form of assignment appearing on the form of the applicable Outstanding SRF Bond, and (2) the Registrar has duly noted the transfer on the applicable Outstanding SRF Bond and recorded the transfer on the registration books of the Registrar. The Registrar may, prior to noting and recording the transfer, require appropriate proof of the transferor's authority and the genuineness of the transferor's signature. The Borrower shall be entitled to deem and treat the Person in whose name the Outstanding SRF Bonds are registered as the absolute owner of the Outstanding SRF Bonds for all purposes, notwithstanding any notice to the contrary, and all payments to the registered holder shall be valid and effectual to satisfy and discharge the Borrower's liability upon such Bond to the extent of the sum or sums so paid. The Borrower reserves the right to appoint a successor Registrar which may be a financial institution. The Borrower shall pay all fees and charges of such Registrar for such services.

Section 6.4 Execution and Delivery. The Outstanding SRF Bonds were executed on behalf of the Borrower by the manual signatures of the authorized officers of the Borrower and were delivered to the DNRC, or its attorney or legal representative. If delivered pursuant to Section 6.1 above, the amended and restated Outstanding SRF Bonds will be, from and after the date of their delivery, the Outstanding SRF Bonds.

## ARTICLE VII REPAYMENT OF PRIOR LOANS

Section 7.1 Repayment of Prior Loans. The payments of principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge, if any, on the Prior Loans shall be due on the dates and in the amounts shown in Schedule B to the corresponding Outstanding SRF Bonds. The portion of each such loan repayment consisting of principal, the portion consisting of interest and the amount of each Administrative Expense Surcharge and

Loan Loss Reserve Surcharge, if any, shall be as set forth in Schedule B to the applicable Outstanding SRF Bonds.

Past-due payments of principal and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge, if any, shall bear interest at the rate of ten percent (10.00%) per annum, until paid.

Any payment of principal, interest, Administrative Expense Surcharge or Loan Loss Reserve Surcharge, if any, under this Section 7.1 shall also be credited against the same payment obligation under the Outstanding SRF Bonds.

Section 7.2 Additional Payments. The Borrower shall also pay, within 30 days after receipt of a bill therefor, from any legally available funds therefor, all reasonable expenses of the DNRC and the Trustee in connection with the Outstanding SRF Bonds including, but not limited to:

(a) the cost of reproducing this Resolution, the Collateral Documents, and the Outstanding SRF Bonds;

(b) the fees and disbursements of Bond Counsel and other counsel utilized by the DNRC and the Trustee in connection with the Outstanding SRF Bonds and the enforcement thereof; and

(c) all taxes and other governmental charges in connection with the execution and delivery of the Outstanding SRF Bonds or the Collateral Documents, whether or not the Outstanding SRF Bonds are then Outstanding, including all recording and filing fees relating to the Collateral Documents and the pledge of the DNRC's right, title and interest in and to the Outstanding SRF Bonds, the Collateral Documents and this Resolution (and with the exceptions noted therein) and all expenses, including attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof or thereof.

Section 7.3 Prepayments. The Borrower may not prepay all or any part of the outstanding principal amount of the 2001 Loan, the 2007 Loan, and the 2017 Loan unless (i) it obtains the prior written consent of the DNRC thereto, and (ii) no principal, interest or Administrative Expense Surcharge or Loan Loss Reserve Surcharge, if any, relating to such Bond is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Prior Loans and corresponding Outstanding SRF Bonds are prepaid in part pursuant to this Section 7.3, then in the discretion of the DNRC, (i) such prepayments may be applied to principal payments in inverse order of maturity, or (ii) the DNRC may reamortize the principal remaining upon such prepayment, together with interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge, over the then-remaining term in substantially equal semiannual payments.

Section 7.4 Obligations of Borrower Unconditional. The obligations of the Borrower to make the payments required by this Resolution and the Outstanding SRF Bonds and to perform its other agreements contained in this Resolution, the Outstanding SRF Bonds and

Collateral Documents shall be absolute and unconditional, except as otherwise provided herein or in such documents. The Borrower (a) shall not suspend or discontinue any payments provided for in this Resolution and the Outstanding SRF Bonds, (b) shall perform all its other agreements in this Resolution, the Outstanding SRF Bonds and the Collateral Documents and (c) shall not terminate this Resolution, the Outstanding SRF Bonds or the Collateral Documents for any cause, including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Prior Projects or the System, commercial frustration of purpose, any dispute with the DNRC or the EPA, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the DNRC to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with this Resolution.

Section 7.5 Limited Liability. All payments of principal of and interest on the Prior Loans and other payment obligations of the Borrower hereunder and under the Outstanding SRF Bonds shall be special, limited obligations of the Borrower payable solely out of the Net Revenues and shall not be payable out of any other revenues of the Borrower. The obligations of the Borrower under this Resolution and the Outstanding SRF Bonds shall never constitute an indebtedness of the Borrower within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Borrower or a charge against its general credit or taxing power. The taxing powers of the Borrower are not pledged to pay principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge, if any, on the Outstanding SRF Bonds, and no funds or property of the Borrower other than the Net Revenues are pledged to pay the principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge, if any, on the Outstanding SRF Bonds.

## ARTICLE VIII OTHER AGREEMENTS OF BORROWER

Section 8.1 Maintenance of System; Liens. The Borrower shall maintain the System, including the 2004 Project, Prior Projects and 2020 Project, in good condition and make all necessary renewals, replacements, additions, betterments and improvements thereto. The Borrower shall not grant or permit to exist any lien on the 2004 Project, Prior Projects or 2020 Project or any other property making up part of the System, other than as provided by this Resolution; provided that this Section 8.1 shall not be deemed to be violated if a mechanic's or contractor's lien is filed against any such property so long as the Borrower uses its best efforts to obtain the discharge of such lien and promptly reports to the DNRC the filing of such lien and the steps it plans to take and does take to discharge of such lien.

Section 8.2 Maintenance of Existence; Merger, Consolidation, Etc.; Disposition of Assets. The Borrower shall maintain its corporate existence, except that it may consolidate with or merge into another Governmental Unit or permit one or more Governmental Units to consolidate with or merge into it or may transfer all or substantially all of its assets to another Governmental Unit and then dissolve if the surviving, resulting or transferee entity (if other than the Borrower) (i) is a Public Entity and (ii) assumes in writing all of the obligations of the



Borrower under the Resolution, the Outstanding SRF Bonds, the Series 2020 Bonds and the Collateral Documents, and (a) such action does not result in any default in the performance or observance of any of the terms, covenants or agreements of the Borrower under the Resolution, the Outstanding SRF Bonds, the Series 2020 Bonds and the Collateral Documents, (b) such action does not violate the Act or the Safe Drinking Water Act and does not adversely affect the exclusion of interest on the Outstanding SRF Bonds, the Series 2020 Bonds or the State Bonds from gross income for federal income tax purposes and (c) the Borrower delivers to the DNRC on the date of such action an Opinion of Bond Counsel that such action complies with this Section 8.2.

Other than pursuant to the preceding paragraph, the Borrower shall not transfer the System or any portion thereof to any other Person, except for property which is obsolete, outmoded, worn out, is being replaced or otherwise is not needed for the operation of the System, unless the provisions of (a) and (b) of the preceding paragraph are satisfied and the Borrower delivers to the DNRC an Opinion of Bond Counsel to that effect and, in addition, the DNRC consents to such transfer.

Section 8.3 Competing Service. The Borrower will not establish or authorize the establishment of any other system for the public supply of service or services in competition with any or all of the services supplied by the facilities of the System.

Section 8.4 Billing. The charges for water services shall be billed at least monthly, and if the bill is not paid within 90 days of the date of billing, or if the customer fails to comply with all rules and regulations established for the System within 90 days after notice of violation thereof (which notice shall be given promptly upon discovery of any such violation), the water service to the premises involved shall be discontinued and shall not be resumed until payment of all past-due bills for water service and compliance with all such rules and regulations. The Borrower shall take appropriate legal action to collect the unpaid charges, including, to the extent now or hereafter authorized by law, making the charge a lien against the real property served by the water connection for which the charge remains unpaid and causing charges with respect to such properties to be collected in the same manner as taxes levied against property within the Borrower.

Section 8.5 Remedies. No Holder of any Bond shall have the right to institute any proceeding, judicial or otherwise, for the enforcement of the covenants herein contained, without the written concurrence of the Holders of not less than 25% in aggregate principal amount of all such Bonds which are at the time Outstanding; but the Holders of such amount of Bonds may, either at law or in equity, by suit, action or other proceedings, protect and enforce the rights of all Holders of Bonds and compel the performance of any and all of the covenants required herein to be performed by the Borrower and its officers and employees, including but not limited to the fixing and maintaining of rates, fees and charges and the collection and proper segregation of the revenues and the application and use thereof. The Holders of a majority in principal amount of Outstanding Bonds shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Holders or the exercise of any power conferred on them and the right to waive a default in the performance of any such covenant, and its

consequences, except a default in the payment of the principal of or interest on any Bond when due. Nothing herein, however, shall impair the absolute and unconditional right of the Holder of each Bond to receive payment of the principal of, premium, if any, and interest on such Bond as such principal, premium and interest respectively become due, and to institute suit for any such payment. Any court having jurisdiction of the action may appoint a receiver to administer the System on behalf of the Borrower with power to charge and collect rates, fees and charges sufficient to provide for the payment of any Bonds, and to apply the Net Revenues in conformity with this Resolution and the laws of the State.

Section 8.6 Rate Covenant. While any Bonds are Outstanding and unpaid, the rates, charges and rentals for all services and facilities furnished and made available by the System to the Borrower and its inhabitants, and to all customers within or without the boundaries of the Borrower, shall be reasonable and just, taking into consideration the cost and value of the System and the cost of maintaining and operating them, and the amounts necessary for the payment of all Bonds and the interest accruing thereon, and the proper and necessary allowances for the depreciation of the System, and no free service shall be provided to any person or corporation. It is covenanted and agreed that the rates, charges and rentals to be charged to all recipients of water services shall be maintained and shall be revised, whenever and as often as may be necessary, according to schedules such that the revenues for each Fiscal Year will be at least sufficient to pay the current Operating Expenses, to maintain the Operating Reserve herein established, and to produce Net Revenues during each Fiscal Year commencing with the Fiscal Year ending June 30, 2020, not less than 110% of the maximum annual debt service on any Outstanding Bonds in the current or any future Fiscal Year, and to accumulate the amounts required in the Reserve Account.

If at the close of any Fiscal Year the Net Revenues actually received during such year have been less than required hereby, the Borrower will forthwith prepare a schedule of altered rates, charges and rentals which are just and equitable and sufficient to produce Net Revenues and Surplus Net Revenues in such amount, and will do all things necessary to the end that such schedule will be placed in operation at the earliest possible date.

Section 8.7 Appointment of Superintendent. In the event of default on the part of the Borrower in the payment of principal of or interest on any Bond promptly as each falls due, or in the keeping of any covenants herein contained, and if such default shall continue for a period of 60 days, the governing body of the Borrower will appoint a special superintendent for the System, with the power and responsibility to operate the System for the Borrower, and to recommend to the governing body of the Borrower such revisions of the rates and charges and operating policies as may be necessary to comply with this Resolution, and to assure that the Net Revenues will be sufficient to pay all principal of and interest on Bonds, and he shall in all things so operate the System as to comply fully with all the requirements and provisions of this Resolution. The right of the owners of the Bonds to require appointment of such a superintendent shall not be exclusive, and in the event of default hereunder, such owner or owners shall have the right to proceed at law or in equity, in any form of action which shall to them seem appropriate.

ARTICLE IX  
INDEMNIFICATION OF DNRC AND DEQ

The Borrower shall, to the extent permitted by law, indemnify and save harmless the DNRC and the DEQ and their officers, employees and agents (each an “Indemnified Party” or, collectively, the “Indemnified Parties”) against and from any and all claims, damages, demands, expenses, liabilities and losses of every kind asserted by or on behalf of any Person arising out of the acts or omissions of the Borrower or its employees, officers, agents, contractors, subcontractors, or consultants in connection with or with regard or in any way relating to the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation or financing of the Prior Projects, the 2004 Project or the 2020 Project. The Borrower shall, to the extent permitted by law, also indemnify and save harmless the Indemnified Parties against and from all costs, reasonable attorneys’ fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand. If any proceeding is brought against an Indemnified Party by reason of such claim or demand, the Borrower shall, upon notice from an Indemnified Party, defend such proceeding on behalf of the Indemnified Party.

ARTICLE X  
ASSIGNMENT

Section 10.1 Assignment by Borrower. The Borrower may not assign its rights and obligations under this Resolution, the Outstanding SRF Bonds or the Series 2020 Bonds, except as provided in Section 8.2.

Section 10.2 Assignment by DNRC. The DNRC will pledge its rights under and interest in this Resolution, the Outstanding SRF Bonds, the Series 2020 Bonds and the Collateral Documents (except to the extent otherwise provided in the Indenture) as security for the payment of the State Bonds and may further assign such interests to the extent permitted by the Indenture, without the consent of the Borrower.

Section 10.3 State Refunding Bonds. In the event the State Bonds are refunded by bonds which are not State Bonds, all references in this Resolution to State Bonds shall be deemed to refer to the refunding bonds and any bonds of the State on a parity with such refunding bonds (together, the “Refunding Bonds”) or, in the case of a crossover refunding, to the State Bonds and the Refunding Bonds.

ARTICLE XI  
THE SERIES 2020 BONDS

Section 11.1 Sale and Issuance of the Series 2020 Bonds. The City Council has investigated the facts necessary and hereby finds, determines and declares it to be necessary and desirable for the Borrower to issue the Series 2020 Bonds to evidence the 2020 Loans. The Series 2020 Bonds are issued to the DNRC without public sale pursuant to Montana Code Annotated, Section 7-7-4433.

Section 11.2 Terms. The Series 2020A Bond and the Series 2020B Bond shall be in the maximum principal amount equal to the original 2020A Committed Amount and 2020B Committed Amount, respectively, shall each be issued as a single, fully registered bond numbered R-1, shall be dated as of the date of delivery to the DNRC, and shall bear interest at the rate charged by the DNRC on the 2020A Loan and 2020B Loan, respectively. The principal of and interest on the Series 2020A Bond and Series 2020B Bond shall be payable on the same dates and in the same amounts as principal and interest of the Loan Repayments are payable. Advances of principal of the Series 2020A Bond and Series 2020B Bond shall be deemed made when advances of the 2020A Loan and 2020B Loan, respectively, are made under Section 4.1, and such advances shall be payable in accordance with Schedule B to each of the Series 2020A Bond and Series 2020B Bond, as applicable, as it may be revised by the DNRC from time to time in accordance with Section 5.1.

The Borrower may prepay the Series 2020 Bonds, in whole or in part, only upon the terms and conditions under which it can prepay the 2020 Loans under Section 5.3.

Section 11.3 Negotiability, Transfer and Registration. The Series 2020 Bonds shall be fully registered as to both principal and interest, and shall be initially registered in the name of and payable to the DNRC. While so registered, principal of and interest on the Series 2020 Bonds shall be payable to the DNRC at the Office of the Department of Natural Resources and Conservation, 1539 Eleventh Avenue, Helena, Montana 59620-2301 or such other place as may be designated by the DNRC in writing and delivered to the Borrower. The Series 2020 Bonds shall be negotiable, subject to the provisions for registration and transfer contained in this section. No transfer of the Series 2020 Bonds shall be valid unless and until (1) the holder, or its duly authorized attorney or legal representative, has executed the form of assignment appearing on each Bond, and (2) the Finance Director of the Borrower (the “Registrar”), as Bond Registrar, has duly noted the transfer on the Series 2020 Bonds and recorded the transfer on the registration books of the Registrar. The Registrar may, prior to noting and recording the transfer, require appropriate proof of the transferor’s authority and the genuineness of the transferor’s signature. The Borrower shall be entitled to deem and treat the person in whose name the Series 2020 Bonds is registered as the absolute owner of the Series 2020 Bonds for all purposes, notwithstanding any notice to the contrary, and all payments to the registered holder shall be valid and effectual to satisfy and discharge the Borrower’s liability upon such Bond to the extent of the sum or sums so paid.

Section 11.4 Execution and Delivery. The Series 2020 Bonds shall be executed on behalf of the Borrower by the manual signatures of the Mayor, City Manager and the City Finance Director. Any or all of such signatures may be affixed at or prior to the date of delivery of the Series 2020 Bonds. The Series 2020 Bonds shall be sealed with the corporate seal of the Borrower. In the event that any of the officers who shall have signed the Series 2020 Bonds shall cease to be officers of the Borrower before the Series 2020 Bonds are issued or delivered, their signatures shall remain binding upon the Borrower. Conversely, the Series 2020 Bonds may be signed by an authorized official who did not hold such office on the date of adoption of this Resolution. The Series 2020 Bonds shall be delivered to the DNRC, or its attorney or legal representative.

Section 11.5 Form. The Series 2020A Bond shall be prepared in substantially the form attached as Appendix B-1, and the Series 2020B Bond shall be prepared in substantially the form attached as Appendix B-2.

## ARTICLE XII PRIORITIES AND ADDITIONAL DEBT

Section 12.1 General Limitations; Issuable in Series. The aggregate principal amount of Bonds that may be authenticated and delivered and Outstanding under this Resolution is not limited, except as provided in Articles VI, XI and XII and except as may be limited by law.

The Bonds may be issued in series as from time to time authorized by the City Council. With respect to the Bonds of any particular series, the Borrower may incorporate in or add to the general title of such Bonds any words, letters or fixtures designed to distinguish that series.

The Bonds shall be special, limited obligations of the Borrower. Principal of, premium, if any, and interest on the Bonds shall be payable solely from Net Revenues (other than to the extent payable out of proceeds of the Bonds). The Bonds shall not be or constitute a pledge of the general credit or taxing powers of the Borrower of any kind whatsoever. Neither the Bonds nor any of the agreements or obligations of the Borrower contained herein shall be construed to constitute an indebtedness of the State or the Borrower within the meaning of any constitutional or statutory provisions whatsoever.

Each and all of the Bonds shall be equally and ratably secured without preference or priority of any one Bond over any other by reason of serial number, date of issue, or otherwise; provided that if at any time the Net Revenues on hand in the Fund are insufficient to pay principal and interest then due on all such Bonds, any and all Net Revenues then on hand shall be first used to pay the interest accrued on all Outstanding Bonds, and the balance shall be applied toward payment of the maturing principal of such Bonds to be paid first, and pro rata in payment of Bonds maturing on the same date.

Each series of Bonds (except the Outstanding SRF Bonds and the Series 2020 Bonds) shall be created by a Supplemental Resolution. The Bonds of each series (other than the Outstanding SRF Bonds and the Series 2020 Bonds, as to which specific provision is made in this Resolution) shall bear such date or dates, shall be payable at such place or places, shall have such stated maturities and redemption dates, shall bear interest at such rate or rates, from such date or dates, shall be payable in such installments and on such dates and at such place or places, and may be redeemable at such price or prices and upon such terms (in addition to the prices and terms herein specified for redemption of all Bonds) as shall be provided in the Supplemental Resolution creating that series, all upon such terms as the Borrower may determine. The Borrower may, at the time of the creation of any series of Bonds or at any time thereafter, make, and the Bonds of that series may contain provision for:

- (a) a sinking, amortization, improvement or other analogous fund;

(b) limiting the aggregate principal amount of the Bonds of that series and of additional Bonds thereafter to be issued;

(c) exchanging Bonds of that series, at the option of the Holders thereof, for other Bonds of the same series of the same aggregate principal amount of a different authorized kind or authorized denomination or denominations; or

(d) registration, transfer and delivery.

Section 12.2 Refunding Revenue Bonds. The Borrower reserves the right and privilege of refunding any or all of the Bonds subject to the following terms and conditions:

(a) Any matured Bonds may be refunded if moneys available for the payment thereof at maturity should at any time be insufficient to make such payment in full.

(b) Any Bonds may be refunded prior to maturity as and when they become prepayable according to their terms.

(c) Provision may be made for the payment and refunding of any unmatured Bonds by the deposit with a duly qualified depository bank, as escrow agent, of cash sufficient, or of securities of the kinds authorized by law, the payments of interest on and principal of which are sufficient, to pay the principal amount of and premium, if any, on such Bonds with interest to maturity or to any prior date or dates on which they are prepayable, and have been called for redemption or provision has been irrevocably made for their redemption, on such date or dates.

(d) Any refunding revenue Bonds issued for the above purposes may be made payable from the Net Revenues on a parity with all then Outstanding Bonds; provided that (x) if the principal and interest payable on such refunding Bonds exceed in any Fiscal Year by more than 5% the principal and interest payable on the Outstanding Bonds to be refunded, (y) if not all Outstanding Bonds of a series are to be refunded and if the first stated maturity of the series of additional Bonds proposed to be issued is earlier than the final stated maturity of any Outstanding Bonds not be refunded, then the requirements of Section 12.3 must be met in respect of such refunding Bonds.

Section 12.3 Other Parity Bonds. The Borrower reserves the right to issue additional Bonds payable from the Revenue Bond Account of the Fund, on a parity as to both principal and interest with the Outstanding SRF Bonds and the Series 2020 Bonds, if the Net Revenues of the System for the last complete Fiscal Year preceding the date of issuance of such additional Bonds have equaled at least 110% of the maximum amount of principal and interest payable from said Revenue Bond Account in any subsequent Fiscal Year during the term of the Outstanding Bonds, on all Bonds then Outstanding and on the additional Bonds proposed to be issued. For the purpose of the foregoing computation, the Net Revenues for the Fiscal Year preceding the issuance of additional Bonds shall be those shown by the financial reports caused to be prepared by the Borrower pursuant to Section 2.3(e), except that if the rates and charges for services provided by the System have been changed since the beginning of such preceding Fiscal Year, then the rates and charges in effect at the time of issuance of the additional Bonds or finally

authorized to go into effect within 60 days thereafter shall be applied to the quantities of service actually rendered and made available during such preceding Fiscal Year to ascertain the revenues, from which there shall be deducted to determine the Net Revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the Borrower or its consultants estimate will be incurred because of the improvement or extension of the System to be constructed from the proceeds of the additional Bonds proposed to be issued. In no event shall any additional Bonds be issued and made payable from the Revenue Bond Account if the Borrower is then in default in any payment of principal of or interest on any Outstanding Bonds payable therefrom or if there then exists any deficiency in the balances required by this Resolution to be maintained in any of the accounts of the Fund, which will not be cured or restored upon the issuance of the additional Bonds. In connection with the issuance of a series of additional Bonds, the Borrower shall cause the balance in the Reserve Account to be increased, from the proceeds of the additional Bonds or from Surplus Net Revenues, to an amount equal to the Reserve Requirement, taking into account the additional Bonds or such portion thereof as may be advanced from time to time.

Section 12.4 Subordinate Obligations. Nothing in this Resolution shall preclude the Borrower from issuing bonds, notes or other obligations which are expressly made a charge on only the Surplus Net Revenues of the System subordinate to the pledge of Net Revenues to the Revenue Bond Account and the Reserve Account (the “Subordinate Obligations”); provided, however, no Subordinate Obligations may be issued pursuant to this Section 12.4 if a deficiency exists in the Revenue Bond Account or the Reserve Account which is not to be restored by the issuance of the Subordinate Obligations. Any Surplus Net Revenues segregated to pay such Subordinate Obligations in the Fund are subject to the prior appropriation thereof to the Revenue Bond Account or the Reserve Account if necessary to meet the requirements thereof.

### ARTICLE XIII WATER SYSTEM FUND

Section 13.1 Bond Proceeds and Revenues Pledged and Appropriated. A special Water System Fund is hereby created and shall be maintained as a separate and special bookkeeping account on the official books of the Borrower until all Bonds and interest and redemption premiums due thereon have been fully paid, or the Borrower’s obligations with reference to such Bonds has been discharged as provided in this Resolution. All proceeds of Bonds issued hereunder (except proceeds of refunding Bonds appropriated to the payment of Outstanding Bonds) and all other funds presently on hand derived from the operation of the System are irrevocably pledged and appropriated to the Fund. In addition, there is hereby irrevocably pledged and appropriated to the Fund all gross revenues and receipts from rates, fees, charges and rentals imposed for connections with and for the availability, benefit and use of the System and from any sales of property acquired for the System and all income received from the investment of such gross revenues, including investment of the reserve established in the Reserve Account and the Operating Reserve established in the Operating Account, but excluding any special assessments or taxes levied for construction of any part of the System and the proceeds of any grant or loan from the State or the United States, and any investment income thereon, to the extent such exclusion is a condition to such grant or loan. The Fund shall be subdivided into

separate accounts as designated and described in Sections 13.2 through 13.9, to segregate income and expenses received, paid and accrued for the respective purposes described in those sections. The revenues received in the Fund shall be apportioned monthly.

Section 13.2 Acquisition and Construction Account. The Acquisition and Construction Account shall be used only to pay as incurred and allowed costs which under accepted accounting practice are capital costs of a Project and of such future reconstructions, improvements, betterments or extensions of the System as may be authorized in accordance with law, including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, reimbursement of any advances made from other Borrower funds, and all other expenses incurred in connection with the acquisition, construction and financing of any such undertaking, including, without limitation, costs of issuance of Bonds or Subordinate Obligations. To the Acquisition and Construction Account shall be credited as received all proceeds of Bonds issued hereunder (except proceeds of refunding Bonds appropriated to the payment of Outstanding Bonds and amounts required to be credited to the Revenue Bond Account or the Reserve Account), all other funds appropriated by the Borrower for the System and any other funds appropriated by the Borrower to the Acquisition and Construction Account for improvements to the System, and all income received from the investment of the Acquisition and Construction Account. Upon completion of a capital improvement or program of capital improvements for the System, the balance remaining in the Acquisition and Construction Account shall be credited to the Revenue Bond Account.

Section 13.3 Operating Account. On each monthly apportionment there shall first be set aside and credited to the Operating Account, as a first charge on the gross revenues, such amount as may be required over and above the balance then held in the account to pay the reasonable and necessary operating expenses of the System which are then due and payable, or are to be paid prior to the next monthly apportionment. The term "operating expenses" shall mean the current expenses, paid or accrued, of operation, maintenance and current repair of the System and its facilities, as calculated in accordance with sound accounting practice, and shall include, without limitation, administrative expenses of the Borrower relating solely to the System, premiums for insurance on the properties thereof, labor and the cost of materials and supplies used for current operation and for maintenance, and charges for the accumulation of appropriate reserves for current expenses which are not recurrent monthly but may reasonably be expected to be incurred in accordance with sound accounting practices. Such expenses shall not include any allowance for interest expense or depreciation, renewals or replacements of capital assets of the System and shall not include any portion of the salaries or wages paid to any officer or employee of the Borrower, except such portion as shall represent reasonable compensation for the performance of duties necessary to the operation of the System. There shall also be credited to this account from available funds a sum equal to the estimated average monthly operating expenses of the System to establish an Operating Reserve, which sum shall be maintained by additional transfers upon each monthly apportionment whenever necessary, or may be augmented by transfers of additional amounts from the Surplus Account described below if determined by the governing body of the Borrower to be necessary to meet contingencies arising



in the operation and maintenance of the System. Money in the Operating Account shall be used solely for the payment of current operating expenses of the System.

Section 13.4 Revenue Bond Account. Upon each monthly apportionment there shall be set aside and credited to the Revenue Bond Account out of the Net Revenues an amount equal to not less than the sum of one-sixth of the interest due within the next six months plus one-twelfth of the principal to become due within the next twelve months with respect to Outstanding Bonds payable semiannually from the Revenue Bond Account; provided that the Borrower shall be entitled to reduce a monthly credit by the amount of any surplus previously credited and then on deposit in the Revenue Bond Account. Money from time to time held in the Revenue Bond Account shall be disbursed only to meet payments of principal of, premium, if any, and interest on the Bonds payable therefrom as such payments become due. If any payment of principal or interest becomes due when moneys in the Revenue Bond Account are temporarily insufficient therefor, such payment shall be advanced out of any Net Revenues theretofore segregated and then on hand in the Reserve Account, the Replacement and Depreciation Account or the Surplus Account.

Section 13.5 Reserve Account. The Borrower agrees to establish and maintain a Reserve Account in the Fund. On the Closing Date, the Borrower shall deposit in the Reserve Account from proceeds of the Series 2020A Bond and the Series 2020B Bond an amount equal to the Reserve Requirement based on the amount of the Series 2020A Bond and Series 2020B Bond, respectively, drawn at closing. Following such deposit, upon each advance of proceeds of the Series 2020B Bond, the Borrower shall transfer from proceeds of the Series 2020B Bond such amount to the Reserve Account to cause the balance therein to equal the Reserve Requirement with respect to the principal amount of the Series 2020B Bond so advanced. Thereafter, upon each monthly apportionment, from the Net Revenues remaining after the apportionment to the Revenue Bond Account, the Borrower shall credit to the Reserve Account such additional Net Revenues as may be required to establish and thereafter maintain the balance in an amount equal, as of the date of calculation, to the Reserve Requirement. Money in the Reserve Account shall be used only to pay maturing principal, premium and interest when money within the Revenue Bond Account is insufficient therefor; provided that on any date when all Outstanding Bonds of a series are due or prepayable by their terms, if the amount then on hand in the Reserve Account allocable to such Bonds and available for such appropriation is sufficient with money available for the purpose to pay all such Bonds and the interest accrued thereon in full, it may be used for that purpose; and provided, further, that so long as the amount on hand in the Reserve Account is not less than the Reserve Requirement, the Borrower may credit earnings on investment of the Reserve Account to the Replacement and Depreciation Account.

Section 13.6 Replacement and Depreciation Account. There shall next be set aside and credited, upon each monthly apportionment, to the Replacement and Depreciation Account Surplus Net Revenues of the System, as the governing body of the Borrower shall determine to be required for the accumulation of a reasonable allowance for depreciation of the System and for replacement or renewal of worn out, obsolete or damaged properties and equipment thereof. Money in this account shall be used only for the purposes above stated or, if so directed by the

governing body of the Borrower, to redeem Bonds which are prepayable according to their terms, to pay principal or interest when due thereon as required in Section 13.4, or to pay the cost of improvements to the System; provided that in the event construction and installation of additional improvements or additions to the System are financed other than from proceeds of Bonds payable from the Revenue Bond Account, Surplus Net Revenues from time to time received may be segregated and paid into one or more separate and additional accounts for the repayment of such indebtedness and interest thereon, in advance of payments required to be made into the Replacement and Depreciation Account.

Section 13.7 Surplus Account. Any amount of the Surplus Net Revenues from time to time remaining after the above required applications thereof shall be credited to the Surplus Account (or such other account in the Fund as the Borrower may establish for bookkeeping purposes to account for surplus money in accordance with the purposes of this Resolution), and the money from time to time in that account, when not required to restore a current deficiency in the Revenue Bond Account or Reserve Account as provided in Sections 13.4 and 13.5, may be used to pay or redeem Bonds, to pay for repairs or improvements to the System, to restore the Operating Reserve, to pay Subordinate Obligations or for any other lawful purpose of the System.

No money shall at any time be transferred from the Surplus Account or any other account of the Fund to any other fund of the Borrower, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvement bonds or other obligations payable from other funds, except as provided in Section 13.10.

Section 13.8 Note Account. Upon issuance of a Note, there shall be established in the Fund and the City Finance Director shall thereafter maintain a separate and special Note Account (the "Note Account"). If a Note is outstanding, all Net Revenues remaining after the required credits to the Revenue Bond Account, the Reserve Account, and the Replacement and Depreciation Account pursuant to this Resolution shall be credited to the Note Account. The Borrower irrevocably appropriates to the Note Account: (a) the proceeds of any Bonds issued to pay and defease one or more Notes, as received and to the extent necessary for the payment of such Notes, and (b) such other money as shall be appropriated to the Note Account from time to time.

Amounts on deposit in the Note Account shall be used solely to pay the principal of and interest on Notes made payable therefrom; provided that if on any date the balance in the Revenue Bond Account or the Reserve Account is less than then required, an amount equal to such deficiency will be transferred from the Net Revenues and investment income therefrom on deposit in the Note Account. Upon payment or discharge of a Note and upon the making of the credits to the Note Account required in connection with any other Notes made payable therefrom, all surplus funds therein shall be transferred to the Surplus Account.

Section 13.9 Rebate Account. The Rebate Account is hereby established as a separate account within the Fund. The Borrower shall make deposits to and disbursements from the Rebate Account pursuant to one or more rebate certificates executed and delivered by the

Borrower in connection with the issuance of Bonds, and for such purposes may make transfers, in the following order of priority, from the Surplus Account, the Replacement and Depreciation Account and the Reserve Account, as necessary, to meet the requirements of the Rebate Account. The Borrower shall invest the Rebate Account in accordance with the provisions of the rebate certificates and shall deposit income from such investments immediately upon receipt thereof in the Rebate Account.

Section 13.10 Deposit and Investment of Funds. The City Finance Director of the Borrower shall cause all money appropriated to the Fund to be deposited as received with one or more depository banks duly qualified in accordance with the provisions of Montana Code Annotated, Section 7-6-201, in a deposit account or accounts. The balance in such accounts, except such portion thereof as shall be guaranteed by federal deposit insurance, shall at all times be secured to its full amount by bonds or securities of the types set forth in said Section 7-6-201. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Fund as defined and authorized in this Resolution; except that money from time to time on hand in the Fund may at any time, in the discretion of the governing body of the Borrower, be invested in securities which are direct, general obligations of, or obligations the prompt payment of the principal of and the interest on which is fully and unconditionally guaranteed by, the United States of America, bank repurchase agreements with respect to such obligations, certificates of deposits of national banks having a combined capital and surplus of at least \$1,000,000 or in the Montana short-term investment program administered by the Board of Investments, which investments mature and bear interest at the times and in the amounts estimated to be required to provide cash when needed for the purposes of the respective accounts; provided that funds on hand in the Reserve Account, the Replacement and Depreciation Account and the Surplus Account may be invested in said securities maturing not later than five years from the date of the investment; and provided, further, that money on hand in the Surplus Account of the Fund may, in the discretion of the governing body of the Borrower, be invested in any securities which are direct, general obligations of the Borrower. Income received from the deposit or investment of moneys in said accounts shall be credited to the account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys in that account.

#### ARTICLE XIV TAX MATTERS

Section 14.1 Use of Prior Projects, 2004 Project and 2020 Project. The Prior Projects, the 2004 Project and the 2020 Project will be owned and operated by the Borrower and available for use by members of the general public on a substantially equal basis. The Borrower shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Prior Projects, the 2004 Project or the 2020 Project or security for the payment of the Outstanding SRF Bonds or the Series 2020 Bonds which might cause any of the Outstanding SRF Bonds or the Series 2020 Bonds to be considered a “private activity bond” or “private loan bond” within the meaning of Section 141 of the Code.

Section 14.2 General Covenant. The Borrower covenants and agrees with the owners from time to time of the Outstanding SRF Bonds and Series 2020 Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Outstanding SRF Bonds or Series 2020 Bonds to become includable in gross income for federal income tax purposes under the Code and the Regulations, and covenants to take any and all actions within its powers to ensure that the interest on the Outstanding SRF Bonds and Series 2020 Bonds will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

Section 14.3 Arbitrage Certification. The Mayor, the City Manager, and the City Finance Director, being among the officers of the Borrower charged with the responsibility for issuing the Series 2020 Bonds pursuant to this Resolution, are authorized and directed to execute and deliver to the DNRC a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2020 Bonds, it is reasonably expected that the proceeds of the Series 2020 Bonds will be used in a manner that would not cause either of the Series 2020 Bonds to be an “arbitrage bond” within the meaning of Section 148 of the Code and the Regulations.

Section 14.4 Series 2020A Bond Arbitrage Rebate. The Borrower acknowledges that the Series 2020A Bond is subject to the rebate requirements of Section 148(f) of the Code. The Borrower covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Series 2020A Bond from gross income for federal income tax purposes. In furtherance of the foregoing, the City Finance Director is hereby authorized and directed to execute a Rebate Certificate, substantially in the form to be prepared by Bond Counsel, and the Borrower hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

Section 14.5 Series 2020B Bond Arbitrage Rebate. The Borrower acknowledges that the Series 2020B Bond is subject to the rebate requirements of Section 148(f) of the Code. The Borrower covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Series 2020B Bond from gross income for federal income tax purposes, unless the Series 2020B Bond qualifies for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no “gross proceeds” of the Series 2020B Bond (other than amounts constituting a “bona fide debt service fund”) arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the City Finance Director is hereby authorized and directed to execute a Rebate Certificate, substantially in the form to be prepared by Bond Counsel, and the Borrower hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

Section 14.6 Arbitrage Certification and Rebate—Outstanding SRF Bonds.

(a) Arbitrage Certification. The Mayor, the City Manager, and the City Finance Director, being the officers of the Borrower charged with the responsibility for issuing the Outstanding SRF Bonds pursuant to the Prior Resolution, executed and delivered to the DNRC, as authorized and directed under the Prior Resolution, certificates in accordance with the provisions of Section 148 of the Code and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Outstanding SRF Bonds, it was reasonably expected that the proceeds of the Outstanding SRF Bonds will not be used in a manner that would cause the Outstanding SRF Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and the Regulations.

(b) Arbitrage Rebate. The Borrower acknowledges that the Outstanding SRF Bonds are subject to the rebate requirements of Section 148(f) of the Code. The Borrower covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Regulations to preserve the exclusion of interest on the Outstanding SRF Bonds from gross income for federal income tax purposes, unless the Outstanding SRF Bonds qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no “gross proceeds” of the Outstanding SRF Bonds (other than amounts constituting a “bona fide debt service fund”) arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the City Finance Director or other appropriate officer of the Borrower executed Rebate Certificates at the time of issuance of each Outstanding SRF Bond, and the Borrower hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

Section 14.7 Information Reporting. The Borrower shall file with the Secretary of the Treasury, not later than May 15, 2020, a statement concerning the Series 2020 Bonds containing the information required by Section 149(e) of the Code.

Section 14.8 “Qualified Tax-Exempt Obligations.” Pursuant to Section 265(b)(3)(B)(ii) of the Code, the Borrower hereby designates the Series 2020 Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. The Borrower has not designated any obligations in 2020 other than the Series 2020 Bonds under Section 265(b)(3). The Borrower hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including “qualified 501(c)(3) bonds” but excluding other “private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the Borrower and all “subordinate entities” of the Borrower in 2020 in an amount greater than \$10,000,000. Notwithstanding any provision to the contrary above, the Borrower may, if appropriate, cause the Series 2020A Bond to be “deemed designated” if the requirements of Section 265(b)(3)(D)(ii) of the Code are satisfied, as may be set forth in the tax certificate delivered by the City in conjunction with the delivery of the Series 2020 Bonds.

ARTICLE XV  
CONTINUING DISCLOSURE

The Borrower understands and acknowledges that the DNRC is acquiring the Series 2020 Bonds under the Program pursuant to which the State issues from time to time State Bonds to provide funds therefor. The Borrower covenants and agrees that, upon written request of the DNRC from time to time, the Borrower will promptly provide to the DNRC all information that the DNRC reasonably determines to be necessary or appropriate to offer and sell State Bonds or to provide continuing disclosure in respect of State Bonds, whether under Rule 15c2-12 (17 C.F.R. § 240.15c2-12) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, or otherwise. Such information shall include, among other things and if so requested, financial statements of the Borrower prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Montana law, as in effect from time to time (such financial statements to relate to a fiscal year or any period therein for which they are customarily prepared by the Borrower, and, if for a fiscal year and so requested by the DNRC, subject to an audit report and opinion of an accountant or government auditor, as permitted or required by the laws of the State). The Borrower will also provide, with any information so furnished to the DNRC, a certificate of the Mayor, the City Manager and the City Finance Director of the Borrower to the effect that, to the best of their knowledge, such information does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make the statements made, in light of the circumstances under which they are made, not misleading.

ARTICLE XVI  
DEFEASANCE

Section 16.1 General. When the liability of the Borrower on all Bonds issued under and secured by this Resolution and all interest thereon has been discharged as provided in this Article XVI, all pledges, covenants and other rights granted by this Resolution to the Holders of such Bonds shall cease, other than to the payment of such Bonds from money segregated for such purpose. The Borrower may also discharge its liability with respect to one or more Bonds in accordance with this Article XVI.

Section 16.2 Maturity. The Borrower may discharge its liability with reference to any Bonds and interest thereon which are due on any date by depositing with the Registrar for such Bonds on or before the date a sum sufficient for the payment thereof in full; or if any Bond or interest thereon shall not be paid when due, the Borrower may nevertheless discharge its liability with reference thereto by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.

Section 16.3 Prepayment. The Borrower may also discharge its obligations with respect to any prepayable Bonds called for redemption on any date when they are prepayable according to their terms, by depositing with the Registrar therefor on or before the Redemption

Date a sum sufficient for the payment thereof in full; provided that notice of the redemption thereof has been duly given as provided in this Resolution or any Supplemental Resolution relating thereto.

Section 16.4 Escrow. The Borrower may at any time discharge its liability with reference to any Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action and the following paragraphs of this Section 16.4, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or Government Obligations authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal, interest and redemption premiums, if any, to become due on such Bonds at their stated maturities or, if such Bonds are prepayable and notice of redemption thereof has been duly given or irrevocably provided for, to such earlier redemption date.

## ARTICLE XVII SUPPLEMENTAL RESOLUTIONS

Section 17.1 General. The Borrower reserves the right to adopt Supplemental Resolutions from time to time and at any time, for the purpose of curing any ambiguity or of curing, correcting or supplementing any defective provision contained herein, or of making such provisions with regard to matters or questions arising hereunder as the Borrower may deem necessary or desirable and not inconsistent with this Resolution, and which shall not adversely affect the interests of the Holders of Outstanding Bonds, or for the purpose of adding to the covenants and agreements herein contained, or to the Revenues herein pledged, other covenants and agreements thereafter to be observed and additional revenues or income thereafter appropriated to the Fund, or for the purpose of surrendering any right or power herein reserved to or conferred upon the Borrower, or for the purpose of authorizing the creation and issuance of a series of Additional Bonds or Subordinate Obligations, as provided in and subject to the conditions and requirements of this Article XVII. Subject to Section 18.4, any such Supplemental Resolution may be adopted without notice to or the consent of the Holder of any of the Bonds issued hereunder.

Section 17.2 Consent of Holders. With the consent of the Holders of Bonds issued hereunder as provided in Section 17.4, the Borrower may from time to time and at any time adopt a Supplemental Resolution for the purpose of amending this Resolution by adding any provisions hereto or changing in any manner or eliminating any of the provisions hereof or of any Supplemental Resolution, except that no Supplemental Resolution shall be adopted at any time without the consent of the Holders of all Bonds issued hereunder which are then Outstanding and affected thereby, if it would extend the time of payment of interest thereon or principal thereof, would reduce the interest rate thereon or the amount of the principal or the redemption price thereof, would give to any Bond or Bonds any privileges over any other Bond or Bonds, would reduce the sources of revenues or income appropriated to the Fund, or would reduce the percentage in principal amount of such Bonds required to authorize or consent to any such Supplemental Resolution.

Section 17.3 Notice. Notice of the Supplemental Resolution to be adopted pursuant to Section 17.2 shall be mailed by first-class mail to the Holders of all Outstanding Bonds at their addresses appearing in the Bond Register, and shall become effective only upon the filing of written consents with the City Clerk, signed by the Holders of not less than a majority in principal amount of the Bonds then Outstanding and affected thereby. Any written consent to the Supplemental Resolution may be embodied in and evidenced by one or any number of concurrent written instruments of substantially similar tenor signed by Holders in person or by agent duly appointed in writing, and shall become effective when delivered to the City Clerk. Any consent by the Holder of any Bond shall bind him and every future Holder of the same Bond with respect to any Supplemental Resolution adopted by the Borrower pursuant to such consent; provided that any Holder may revoke its consent with reference to any Bond by written notice received by the City Clerk before the Supplemental Resolution has become effective. In the event that unrevoked consents of the Holders of the required amount of Bonds have not been received by the City Clerk within one year after the mailing of notice of the Supplemental Resolution, the Supplemental Resolution and all consents theretofore received shall be of no further force and effect.

Section 17.4 Manner of Consent. Proof of the execution of any consent, or of a writing appointing any agent to execute the same, or of the ownership by any Person of Bonds shall be sufficient for any purpose of this Resolution and shall be conclusive in favor of the Borrower if made in the manner provided in this Section 17.4. The fact and date of the execution by any Person of any such consent or appointment may be proved by the affidavit of a witness of such execution or by the certification of any notary public or other officer authorized by law to take acknowledgment of deeds, certifying that the Person signing it acknowledged to him or her the execution thereof. The fact and date of execution of any such consent may also be proved in any other manner which the Borrower may deem sufficient; but the Borrower may nevertheless, in its discretion, require further proof in cases where it deems further proof desirable. The ownership of Bonds shall be proved by the Bond Register.

## ARTICLE XVIII MISCELLANEOUS

Section 18.1 Notices. All notices or other communications hereunder shall be sufficiently sent or given and shall be deemed sent or given when delivered or mailed by certified mail, postage prepaid, to the parties at the following addresses:

DNRC:	Department of Natural Resources and Conservation 1539 Eleventh Avenue Helena, Montana 59620 Attn: Conservation and Resource Development Division
Trustee:	U.S. Bank National Association c/o Corporate Trust Services



1420 – 5<sup>th</sup> Avenue, 7<sup>th</sup> Floor  
Seattle, Washington 98101  
Attn: Corporate Trust Department

Borrower: City of Kalispell  
312 1st Avenue East  
P.O. Box 1997  
Kalispell, Montana 59903  
Attn: City Finance Director

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices or other communications shall be sent.

Section 18.2 Binding Effect. This Resolution shall inure to the benefit of and shall be binding upon the DNRC, the Borrower and their respective successors and assigns.

Section 18.3 Severability. If any provision of this Resolution shall be determined to be unenforceable at any time, it shall not affect any other provision of this Resolution or the enforceability of that provision at any other time.

Section 18.4 Amendments. So long as the DNRC is the holder of any Bonds issued under this Resolution or a Supplemental Resolution, this Resolution may not be effectively amended without the written consent of the DNRC.

Section 18.5 Applicable Law. This Resolution shall be governed by and construed in accordance with the laws of the State.

Section 18.6 Captions; References to Sections. The captions in this Resolution are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this Resolution. References to Articles and Sections are to the Articles and Sections of this Resolution, unless the context otherwise requires.

Section 18.7 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Resolution shall be had against any director, officer or employee, as such, past, present or future, of the DNRC, the DEQ or the Trustee, either directly or through the DNRC, the DEQ or the Trustee, or against any officer, or member of the governing body or employee of the Borrower, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or member of the governing body or employee of the DNRC, the Trustee or the Borrower is hereby expressly waived and released by the Borrower and by the DNRC as a condition of and in consideration for the adoption of this Resolution and the making of the 2020 Loans.

Section 18.8 Payments Due on Holidays. If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Resolution, the

Outstanding SRF Bonds or the Series 2020 Bonds, shall not be Business Day, such payments may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Resolution, the Outstanding SRF Bonds or the Series 2020 Bonds.

Section 18.9 Right of Others to Perform Borrower's Covenants. In the event the Borrower shall fail to make any payment or perform any act required to be performed hereunder, then and in each such case the DNRC or the provider of any Collateral Document may (but shall not be obligated to) remedy such default for the account of the Borrower and make advances for that purpose. No such performance or advance shall operate to release the Borrower from any such default and any sums so advanced by the DNRC or the provider of any Collateral Document shall be paid immediately to the party making such advance and shall bear interest at the rate of ten percent (10%) from the date of the advance until repaid. The DNRC and the provider of any Collateral Document shall have the right to enter the 2020 Project or the facility or facilities of which the 2020 Project are a part or any other facility which is a part of the System in order to effectuate the purposes of this Section.

Section 18.10 Authentication of Transcript. The officers of the Borrower are hereby authorized and directed to furnish to the DNRC and to Bond Counsel certified copies of all proceedings relating to the issuance of the Series 2020 Bonds and such other certificates and affidavits as may be required to show the right, power and authority of the Borrower to issue the Series 2020 Bonds, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the Borrower as to the truth of the statements purported to be shown thereby.

Section 18.11 Repeals and Effective Date.

(a) Repeal. All provisions of other resolutions and other actions and proceedings of the Borrower and this Council that are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

(b) Effective Date. This Resolution shall take effect immediately.

PASSED AND ADOPTED by the City Council of the Borrower on this 6th day of January, 2020.

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Mayor

Attest:

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City Clerk

(SEAL)

APPENDIX A

DESCRIPTION OF PRIOR PROJECTS

The 2001 Project consisted of the acquisition, construction and installation of various improvements of the System, including installation of a 20-diameter water main, 10-inch diameter water mains, valves, hydrants and appurtenant structures from the intersection of Main Street and Sunset Boulevard south to the intersection of Main Street and Center Street and related improvements.

The 2007 Project consisted of the acquisition, construction and installation of various improvements of the System, including installing a water tank and associated piping and related improvements.

The 2017A Project consisted of the construction and equipping of the rehabilitation and replacement of the water system infrastructure along a portion of 4<sup>th</sup> Avenue East in the City of Kalispell.

DESCRIPTION OF THE 2004 PROJECT

The 2004 Project consisted of the acquisition, construction and installation of various improvements to the System, including installation of approximately 3.48 miles of water main piping, 11.08 tons of pipefittings, 76 water valves, 30 fire hydrants, and appurtenances along U.S. Highway 93 South, and related improvements.

DESCRIPTION OF THE 2020 PROJECT

The 2020 Project consists of the costs of designing and engineering upgrades and improvements to the water system commonly known as the 4-Mile Drive project, including installation of water mains in the City’s upper pressure zone and related improvements.

ESTIMATED BUDGET FOR 2020 PROJECT

	Source:
	Series 2020B
	<u>Bond</u>
2020B Reserve Amount	\$ 80,047
Bond Counsel & Related costs	15,000
Construction	2,085,590
Contingency	<u>417,363</u>
TOTAL COSTS	\$2,598,000

APPENDIX B-1

[Form of the Series 2020A Bond]

UNITED STATES OF AMERICA  
STATE OF MONTANA  
COUNTY OF FLATHEAD

**CITY OF KALISPELL**

WATER SYSTEM REVENUE REFUNDING BOND  
(DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM)  
SERIES 2020A

R-1

\$ \_\_\_\_\_

FOR VALUE RECEIVED, CITY OF KALISPELL, MONTANA (the “Borrower”), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and, for value received, hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the “DNRC”), or its registered assigns, solely from the Revenue Bond Account of its Water System Fund, the principal sum equal to the sum of the amounts entered on Schedule A hereto under “Total Amount Advanced,” with interest on each such amount from the date such amount is advanced hereunder at the rate of two percent (2.00%) per annum on the unpaid balance until paid. In addition, the Borrower shall pay an Administrative Expense Surcharge and a Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond each at the rate of twenty-five hundredths of one percent (0.25%) per annum. Principal, interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a “Loan Repayment Date”) commencing July 1, 2020 and concluding on July 1, 2024. Each installment shall be in the amount set forth opposite its due date in Schedule B hereto under “Total Loan Payment.” The portion of each such payment consisting of principal, the portion consisting of interest, the portion consisting of Administrative Expense Surcharge, and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B hereto. Upon each disbursement of 2020A Loan amounts to the Borrower pursuant to the Resolution described below, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under “Advances” and the total amount advanced under the Resolution (as hereinafter defined), including such disbursement, under “Total Amount Advanced.” The DNRC shall prepare Schedule B and revised Schedules B, or cause Schedule B and revised Schedules B to be prepared, as provided in Section 5.1 of the Resolution (as hereinafter defined). Schedule B shall be calculated and recalculated on a level debt service basis assuming an interest rate of two and one-half percent (2.50%) per annum. Past-due payments of principal and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days

each. All payments under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the Bond Register, in lawful money of the United States of America.

This Bond is one of an issue of Water System Revenue Bonds of the Borrower authorized to be issued in one or more series from time to time, and constitutes a series in the maximum authorized principal amount of up to \$\_\_\_\_\_ (the "Series 2020A Bond"). The Series 2020A Bond is issued to pay, refund and redeem the Borrower's outstanding Water System Revenue and Refunding Bonds, Series 2004 (the "Series 2004 Bonds"), which financed the cost of acquisition or construction of certain improvements to the water system of the Borrower (the "System"), to fund a deposit to the Reserve Account, and to pay costs of issuing the Series 2020A Bond and costs of the refunding. The Series 2020A Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Part 44 and 45, as amended, and ordinances and resolutions duly adopted by the governing body of the Borrower, including Resolution No. \_\_\_\_\_, adopted by the City Council of the City on January 6, 2020 (the "Resolution"). Terms used with initial capital letters but not defined herein have the meanings given them in the Resolution. The Series 2020A Bond is issuable only as a single, fully registered bond. The Series 2020A Bond is issued on a parity and is equally and ratably secured by the Net Revenues of the System with the Borrower's outstanding First Amended and Restated Water System Revenue Bond (DNRC Drinking Water Revolving Loan Program), Series 2001 (the "Series 2001 Bond"), its First Amended and Restated Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2007B (the "Series 2007B Bond"), and its Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2017A (the "Series 2017A Bond"). The Borrower is also issuing simultaneously herewith its Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2020B (the "Series 2020B Bond").

Reference is made to the Resolution for a more complete statement of the terms and conditions upon which the Series 2020A Bond has been issued, the Net Revenues of the System pledged and appropriated for the payment and security thereof, the conditions upon which additional bonds may be issued under the Resolution and made payable from such Net Revenues on a parity with the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, the Series 2020A Bond, the Series 2020B Bond and any other parity bonds (collectively, the "Bonds").

The Borrower may prepay the principal of the Series 2020A Bond only if (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2020A Bond is prepaid in part, then in the discretion of the DNRC, (i) such prepayments may be applied to principal payments in inverse order of maturity, or (ii) the DNRC may reamortize the principal remaining upon such prepayment, together with interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge, over the then-remaining term in substantially equal semiannual payments.

The Series 2020A Bond, including interest and any premium for the redemption thereof, are payable solely from the Net Revenues pledged for the payment thereof and do not constitute a

debt of the Borrower within the meaning of any constitutional, statutory or charter limitation or provision.

The Borrower may deem and treat the person in whose name this Series 2020A Bond is registered as the absolute owner hereof, whether this Series 2020A Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and the Borrower shall not be affected by any notice to the contrary. The Series 2020A Bond may be transferred as hereinafter provided.

This Series 2020A Bond has been designated by the Borrower as a “qualified tax-exempt obligation” pursuant to Section 265 of the Internal Revenue Code of 1986, as amended. [or “deemed designated”]

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the Borrower has duly authorized the refunding and redemption of the Refunded Bonds hereinabove described, has fixed and established and will collect reasonable rates and charges for the services and facilities afforded by the System, and has created a special Water System Fund into which the gross revenues of the System will be paid, and a separate and special Revenue Bond Account in that Fund, into which will be paid each month, from and as a first and prior lien on the Net Revenues of the System then on hand, an amount equal to not less than the sum of one-sixth of the interest to become due within the next six months and one-twelfth of the principal to become due within the next twelve months with respect to all Bonds payable semiannually from that account; that the Borrower has created a Reserve Account in such fund into which shall be paid additional Net Revenues, after required credits to the Revenue Bond Account sufficient to maintain a reserve therein equal to the Reserve Requirement; that the Revenue Bond Account will be used only to pay the principal of, premium, if any, and interest on the Bonds and any other additional Bonds issued pursuant to the Resolution on a parity therewith; that the rates and charges for the System will from time to time be made and kept sufficient, to provide gross income and revenues adequate to pay promptly the reasonable and current expenses of operating and maintaining the System, to produce during each fiscal year Net Revenues not less than 110% of the maximum annual principal and interest payable on the outstanding Bonds in the current or any future fiscal year, and to maintain the Reserve Account at the Reserve Requirement; that additional bonds may be issued and made payable from the Revenue Bond Account on a parity with the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, the Series 2020A Bond, the Series 2020B Bond, and any other parity Bonds upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues, unless the lien thereof shall be expressly made subordinate to the lien of the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, the Series 2020A Bond, the Series 2020B Bond, and other additional Bonds on such Net Revenues; that all provisions for the security of this Series 2020A Bond set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that all acts, conditions and things required by the Constitution and laws of the State of Montana and the ordinances and resolutions of the Borrower to be done, to exist, to happen and to be performed in order to make this Series 2020A Bond a valid and binding special obligation of the Borrower according to its terms have been done, do exist, have happened and have been performed as so required; and that this Series 2020A Bond and the premium, if any, and interest hereon are payable solely from the Net Revenues of the System pledged and appropriated to the Revenue Bond Account and do not constitute a debt of the Borrower within the meaning of any constitutional,

statutory or charter limitation or provision and the issuance of the Series 2020A Bond does not cause either the general or the special indebtedness of the Borrower to exceed any constitutional, statutory or charter limitation.

IN WITNESS WHEREOF, the City of Kalispell, Montana, by its governing body, has caused this Bond to be executed by the signatures of its of its Mayor, City Manager and City Finance Director, and has caused the official seal of the City to be affixed hereto, and has caused this Bond to be dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

(SEAL)

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Finance Director



REGISTRATION AND TRANSFER

This Bond shall be fully registered as to both principal and interest. No transfer of this Bond shall be valid unless and until (1) the registered holder of the Bond, or its duly authorized attorney or legal representative, executes the form of assignment appearing on this Bond, and (2) the City Finance Director of the Borrower as bond registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the Registrar's registration books. The Borrower shall be entitled to deem and treat the person in whose name this Bond is registered as absolute owner thereof for all purposes, notwithstanding any notice to the contrary. Payments on account of the Bond shall be made only to the order of the registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge the Borrower's liability upon the Bond to the extent of the sum or sums so paid.

REGISTER

The ownership of the unpaid Principal Balance of this Bond and the interest accruing thereon is registered on the books of the City of Kalispell, Montana in the name of the registered holder appearing on the first page hereof or as last noted below:

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of City Finance Director</u>
_____, 2020	Department of Natural Resources and Conservation 1539 Eleventh Avenue Helena, MT 59620	_____

THE FOLLOWING ENTRIES ARE TO BE MADE ONLY BY THE BOND REGISTRAR UPON REGISTRATION OF EACH TRANSFER

The City Finance Director of the City of Kalispell, Montana, acting as Bond Registrar, has transferred, on the books of the Borrower, on the date last noted below, ownership of the principal amount of and the accrued interest on this Bond to the new registered holder noted next to such date, except for amounts of principal and interest theretofore paid.

<u>Date of Transfer</u>	<u>Name of New Registered Holder</u>	<u>Signature of Bond Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

FORM OF ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_  
\_\_\_\_\_ the within Bond and does hereby  
irrevocably constitute and appoint \_\_\_\_\_  
attorney to transfer the Bond on the books kept for the registration thereof, with full power of  
substitution in the premises.

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

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatsoever.



SCHEDULE B

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Administrative Expense Surcharge</u>	<u>Loan Loss Reserve Surcharge</u>	<u>Total Loan Payment</u>
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APPENDIX B-2

[Form of the Series 2020B Bond]

UNITED STATES OF AMERICA  
STATE OF MONTANA  
COUNTY OF FLATHEAD

**CITY OF KALISPELL**

WATER SYSTEM REVENUE BOND  
(DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM)  
SERIES 2020B

R-1

\$2,598,000.00

FOR VALUE RECEIVED, CITY OF KALISPELL, MONTANA (the “Borrower”), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and, for value received, hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the “DNRC”), or its registered assigns, solely from the Revenue Bond Account of its Water System Fund, the principal sum equal to the sum of the amounts entered on Schedule A attached hereto under “Total Amount Advanced,” with interest on each such amount from the date such amount is advanced hereunder at the rate of two percent (2.00%) per annum on the unpaid balance until paid. In addition, the Borrower shall pay an Administrative Expense Surcharge and a Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond, each at the rate of twenty-five hundredths of one percent (0.25%) per annum. Principal, interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a “Loan Repayment Date”), commencing July 1, 2020 and concluding on January 1, 2040. Principal shall be payable on the dates set forth in Schedule B hereto. Each installment shall be in the amount set forth opposite its due date in Schedule B hereto under “Total Loan Payment.” The portion of each such payment consisting of principal, the portion consisting of interest, the portion consisting of Administrative Expense Surcharge and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B attached hereto. Upon each disbursement of 2020 Loan amounts to the Borrower pursuant to the Resolution described below, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under “Advances” and the total amount advanced under the Resolution (as hereinafter defined), including such disbursement, under “Total Amount Advanced.” The DNRC shall prepare Schedule B and any revised Schedule B, or cause Schedule B and any revised Schedule B to be prepared, as provided in Section 5.1 of the Supplemental Resolution (as hereinafter defined). Schedule B shall be calculated and recalculated on a level debt service basis assuming an interest rate of two and one-half percent (2.50%) per annum. Past-due payments of principal and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days each. All payments under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the Bond register, in lawful money of the United States of America.

This Bond is one of an issue of Water System Revenue Bonds of the Borrower authorized to be issued in one or more series from time to time, and constitutes a series in the maximum authorized principal amount of \$2,598,000 (the "Series 2020B Bond"), issued to finance costs of designing and engineering of certain improvements to the water system of the Borrower (the "System"), to fund deposits to the Reserve Account, and to pay costs of issuing the Series 2020B Bond. The Series 2020B Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Parts 44 and 45, as amended, and ordinances and resolutions duly adopted by the governing body of the Borrower, including Resolution No. \_\_\_\_, adopted by the City Council on January 6, 2020 (the "Resolution"). Terms used with initial capital letters but not defined herein have the meanings given them in the Resolution. The Series 2020B Bond is issuable only as a single, fully registered bond. The Series 2020B Bond is issued on a parity and is equally and ratably secured by the Net Revenues of the System with the Borrower's outstanding First Amended and Restated Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2001 (the "Series 2001 Bond"), its First Amended and Restated Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2007B (the "Series 2007B Bond"), and its Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2017A (the "Series 2017A Bond"). The Borrower is also issuing simultaneously herewith its Water System Revenue Refunding Bond (DNRC Drinking Water State Revolving Loan Program), Series 2020A (the "Series 2020A Bond").

Reference is made to the Resolution for a more complete statement of the terms and conditions upon which the Series 2020B Bond has been issued, the Net Revenues of the System pledged and appropriated for the payment and security thereof, the conditions upon which additional bonds may be issued under the Resolution and made payable from such Net Revenues on a parity with the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, the Series 2020A Bond, the Series 2020B Bond, and any other parity Bond (collectively, the "Bonds") or otherwise, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the Borrower, and the rights of the owners of the Series 2020B Bond.

The Borrower may prepay the principal of the Series 2020B Bond only if (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2020B Bond is prepaid in part, then in the discretion of the DNRC, (i) such prepayments may be applied to principal payments in inverse order of maturity, or (ii) the DNRC may reamortize the principal remaining upon such prepayment, together with interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge, over the then-remaining term in substantially equal semiannual payments.

This Series 2020B Bond, including interest and any premium for the redemption thereof, are payable solely from the Net Revenues pledged for the payment thereof and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision.

The Borrower may deem and treat the person in whose name this Series 2020B Bond is registered as the absolute owner hereof, whether this Series 2020B Bond is overdue or not, for the

purpose of receiving payment and for all other purposes, and the Borrower shall not be affected by any notice to the contrary. The Series 2020B Bond may be transferred as hereinafter provided.

This Series 2020B Bond has been designated by the Borrower as a “qualified tax-exempt obligation” pursuant to Section 265 of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the Borrower will forthwith construct and complete the improvements to the System hereinabove described; that it will prescribe and collect reasonable rates and charges for all services and facilities afforded by the System, including all additions thereto and replacements and improvements thereof, and has created a special Water System Fund into which the gross revenues of the System will be paid, and a separate and special Revenue Bond Account in that Fund, into which will be paid each month, from and as a first and prior lien on the Net Revenues of the System then on hand, an amount equal to not less than the sum of one-sixth of the interest to become due within the next six months and one-twelfth of the principal to become due within the next twelve months with respect to all Bonds payable semiannually from that Account; that the Borrower has created a Reserve Account in such fund into which shall be paid additional Net Revenues, after required credits to the Revenue Bond Account, sufficient to maintain a reserve therein equal to the Reserve Requirement; that the Revenue Bond Account will be used only to pay the principal of, premium, if any, and interest on the Bonds; that the rates and charges for the System will from time to time be made and kept sufficient, to provide gross revenues adequate to pay promptly the reasonable and current expenses of operating and maintaining the System, to maintain the Reserve Account at the Reserve Requirement and to produce during each fiscal year Net Revenues not less than 110% of the maximum annual principal and interest payable on the outstanding Bonds in the current or any future fiscal year; that additional Bonds may be issued and made payable from the Revenue Bond Account on a parity with the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, the Series 2020A Bond, the Series 2020B Bond, and other Bonds upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues of the System, unless the lien thereof shall be expressly made subordinate to the lien of the Series 2001 Bond, the Series 2007B Bond, the Series 2017A Bond, the Series 2020A Bond, the Series 2020B Bond, and other Bonds on such Net Revenues; that all provisions for the security of the holder this Series 2020B Bond set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that all acts, conditions and things required by the Constitution and laws of the State of Montana and the ordinances and resolutions of the Borrower to be done, to exist, to happen and to be performed in order to make this Series 2020B Bond a valid and binding special obligation of the Borrower according to its terms have been done, do exist, have happened and have been performed in regular and due form, time, and manner as so required; and that this Series 2020B Bond and interest hereon are payable solely from the Net Revenues of the System pledged and appropriated to the Revenue Bond Account and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision and the issuance of the Series 2020B Bond does not cause either the general or the special indebtedness of the Borrower to exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Kalispell, Montana, by its governing body, has caused this Bond to be executed by the signatures of its Mayor, City Manager and City Finance Director, and has caused the official seal of the Borrower to be affixed hereto, and has caused this Bond to be dated as of the [\_\_\_\_] day of [\_\_\_\_\_], 2020.

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Mayor

(SEAL)

---

City Manager

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City Finance Director



REGISTRATION AND TRANSFER

This Bond shall be fully registered as to both principal and interest. No transfer of this Bond shall be valid unless and until (1) the registered holder of the Bond, or its duly authorized attorney or legal representative, executes the form of assignment appearing on this Bond, and (2) the City Finance Director as bond registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the Registrar's registration books. The Borrower shall be entitled to deem and treat the person in whose name this Bond is registered as absolute owner thereof for all purposes, notwithstanding any notice to the contrary. Payments on account of the Bond shall be made only to the order of the registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge the Borrower's liability upon the Bond to the extent of the sum or sums so paid.

REGISTER

The ownership of the unpaid Principal Balance of this Bond and the interest accruing thereon is registered on the books of the City of Kalispell, Montana in the name of the registered holder appearing on the first page hereof or as last noted below:

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of City Finance Director</u>
[ _____ ], 2020	Department of Natural Resources and Conservation 1539 Eleventh Avenue Helena, MT 59620	_____

THE FOLLOWING ENTRIES ARE TO BE MADE ONLY BY THE BOND  
REGISTRAR UPON REGISTRATION OF EACH TRANSFER

The City Finance Director of the City of Kalispell, Montana, acting as Bond Registrar, has transferred, on the books of the Borrower, on the date last noted below, ownership of the principal amount of and the accrued interest on this Bond to the new registered holder noted next to such date, except for amounts of principal and interest theretofore paid.

<u>Date of Transfer</u>	<u>Name of New Registered Holder</u>	<u>Signature of Bond Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

FORM OF ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the Bond on the books kept for the registration thereof, with full power of substitution in the premises.

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

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatsoever.



SCHEDULE B

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Administrative Expense Surcharge</u>	<u>Loan Loss Reserve Surcharge</u>	<u>Total Loan Payment</u>
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APPENDIX C

[NONE]

## APPENDIX D

[Form of Escrow Agreement]

### ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “Agreement”), is made and executed between the City of Kalispell, Montana (the “City”), and U.S. Bank National Association, of Salt Lake City, Utah, as escrow agent (the “Agent”), as of the date set forth at the end of this Agreement. The parties recite and, in consideration of the mutual covenants and payments referred to and contained herein, covenant and agree as follows:

1. The City has, in accordance with a resolution of its City Council adopted on January 6, 2020, sold its Water System Revenue Refunding Bond (DNRC Drinking Water State Revolving Loan Program), Series 2020A, dated, as originally issued, as of January 30, 2020 (the “Series 2020 Bond”), in the aggregate principal amount of \$[\_\_\_\_\_], for the purpose of providing funds for paying, refunding and redeeming the City’s outstanding Water System Revenue and Refunding Bonds, Series 2004 (the “Series 2004 Bonds”), to fund the Reserve Account to the Reserve Requirement, and to pay costs of issuance and of the refunding. The Series 2004 Bonds maturing on July 1, 2024 and outstanding in the aggregate principal amount of \$405,000 (the “Refunded Bonds”) are subject to redemption on July 1, 2014 and any date thereafter at a redemption price equal to the principal amount thereof plus interest accrued thereon through the date of redemption, without premium. The Refunded Bonds shall be called for redemption on March 5, 2020.

The City has directed that net proceeds of the Series 2020 Bond be applied as follows: (i) \$[\_\_\_\_\_] (together with funds of the City identified in the last sentence of this paragraph) to the credit of the escrow account shown on Exhibit A hereto (which is hereby incorporated herein and made a part hereof, the “Escrow Account”) to be applied to the refunding of the Refunded Bonds, (ii) \$[\_\_\_\_\_] to the City for credit to the Reserve Account for the Series 2020 Bond, and (iii) \$[\_\_\_\_\_] to the City for credit to the Acquisition and Construction Account to pay costs of issuing the Series 2020A Bond. At closing, the City will deposit a total of \$[91,809] into the Escrow Account from the Reserve Account for the Series 2004 Bonds to be applied to the refunding of the Refunded Bonds.

2. The City represents, based on information supplied by the paying agent for the Refunded Bonds, and the Escrow Agent certifies, that the amount to be deposited by the City pursuant to this Agreement into the Escrow Account, i.e., \$[\_\_\_\_\_], is sufficient, without regard to any investment income thereon, to redeem in full and pay the principal of and interest on the Refunded Bonds on March 5, 2020. The City directs that the funds deposited in the Escrow Account be invested in the amounts and investments shown on the attached Exhibit A. The Escrow Agent shall promptly transfer to the City all amounts remaining in the Escrow Account after paying the redemption price of the Refunded Bonds on March 5, 2020. The City will deposit investment earnings received from investment of amounts in the Escrow Account into the Revenue Bond Account to be applied to the July 1, 2020 interest payment on the Series 2020 Bond.

3. The Agent acknowledges receipt of the cash described in Exhibit A hereto (which is hereby incorporated herein and made a part hereof) and agrees that it will hold such cash in a special segregated Escrow Account in the name of the City and will remit from the Escrow Account to the paying agent of the Series 2004 Bonds the funds required for the payment of principal of the Refunded Bonds and interest thereon as shown on Exhibit B hereto (which is hereby incorporated herein and made a part hereof). The Agent shall direct such paying agent to pay the redemption price of the Refunded Bonds on March 5, 2020.

The Agent will:

(a) not less than 30 days prior to March 5, 2020, cause notice of the redemption of the Refunded Bonds (in the form of Exhibit C hereto (which is hereby incorporated herein and made a part hereof)), to be mailed, by first class mail, postage prepaid, or such other means as may be required by the securities depository, to U.S. Bank National Association, as registrar for the Series 2004 Bonds, and to registered owners of the Refunded Bonds at their addresses as they appear on the bond register, as required by Section 2.08 of the resolution of the City Council of the City adopted May 17, 2004, authorizing the issuance of the Series 2004 Bonds (the “2004 Resolution”); and

(b) not less than 35 days prior to March 5, 2020, cause notice of the redemption of the Refunded Bonds (in the form of Exhibit C hereto) to be delivered by certified mail or telecopy, or such other means as may be required by the securities depository, to D.A. Davidson, of Great Falls, Montana, as the original purchaser of the Series 2004 Bonds; to The Depository Trust Company, of New York, New York; and one or more national information services that disseminate information regarding municipal bond redemptions, all as required by Section 2.08 of the 2004 Resolution.

4. The City acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the City the right to receive brokerage confirmations of security transactions, the City waives receipt of such confirmations.

5. The Agent agrees that, except as shown on Exhibit A, it will not invest or reinvest any cash held in the Escrow Account, without the City’s prior written consent.

6. The Agent acknowledges receipt of a sum described in a letter agreement between the City and the Agent, as and for full compensation for all services to be performed by it as Agent under this Agreement. The Agent expressly waives any lien upon or claim against the moneys and investments in the Escrow Account.

7. If at any time it shall appear to the Agent that the money in the Escrow Account will not be sufficient to make any payment due to the owners of any of the Refunded Bonds, the Agent shall immediately notify the City. Upon receipt of such notice, the City shall forthwith transmit to the Agent for deposit in the Escrow Account from moneys on hand and legally available therefor in the Water System Fund, such additional moneys as may be required to make any such payment.

8. By no later than March 15, 2020, the Agent shall submit to the City a report covering all money it shall have then received and all payments it shall have then made or caused to be made hereunder.

9. It is recognized that title to the moneys held in the Escrow Account from time to time shall remain vested in the City but subject always to the prior charge and lien thereon of this Agreement and the use thereof required to be made by the provisions of this Agreement. The Agent shall hold all such money in a special trust fund and account separate and wholly segregated from all other funds of the Agent on deposit therein and shall never commingle such money with other money or securities. It is understood and agreed that the responsibility of the Agent under this Agreement is limited to the safekeeping and segregation of the funds deposited with it in the Escrow Account and the collection of and accounting for the principal and interest and other amounts payable with respect thereto. Except as provided in Section 5 hereof, no withdrawals, transfers, or investment or reinvestment shall be made of cash balances in the Escrow Account. Cash balances shall be held by the Agent as cash balances as shown on the books and records of the Agent and shall not be invested or reinvested by the Agent except as provided in Section 5 hereof.

10. This Agreement is made by the City for the benefit of the owners of the Refunded Bonds and is not revocable by the City, and the funds deposited in the Escrow Account and all income therefrom, if any, have been irrevocably appropriated for the payment and redemption of the Refunded Bonds and interest thereon, in accordance with this Agreement.

11. This Agreement shall be binding upon and shall inure to the benefit of the City and the Agent and their respective successors and assigns. In addition, this Agreement shall constitute a third-party beneficiary contract for the benefit of the owners of the Refunded Bonds. These third-party beneficiaries shall be entitled to enforce performance and observance by the City and the Agent of the respective agreements and covenants herein contained as fully and completely as if said third-party beneficiaries were parties hereto. Any bank or trust company into which the Agent may be merged or with which it may be consolidated or any bank or trust company resulting from any merger or consolidation to which it shall be a party or any bank or trust company to which it may sell or transfer all or substantially all of its corporate trust business shall, if the City approves, be the successor agent hereunder without the execution of any additional document or the performance of any further act.

12. This Agreement shall terminate when all of the Refunded Bonds have been discharged and any and all remaining cash has been distributed in accordance with Section 2 and the report has been submitted in accordance with Section 8.

13. This Agreement may not be amended in a manner that materially adversely affects the interests of the holders of the Refunded Bonds, except with the prior written consent of all registered holders of the Refunded Bonds.

[Balance of page intentionally left blank]



IN WITNESS WHEREOF the parties hereto have caused this Escrow Agreement to be duly executed by their duly authorized officers, as of the 30th day of January, 2020.

CITY OF KALISPELL, MONTANA

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
City Manager

By \_\_\_\_\_  
City Finance Director

(Signature Page to Escrow Agreement between  
City of Kalispell, Montana  
and U.S. Bank National Association)

U.S. BANK NATIONAL ASSOCIATION,  
as Escrow Agent

By \_\_\_\_\_  
Its Vice President

(Signature Page to Escrow Agreement between  
City of Kalispell, Montana  
and U.S. Bank National Association)

EXHIBIT A

\$[ ]

Water System Revenue Refunding Bond  
(DNRC Drinking Water State Revolving Loan Fund), Series 2020A  
City of Kalispell, Montana

*[First American Funds Treasury Obligation Fund Class D]*

Maturity Date    Principal Amount    Interest Rate

EXHIBIT B

\$[ ]  
Water System Revenue Refunding Bond  
(DNRC Drinking Water State Revolving Loan Fund), Series 2020A  
City of Kalispell, Montana

DEBT SERVICE SCHEDULE FOR  
SERIES 2004 BONDS

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
03/05/2020	\$405,000.00	\$ [ ]	\$[ ]

EXHIBIT C

NOTICE OF REDEMPTION

Water System Revenue and Refunding Bonds, Series 2004  
City of Kalispell, Montana

NOTICE IS HEREBY GIVEN that the City of Kalispell, Montana, has called for redemption the following bonds of its Water System Revenue and Refunding Bonds, Series 2004, dated, as originally issued, as of May 15, 2004:

<u>Year</u>	<u>Amount</u>	<u>Rate</u>	<u>CUSIP No.</u>
2024	\$405,000	4.85%	48342W BL8

Such bonds have been called for redemption on March 5, 2020, and interest thereon will cease to accrue from and after said date. The redemption price is equal to 100% of the principal amount of the bonds plus interest accrued to the date of redemption, plus a premium in an amount equal to two percent of the principal amount of the bonds being redeemed.

Holders of such bonds maturing in said years should surrender their bonds for payment to U.S. Bank National Association (successor to First Trust Company of Montana National Association), as paying agent of the above-described Bonds, on or before said date. Bonds must be sent to the operations center of the paying agent in St. Paul, Minnesota, at U.S. Bank National Association, 60 Livingston Avenue, St. Paul, Minnesota 55107.

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, federal backup withholding tax will be withheld at the applicable backup withholding rate in effect at the time the payment is made if the tax identification number is not properly certified.

Interest on such Bonds shall cease to accrue on March 5, 2020, and the holders thereof shall have no further rights with respect thereto except to receive the redemption price so deposited.

Dated: January 30, 2020.

BY ORDER OF THE  
CITY OF KALISPELL

City Finance Director

U.S. BANK NATIONAL ASSOCIATION

By \_\_\_\_\_  
Its \_\_\_\_\_