

**THE CITY OF WHEELING  
(WEST VIRGINIA)**

**COMBINED WATERWORKS AND SEWERAGE SYSTEM  
BOND ANTICIPATION NOTES, SERIES 2020**

**NOTE ORDINANCE**

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**THE CITY OF WHEELING (WEST VIRGINIA)**

AN ORDINANCE AUTHORIZING THE DESIGN, ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS AND EXTENSIONS TO THE WATERWORKS PORTION OF THE EXISTING PUBLIC COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE SYSTEM AND TEMPORARILY FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, AND PAYING COSTS OF ISSUANCE AND RELATED COSTS, THROUGH THE ISSUANCE OF THE COMBINED WATERWORKS AND SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2020 OF THE CITY OF WHEELING IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT MORE THAN \$8,000,000; PROVIDING FOR THE RIGHTS AND REMEDIES OF, AND THE SECURITY FOR, THE REGISTERED OWNER OF SUCH NOTES; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX CERTIFICATE, REQUEST FOR PROPOSALS, AND OTHER DOCUMENTS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF CITY OF WHEELING:**

**ARTICLE I**  
**DEFINITIONS; STATUTORY AUTHORITY; FINDINGS**

Section 1.01. Authority for this Ordinance. This Ordinance is enacted pursuant to the provisions of Chapter 8, Article 20 of the Code of West Virginia (the “Act”) and other applicable provisions of law.

Section 1.02. Findings. The Governing Body hereby finds and determines as follows:

A. The Issuer is a municipality, public corporation and political subdivision of the State of West Virginia, in Ohio County of said State.

B. The Issuer presently owns and operates a public combined waterworks and sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that the design, acquisition and construction of certain additions, improvements and betterments to the waterworks portion of existing public combined waterworks and sewerage system of the Issuer, consisting of design and construction activities related to the improvements and/or construction to the waterworks portion of the system, including the replacement of water distribution lines in the downtown area of the City, specifically including, but not limited to, Main Street from 9<sup>th</sup> to 16<sup>th</sup> Streets, 16<sup>th</sup> Street from Main to Eoff Street and Market Street from 11<sup>th</sup> to 16<sup>th</sup> Streets, together with all appurtenant facilities

(collectively, the "Project") (the existing public combined waterworks and sewerage system of the Issuer, the Project and any further additions, betterments and improvements thereto are herein called the "System").

C. It is deemed necessary for the Issuer to issue its Combined Waterworks and Sewerage System Bond Anticipation Notes, Series 2020, in the aggregate principal amount of not more than \$8,000,000 (the "Series 2020 Notes"), to finance the costs of design, acquisition and construction of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2020 Notes prior to and during design, acquisition and construction of the Project and for a period not exceeding 6 months after completion of design, acquisition and construction of the Project; engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, discount, initial fees for the services of placement agents, registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2020 Notes and such other expenses as may be necessary or incidental to the financing herein authorized, the design, acquisition and construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2020 Notes or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

D. The period of usefulness of the System after completion of the Project is not less than 35 years.

E. It is in the best interest of the Issuer that the Series 2020 Notes be sold to the Lender pursuant to the terms and provisions as shall be approved by Certificate of Determinations of the Issuer.

F. There are outstanding obligations of the Issuer secured by the Gross Revenues, being the Issuer's:

(i) Combined Waterworks and Sewerage System Revenue Bonds, Series 2005 A (West Virginia SRF Program), dated May 3, 2005, issued in the original aggregate principal amount of \$14,500,000 (the "Series 2005 A Bonds");

(ii) Combined Waterworks and Sewerage System Revenue Bonds, Series 2010 B (West Virginia SRF Program), dated December 14, 2010, issued in the original aggregate principal amount of \$8,356,000 (the "Series 2010 B Bonds");

(iii) Combined Waterworks and Sewerage System Revenue Bonds, Series 2013 (Tax-Exempt), dated May 30, 2013, issued in the original aggregate principal amount of \$38,255,000 (the "Series 2013 Bonds");

(iv) Combined Waterworks and Sewerage System Refunding Revenue Bonds, Series 2015 A (Bank Qualified), dated September 2, 2015, issued in the original aggregate principal amount of \$8,030,000 (the "Series 2015 A Bonds"); and

(v) Combined Waterworks and Sewerage System Refunding Revenue Bonds, Series 2015 B (Taxable), dated September 2, 2015, issued in the original aggregate

principal amount of \$2,425,000 (the “Series 2015 B Bonds”) (collectively, the “Prior Bonds”).

The Series 2020 Notes shall be junior and subordinate to the Prior Bonds with respect to liens, pledge and source of and security for payment in all respects. The Series 2020 Notes shall be payable from and secured by the proceeds of revenue bonds or other obligations issued subsequent to the Series 2020 Notes for the purpose of permanently financing the Project. The Series 2020 Notes are further secured by a first lien on Surplus Revenues of the System, on a parity with the lien on such Surplus Revenues of the Issuer’s Combined Waterworks and Sewerage System Bond Anticipation Notes, Series 2018, dated December 20, 2018, and issued in the original aggregate principal amount of \$10,000,000 (the “Series 2018 Notes”). The Series 2018 Notes are further payable from and secured by the proceeds of revenue bonds or other obligations issued subsequent to the Series 2018 Notes to finance the project as defined in the ordinance of the City approving this issuance of the Series 2018 Notes.

G. The Issuer derives Gross Revenues from the System which are pledged for payment of the Prior Bonds. Except for such pledge thereof to secure and pay the Prior Bonds, said Gross Revenues are not pledged or encumbered in any manner.

H. It is in the best interests of the Issuer and the customers thereof, and the citizens of The City of Wheeling, that the Series 2020 Notes be issued, and the Series 2020 Notes secured by a pledge of revenue bonds or other obligations of the Issuer, issued subsequent to the Series 2020 Notes and a first lien on Surplus Revenues, if any, of the System, which first lien on Surplus Revenues is on a parity with the lien thereon of the Series 2018 Notes.

I. The Series 2020 Notes and the Certificate of Authentication and Registration to be endorsed thereon are to be in substantially the form set forth in EXHIBIT A – FORM OF SERIES 2020 NOTES, attached hereto and incorporated herein by reference, with necessary and appropriate variations, omissions and insertions as permitted or required by this Ordinance or a Supplemental Resolution or as deemed necessary by the Registrar or the Issuer.

J. All things necessary to make the Series 2020 Notes, when authenticated by the Registrar and issued as in this Ordinance provided, the valid, binding and legal special obligations of the Issuer according to the import thereof, and to validly pledge and assign those funds pledged hereby to the payment of the principal of and interest on the Series 2020 Notes will be timely done and duly performed.

K. The enactment of this Ordinance, and the execution and issuance of the Series 2020 Notes, subject to the terms thereof, will not result in any breach of, or constitute a default under, any instrument to which the Issuer is a party or by which it may be bound or affected.

L. The Issuer has complied with all requirements of West Virginia law relating to the operation of the System, the issuance of the Series 2020 Notes and the design, acquisition and construction of the Project or will have so complied prior to issuance of any thereof.

Section 1.03. Ordinance Constitutes Contract. In consideration of the acceptance of the Series 2020 Notes by those who shall own or hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owner and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit,

protection and security of the legal Registered Owner of any and all of such Series 2020 Notes, all of which shall be of equal rank and without preference, priority or distinction between any one of the Series 2020 Notes and any other of the Series 2020 Notes, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04.      Definitions. All capitalized terms used in this Ordinance and not otherwise defined in the recitals hereto shall have the meanings specified below, unless the context expressly requires otherwise:

"Act" means Chapter 8, Article 20 of the Code of West Virginia, 1931, as amended and in effect on the date of delivery of the Series 2020 Notes.

"Additional Parity Bonds" means additional Bonds issued subsequent to the Series 2020 Notes payable from the Gross Revenues of the System on a parity with the Prior Bonds.

"Authorized Officer" means the Mayor of the Issuer or any other officer or employee of the Issuer specifically designated by resolution of the Governing Body of the Issuer.

"Bond Counsel" shall mean any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the Issuer, and shall initially mean Steptoe & Johnson PLLC, Charleston, West Virginia.

"Bonds" means, collectively, the Prior Bonds and any Additional Parity Bonds hereafter issued within the terms, restrictions and conditions contained herein.

"Business Day" means any day other than a Saturday, Sunday or a day on which national banking associations or West Virginia banking corporations are authorized by law to remain closed.

"Capitalized Interest" means monies whether from the proceeds of the Series 2020 Notes or any other source deposited in the Series 2020 Notes Sinking Fund and pledged to the payment of interest on such Series 2020 Notes.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Series 2020 Notes, substantially in the form set forth in EXHIBIT A - FORM OF SERIES 2020 NOTES, attached hereto.

"Certificate of Determinations" means the Certificate of Determinations for the Series 2020 Notes.

"Closing Date" means the date upon which there is an exchange of the Series 2020 Notes for the proceeds representing the original purchase price thereof.

"City Clerk" means the City Clerk of the Issuer.

"Code" shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and Regulations thereunder.

"Code of West Virginia" means the Code of West Virginia, 1931, as amended.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia which succeeds to the functions of the Commission.

"Consulting Engineers" means, initially, CT Consultants, Inc., Wheeling, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the Code of West Virginia; provided, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or public corporation and political subdivisions.

"Costs"; "Costs of the Project" or similar terms means all those costs now or hereafter permitted by the Act to be financed with the Series 2020 Notes issued pursuant hereto, including, without limitation, those costs described in Section 1.02C.

"Depository Bank" means the bank or banks to be designated as such in the Supplemental Resolution, and any other bank or national banking association located in the State of West Virginia, eligible under the laws of the State of West Virginia to receive deposits of state and municipal funds and insured by the FDIC that may hereafter be appointed by the Issuer as Depository Bank.

"Event of Default" means any occurrence or event specified in Section 7.01.

"FDIC" means the Federal Deposit Insurance Corporation or any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Council of the Issuer as it may now or hereafter be constituted.

"Government Obligations" means certificates or interest-bearing notes or obligations of the United States, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts, and includes Capitalized Interest (as herein defined), any proceeds from the sale or other disposition of capital assets, but does not include any increase in the value of capital assets (including Qualified Investments). Gross Revenues does not include the proceeds of grants or contributions in aid of construction received by the Issuer, or bonds or notes issued by the Issuer, which proceeds are required by the terms of such grant, contribution in aid of construction, bond or note to be used to finance capital improvements, betterments and/or additions for the System or are pledged or obligated for any purpose other than the payment of Operating Expenses (as herein defined) of the System or principal of or interest on the Bonds.

"Independent Certified Public Accountant" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an



independent annual or special audit of the accounts of the System or for any purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract, investment-type property or residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes other than specified private activity bonds as defined in Section 57(a)(5)(C) of the Code.

"Issuer" means The City of Wheeling, a municipality and public corporation and political subdivision of the State of West Virginia, located in Ohio County and Marshall County of said State, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Lender" means the commercial lending institution, the bid from which submitted in response to the Request for Proposals, is determined by the Issuer, in its sole discretion, to be most advantageous to the Issuer, as determined by a resolution supplemental hereto.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2020 Notes, plus accrued interest and premium, if any, less original issue discount, if any. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from investment of proceeds of the Series 2020 Notes, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means the balance of Gross Revenues remaining after deduction of Operating Expenses, as hereinafter defined.

"Nonpurpose Investment" means any Investment Property which is acquired with the gross proceeds of the Series 2020 Notes and is not acquired in order to carry out the governmental purpose of the Series 2020 Notes.

"Note Register" means the books of the Issuer maintained by the Registrar for the registration and transfer of Series 2020 Notes.

"Operating Expenses," unless qualified, means the current expenses, paid or accrued, of repair, operation, management and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, accounting, auditing and insurance expenses (other than those capitalized as part of the costs of any project relating to the acquisition, equipping or construction of additions, betterments or improvements for the System), supplies, labor, wages, the cost of materials and supplies used for current repairs, operations or maintenance, fees and expenses of fiscal agents and of the Depository Bank, Registrar and Paying Agent or Paying Agents, payments to pension or retirement funds, payments with respect to other post employment benefits, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles.

"Ordinance" means this Ordinance and all orders and resolutions supplemental hereto or amendatory hereof.

"Paying Agent" means the Commission and any other paying agent for the Series 2020 Notes which may be appointed by a resolution supplemental hereto, all in accordance with Section 8.07 hereof.

"Prior Bonds" means, collectively, the Series 2005 A Bonds, Series 2010 B Bonds, Series 2013 Bonds, Series 2015 A Bonds, and Series 2015 B Bonds.

"Prior Ordinances" means the respective Ordinances of the Issuer, as amended, modified or supplemented, authorizing the issuance of the Prior Bonds.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

"Project Fund" means the Project Fund created by Section 4.01 hereof.

"Qualified Investments" means and includes any investment permitted to be made by a municipality, public service district or public corporation of the State pursuant to State law, specifically including but not limited to Chapter 8, Article 13, Section 22a of the Code of West Virginia and the West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the Code of West Virginia.

"Rebate Fund" means the Rebate Fund, if necessary, described in Section 4.01 hereof.

"Record Date" means the day of the month which shall be so stated in the Series 2020 Notes, regardless of whether such day is a Saturday, Sunday or legal holiday.

"Registered Owner," "Noteholder," "Holder," "Owner" or any similar term means any person who shall be the registered owner of any outstanding Note.

"Registrar" means the bank to be designated in the Supplemental Resolution as the registrar for the Series 2020 Notes, and any successor thereto appointed in accordance with Section 8.07 hereof.

"Regulations" means temporary and permanent regulations promulgated under the Code, and includes applicable regulations promulgated under the Code.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by the Prior Ordinances and continued by Section 4.01 hereof.

"Request for Proposals" means the Request for Proposals of the Issuer requesting bids with terms for the purchase of the Series 2020 Notes from commercial lending institutions.

"Reserve Accounts" means, collectively, the respective reserve accounts created for the Prior Bonds and any hereinafter issued Additional Parity Bonds.

"Reserve Account Requirement" means the amount required to be on deposit in the respective Reserve Accounts for the Prior Bonds and any hereinafter issued Additional Parity Bonds.

"Revenue Fund" means the Revenue Fund established by the Prior Ordinances and continued hereby.

"Series 2005 A Bonds" means the Issuer's Combined Waterworks and Sewerage System Revenue Bonds, Series 2005 A (West Virginia SRF Program), dated May 3, 2005, issued in the original aggregate principal amount of \$14,500,000.

"Series 2010 B Bonds" means the Issuer's Combined Waterworks and Sewerage System Revenue Bonds, Series 2010 B (West Virginia SRF Program), dated December 14, 2010, issued in the original aggregate principal amount of \$8,356,000.

"Series 2013 Bonds" means the Issuer's Combined Waterworks and Sewerage System Revenue Bonds, Series 2013 (Tax-Exempt), dated May 30, 2013, issued in the original aggregate principal amount of \$38,255,000.

"Series 2015 A Bonds" means the Issuer's Combined Waterworks and Sewerage System Refunding Revenue Bonds, Series 2015 A (Bank Qualified), dated September 2, 2015, issued in the original aggregate principal amount of \$8,030,000.

"Series 2015 B Bonds" means the Issuer's Combined Waterworks and Sewerage System Refunding Revenue Bonds, Series 2015 B (Taxable), dated September 2, 2015, issued in the original aggregate principal amount of \$2,425,000.

"Series 2018 Notes" means the Issuer's Combined Waterworks and Sewerage System Bond Anticipation Notes, Series 2018, dated December 20, 2018, and issued in the original aggregate principal amount of \$10,000,000.

"Series 2020 Notes"; "Notes" or "Note" means the Combined Waterworks and Sewerage System Bond Anticipation Notes, Series 2020, of the Issuer, originally authorized to be issued pursuant to this Ordinance and the Supplemental Resolution.

"Series 2020 Notes Sinking Fund" means the Series 2020 Notes Sinking Fund established by Section 4.02 hereof.

"Sinking Funds" means, collectively, the respective sinking funds created for the Series 2020 Notes and the Prior Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution amendatory hereof or supplemental hereto and, when preceded by the article "the," refers specifically to the Supplemental Resolution to be adopted by the Issuer following adoption of this Resolution, and any Certificate of Determinations provided for by such Supplemental Resolution, setting forth the final amounts, maturities, interest rates and other terms of the Series 2020 Notes and authorizing the sale of the Series 2020 Notes to the Lender; provided, that any provision intended to be included in the Supplemental Resolution and not so included may be contained in any other Supplemental Resolution.

“Surplus Revenues” means the Net Revenues not required by the Prior Ordinances to be set aside and held for the payment of or security for the Prior Bonds, or any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund, the Sinking Funds and the Reserve Accounts.

"System" means the complete public combined waterworks and sewerage system of the Issuer, presently existing in its entirety or any integral part thereof, and any further additions, extensions, renovations and improvements thereto hereafter constructed or acquired for the System from any sources whatsoever.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations and vice versa; and words importing the masculine gender shall include the feminine and neuter genders and vice versa.

Additional terms and phrases are defined in this Ordinance as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with generally accepted accounting principles.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Ordinance; and the term "hereafter" means after the date of adoption of this Ordinance.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Ordinance so numbered.

## **ARTICLE II** **AUTHORIZATION OF DESIGN, ACQUISITION AND CONSTRUCTION OF THE PROJECT**

Section 2.01. Authorization of Design, Acquisition and Construction of the Project. There is hereby authorized and ordered the design, acquisition and construction of the Project, at an estimated cost of not to exceed \$8,000,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2020 Notes shall be applied as provided in Section 3.10 hereof. The Issuer has or will enter into contracts for the design, acquisition and construction of the Project.

The cost of the Project is estimated not to exceed \$8,000,000 which will be obtained from proceeds of the Series 2020 Notes.

## **ARTICLE III** **THE SERIES 2020 NOTES**

Section 3.01. Form and Payment of Series 2020 Notes. No Series 2020 Notes shall be issued pursuant to this Ordinance except as provided in this Article III. Any Series 2020 Notes issued pursuant to this Ordinance may be issued only as fully registered Series 2020 Notes without coupons, in the entire principal amount thereof (or such other denominations as may be set forth in a Supplemental Resolution). The Series 2020 Notes shall be dated as of the date provided in a Supplemental Resolution. The Series 2020 Notes shall bear interest on the principal amounts advanced from the interest payment date next preceding the date of authentication or, if authenticated after the Record Date but prior to the applicable

interest payment date or on such interest payment date, from such interest payment date or, if no interest on such Series 2020 Notes have been paid, from the date thereof; provided however, that, if, as shown by the records of the Registrar, interest on such Series 2020 Notes shall be in default, any Series 2020 Notes issued in exchange for the Series 2020 Notes surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the initial Series 2020 Notes surrendered.

The principal of and the premium, if any, on the Series 2020 Notes shall be payable in any coin or currency which, on the respective date of such payment, is legal tender for the payment of public and private debts under the laws of the United States of America upon surrender at the principal office of the Paying Agent. Interest on the Series 2020 Notes on the principal amounts advanced shall be paid quarterly by wire transfer to the Registered Owner thereof at his address as it appears in the Note Register at the close of business on the Record Date.

The Series 2020 A Notes shall be subject to optional redemption at the option of the Issuer, prior to maturity, in whole at any time at a redemption price of par plus accrued interest to the date fixed for redemption.

Section 3.02. Execution of Series 2020 Notes. The Series 2020 Notes shall be executed in the name of the Issuer by the Mayor, by his or her manual or facsimile signature, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the City Clerk by his or her manual or facsimile signature; provided, that all such signatures and the seal may be by facsimile. In case any one or more of the officers who shall have signed or sealed the Series 2020 Notes shall cease to be such officer of the Issuer before the Series 2020 Notes so signed and sealed have been actually sold and delivered, such Series 2020 Notes may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series 2020 Notes had not ceased to hold such office. The Series 2020 Notes may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Series 2020 Notes shall hold the proper office in the Issuer, although at the date of such Series 2020 Notes such person may not have held such office or may not have been so authorized.

Section 3.03. Authentication and Registration. No Series 2020 Notes shall be valid or obligatory for any purpose or entitled to any security or benefit under this Ordinance unless and until the Certificate of Authentication and Registration on such Series 2020 Notes, substantially in the form set forth in EXHIBIT A - FORM OF SERIES 2020 NOTES attached hereto and incorporated herein by reference with respect to such Series 2020 Notes, shall have been duly manually executed by the Registrar. Any such manually executed Certificate of Authentication and Registration upon the Series 2020 Notes shall be conclusive evidence that such Series 2020 Notes have been authenticated, registered and delivered under this Ordinance. The Certificate of Authentication and Registration on the Series 2020 Notes shall be deemed to have been executed by the Registrar if signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on the Series 2020 Notes.

Section 3.04. Negotiability and Registration. Subject to the requirements for transfer set forth below, the Series 2020 Notes shall be, and have all of the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State, and each successive Registered Owner, in accepting the Series 2020 Notes, shall be conclusively deemed to have agreed that such Series 2020 Notes shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder shall further be conclusively deemed to have agreed that said Series 2020 Notes shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2020 Notes remain outstanding, the Registrar shall keep and maintain books for the registration and transfer of the Series 2020 Notes. The Series 2020 Notes shall be transferable only by transfer of registration upon the Note Register by the registered owner thereof in person or by his attorney or legal representative duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or such duly authorized attorney or legal representative. Upon transfer of the Series 2020 Notes, there shall be issued at the option of the Holder or the transferee another Note or Notes of the aggregate principal amount equal to the unpaid amount of the transferred Note and of the same series, interest rate and maturity of said transferred Note.

In all cases in which the privilege of transferring or exchanging the Series 2020 Notes is exercised, the Series 2020 Notes shall be delivered in accordance with the provisions of this Ordinance. All Series 2020 Notes surrendered in any such transfer or exchange shall forthwith be canceled by the Registrar. Transfers of Series 2020 Notes and the initial exchange of Series 2020 Notes shall be made by the Registrar without charge to the Holder or the transferee thereof, except as provided below. For any other exchange of the Series 2020 Notes, the Registrar may impose a service charge. For every such transfer or exchange of the Series 2020 Notes, the Registrar may make a charge sufficient to reimburse its office for any tax or other governmental charge required to be paid with respect to such transfer or exchange, and such tax or governmental charge, and such service charge for exchange other than the initial exchange, shall be paid by the person requesting such transfer or exchange as a condition precedent to the exercise of the privilege of making such transfer or exchange.

Section 3.05. Series 2020 Notes Mutilated, Destroyed, Stolen or Lost. In case the Series 2020 Notes shall become mutilated or be destroyed, stolen or lost, the Issuer may execute, in its discretion, and the Registrar shall authenticate, register and deliver a new Series 2020 Note in exchange and upon surrender and cancellation of, the mutilated Series 2020 Notes, or in lieu of and substitution for the Series 2020 Notes destroyed, stolen or lost, and upon the Registered Owner furnishing the Issuer and the Registrar proof of his ownership thereof and that the Series 2020 Notes have been destroyed, stolen or lost and satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer or the Registrar may prescribe and paying such expenses as the Issuer or the Registrar may incur. The name of the Registered Owner listed in the Note Register shall constitute proof of ownership. The Series 2020 Notes so surrendered shall be submitted to and canceled by the Registrar, and evidence of such cancellation shall be given to the Issuer. If the Series 2020 Notes shall have matured or be about to mature, instead of issuing a substitute Series 2020 Notes the Issuer, by and through the Registrar, may pay the same, upon being indemnified as aforesaid, and, if the Series 2020 Notes be lost, stolen or destroyed, without surrender thereof.

Any such duplicate Series 2020 Notes issued pursuant to this section shall constitute an original, additional contractual obligation on the part of the Issuer, whether or not the lost, stolen or destroyed Series 2020 Notes be at any time found by anyone.

Section 3.06. Persons Treated as Owners. The Issuer, the Registrar and any agent of the Issuer or the Registrar may treat the person in whose name the Series 2020 Notes are registered as the owner of the Series 2020 Notes for the purpose of receiving payment of the principal of, and interest on, the Series 2020 Notes for all other purposes, whether or not the Series 2020 Notes are overdue.

Section 3.07. Authorization of Series 2020 Notes. For the purposes of temporarily paying costs of design, acquisition and construction of the Project, Capitalized Interest, if any, and paying costs of issuance of the Series 2020 Notes and related costs, there shall be issued the Series 2020 Notes of the Issuer, in an aggregate principal amount of not more than \$8,000,000. The Series 2020 Notes shall be issued as a single note and designated "The City of Wheeling, Combined Waterworks and Sewerage System Bond Anticipation Notes, Series 2020" and shall be issued in fully registered form, in such denominations as set forth in a Supplemental Resolution, in an aggregate amount not to exceed \$8,000,000. The Series 2020 Notes shall be numbered R-1. The Series 2020 Notes shall be dated such date, shall bear interest at such rate or rates, not exceeding the then legally permissible limit (not to exceed 6.0% percent) on such date or dates; shall mature on such dates (not initially to exceed 5 years; provided; however, the Series 2020 Notes may be extended upon consent of the Lender); and shall be subject to such repayment or redemption, all as provided in the Supplemental Resolution or as specifically provided in the Series 2020 Notes.

Section 3.08. Delivery of Series 2020 Notes. The Issuer shall execute and deliver the Series 2020 Notes to the Registrar, and the Registrar shall authenticate, register and deliver the Series 2020 Notes to the Lender upon receipt of the documents set forth below:

- (1) The name in which the Series 2020 Notes are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;
- (2) A request and authorization to the Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2020 Notes to the Lender;
- (3) Copies of this Ordinance and the Supplemental Resolution certified by the City Clerk;
- (4) The unqualified approving opinion of Bond Counsel regarding the Series 2020 Notes; and
- (5) A copy of such other documents and certificates as the Lender may reasonably require.

Section 3.09. Form of Series 2020 Notes. The definitive Series 2020 Notes shall be in substantially the form set forth in EXHIBIT A – FORM OF SERIES 2020 NOTES attached hereto and incorporated herein by reference, with such necessary and appropriate omissions, insertions and variations as are approved by those officers executing such Series 2020 Notes on behalf of the Issuer and execution thereof by such officers shall constitute conclusive evidence of such approval, and the definitive Series 2020 Notes shall have the form of the opinion of Steptoe & Johnson PLLC, as Bond Counsel, attached thereto.

Section 3.10. Disposition of Proceeds of Series 2020 Notes. Upon the issuance and delivery of the Series 2020 Notes, the Issuer shall forthwith deposit the proceeds thereof as follows:

A. From the proceeds of the Series 2020 Notes, there shall first be deposited with the Commission in the Series 2020 Notes Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as Capitalized Interest.

B. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2020 Notes, such monies shall be deposited with the Depository Bank in the Project Fund and applied solely to payment of Costs of the Project in the manner set forth herein.

**ARTICLE IV**  
**SYSTEM REVENUES; FUNDS AND ACCOUNTS**

Section 4.01. Establishment of Funds and Accounts with Depository Bank. Pursuant to this Article IV, the following special funds are created with (or continued if previously established by the Prior Ordinances), and shall be held by, the Depository Bank, segregated from all other funds and accounts of the Depository Bank or the Issuer and from each other and used solely for the purposes provided herein:

- (1) Revenue Fund (established by the Prior Ordinances);
- (2) Renewal and Replacement Fund (established by the Prior Ordinances);
- (3) Project Fund; and
- (4) Rebate Fund.

Section 4.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued if previously established by Prior Ordinances) with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

- (1) Series 2005 A Bonds Sinking Fund (established by Prior Ordinances);
- (2) Series 2005 A Bonds Reserve Account (established by Prior Ordinances);
- (3) Series 2010 B Bonds Sinking Fund (established by Prior Ordinances);
- (4) Series 2010 B Bonds Reserve Account (established by Prior Ordinances);
- (5) Series 2013 Bonds Sinking Fund (established by Prior Ordinances);
- (6) Series 2013 Bonds Reserve Account (established by Prior Ordinances);
- (7) Series 2015 A Bonds Sinking Fund (established by Prior Ordinances);
- (8) Series 2015 A Bonds Reserve Account (established by Prior Ordinances);
- (9) Series 2015 B Bonds Sinking Fund (established by Prior Ordinances);
- (10) Series 2015 B Bonds Reserve Account (established by Prior Ordinances);
- (11) Series 2018 Notes Sinking Fund: and



(12) Series 2020 Notes Sinking Fund.

Section 4.03. System Revenues and Application Thereof. So long as any of the Series 2020 Notes shall be outstanding and unpaid, the Issuer covenants as follows:

A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the Issuer in the Revenue Fund. The Revenue Fund shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. All Revenues at any time remaining on deposit in the Revenue Fund shall be disposed of only in the following manner and order of priority:

- (1) The Issuer shall first, from the monies in the Revenue Fund, on the first day of each month simultaneously remit to the Commission the amounts required by the Prior Ordinances for payment of interest on the Prior Bonds.
- (2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission the amounts required by the Prior Ordinances for payment of principal of the Prior Bonds.
- (3) The Issuer shall next, each month, transfer from the Revenue Fund an amount sufficient to pay current Operating Expenses of the System.
- (4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission the amounts required by the Prior Ordinances to be deposited in the respective Reserve Accounts for the Prior Bonds.
- (5) The Issuer shall next, on the first day of each month, transfer from the monies remaining in the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund (as previously set forth in the Prior Ordinances and not in addition thereto), a sum equal to 2.5% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article V hereof. Subject to the restrictions contained in the Prior Ordinances so long as the Prior Bonds are outstanding, withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, or improvements or extensions to the System; provided, that any deficiency in any Reserve Account, except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such Reserve Account to the maximum extent required hereof, shall be promptly eliminated with monies from the Renewal and Replacement Fund.
- (6) Whenever all of the required and provided for transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or

such other period as required by the Act, such excess shall be considered as surplus revenues (the "Surplus Revenues") which Surplus Revenues shall first be applied, pro rata, to pay interest on the Series 2018 Notes and the Series 2020 Notes and then to pay principal of the Series 2018 Notes and the Series 2020 Notes.

(7) After all the foregoing provisions for use of monies in the Revenue Fund have been fully complied with, any monies remaining therein and not permitted to be retained therein may be used to prepay installments of the Prior Bonds, pro rata, or for any lawful purpose of the System.

B. The Commission is hereby designated as the fiscal agent for the administration of the Series 2020 Notes Sinking Fund created or continued hereunder, and all amounts required for said Sinking Fund shall be remitted to the Commission from said Revenue Fund and from the proceeds of the sale of the Series 2020 Notes, by the Issuer at the times and as otherwise provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. Notwithstanding the foregoing, however, the Commission shall deposit all remittances in the fund or account in the priority established by this Ordinance.

Moneys in the Series 2020 Notes Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2020 Notes, whether by maturity or redemption prior to maturity. Pending such use, such moneys shall be invested in accordance with Article V.

The Issuer shall not be required to make any further payments into the Series 2020 Notes Sinking Fund when the aggregate amount of funds therein is at least equal to the aggregate principal amount of Series 2020 Notes then outstanding, plus the amount of interest due or thereafter to become due on such Series 2020 Notes then outstanding.

The payments into the Series 2020 Notes Sinking Fund shall be made on the first day of each month, except that, when the first day of any month shall be a Saturday, Sunday or legal holiday, then such payments shall be made on the next succeeding Business Day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Ordinance.

## **ARTICLE V**

### **INVESTMENTS; ARBITRAGE; TAX CERTIFICATE AND REBATE**

Section 5.01. Investments. The Issuer shall invest and reinvest, and shall instruct the Commission and the Depository Bank to invest and reinvest, any moneys held as a part of the funds and accounts created by this Ordinance in Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this section.

Except as provided below, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The Issuer shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless

of the loss on such liquidation. The Issuer may make any and all investments permitted by this section through the Depository Bank. The Depository Bank shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

Notwithstanding the foregoing, all moneys deposited in any Sinking Fund, including any reserve account therein, may be invested by the Commission in the West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the Code of West Virginia.

Section 5.02. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Series 2020 Notes in such manner and to such extent as may be necessary, so that such Series 2020 Notes will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations prescribed thereunder, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Series 2020 Notes) so that the interest on the Series 2020 Notes will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 5.03. Tax Certificate and Rebate. The Issuer shall deliver a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 2020 Notes. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 2020 Notes as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Ordinance.

The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. Upon completion of each such annual calculation, the Issuer shall deposit, or cause to be deposited, in the Rebate Fund such sums as are necessary to cause the aggregate amount on deposit in the Rebate Fund to equal the sum determined to be subject to rebate to the United States, which, notwithstanding anything herein to the contrary, shall be paid from investment earnings on the underlying fund or account established hereunder and on which such rebatable arbitrage was earned or from other lawfully available sources. Notwithstanding anything herein to the contrary, the Rebate Fund shall be held free and clear of any lien or pledge hereunder and used only for payment of rebatable arbitrage to the United States. The Issuer shall pay, or cause to be paid, to the United States, from the Rebate Fund, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. In the event that there are any amounts remaining in the Rebate Fund following all such payments required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefore. The Issuer, at its expense, may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer may deem appropriate in order to assure compliance with this Section 5.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 5.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations. In the event the Issuer fails to make such rebates as

required, the Issuer shall pay any and all penalties and other amounts, from lawfully available sources, and obtain a waiver from the Internal Revenue Service, if necessary, in order to maintain the exclusion of interest on the Series 2020 Notes from gross income for federal income tax purposes.

## **ARTICLE VI** **ADDITIONAL COVENANTS OF THE ISSUER**

Section 6.01. Covenants Binding and Irrevocable. All the covenants, agreements and provisions of this Ordinance shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by the Holder of the Series 2020 Notes, as prescribed by Article VII. In addition to the other covenants, agreements and provisions of this Ordinance, the Issuer hereby covenants and agrees with the Holder of the Series 2020 Notes as hereinafter provided in this Article VI. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2020 Notes or the interest thereon, are outstanding and unpaid.

Section 6.02. Series 2020 Notes Not to be Indebtedness of the Issuer. The Series 2020 Notes shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness. The Series 2020 Notes shall be payable solely from and secured by the proceeds of bonds proposed to be issued in the future to permanently finance the Project and a first lien on Surplus Revenues.

Section 6.03. Series 2020 Notes Secured by Pledge of Future Revenue Bonds for Project and Surplus Revenues; Lien Position with Respect to Prior Bonds. The Series 2020 Notes shall be junior and subordinate to the Prior Bonds with respect to liens, pledge and source of and security for payment in all respects. The Series 2020 Notes and the interest thereon shall be payable from and secured by the proceeds of Combined Waterworks and Sewerage System Revenue Bonds issued in the future to permanently finance the Project and a first lien on Surplus Revenues, on a parity with the first lien on Surplus Revenues of the Series 2018 Notes.

Section 6.04. Rates. Prior to the issuance of the Series 2020 Notes, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Issuer, which copy will be open to inspection by all interested parties. Such rates and charges shall be sufficient to comply with the requirements of the Prior Ordinances.

Section 6.05. Operation and Maintenance. The Issuer will maintain the System in good condition and will operate the same as a revenue-producing enterprise in an efficient and economical manner, making such expenditures for equipment and for renewal, repair and replacement as may be proper for the economical operation and maintenance thereof from the Gross Revenues of said System in the manner provided in this Ordinance. The Issuer will obtain all permits required by state and federal laws for the operation of the System.

Section 6.06. Sale of the System. So long as the Prior Bonds and the Series 2018 Notes are outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System except as provided in the Prior Ordinances. So long as the Series 2020 Notes are outstanding, the Issuer shall not sell or dispose of all, or substantially all, of the System without either defeasing, or paying in full, the Series 2020 Notes.

Section 6.07. Issuance of Other Obligations Payable out of Revenues and General Covenant Against Encumbrances. The Series 2020 Notes shall be payable from and secured by the proceeds of revenue bonds or other obligations issued subsequent to the Series 2020 Notes to permanently finance the Project and a first lien on Surplus Revenues on a parity with the first lien on such revenues of the Series 2018 Notes. The Issuer shall not issue any obligations secured by Gross Revenues, Net Revenues or Surplus Revenues without the prior written consent of the Registered Owners of the Series 2020 Notes.

Section 6.08. [RESERVED]

Section 6.09. Insurance and Bonds. The Issuer hereby covenants and agrees, that so long as the Series 2020 Notes remain outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance and bonds and workers' compensation coverage with a reputable insurance carrier or carriers or bonding company or companies covering the following risks and in the following amounts:

A. FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the original cost thereof. In the time of war the Issuer will also carry and maintain insurance to the extent available against risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged and destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund.

B. PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

C. WORKERS' COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

D. FLOOD INSURANCE, to extent available at reasonable cost to the Issuer.

E. BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

F. FIDELITY BONDS will be provided to the extent required by State law.

Section 6.10. Mandatory Connections. The mandatory use of the sanitary sewerage portion of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer, and in order to assure the rendering harmless of sewage and waterborne waste matter produced or arising within

the territory served by the sanitary sewerage portion of the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the sanitary sewerage portion of the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the sanitary sewerage portion of the System.

Any such house, dwelling or building from which emanates sewage or waterborne waste matter and which is not so connected to the sanitary sewerage portion of the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the residents of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 6.11. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System and, in the event the Issuer or any department, agency, instrumentality, officer or employee thereof shall avail himself of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 6.12. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia. The Issuer further covenants and agrees that it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services and facilities of the System to all delinquent users of services and facilities of the System and will not restore such services of the System until all billing for charges for the services and facilities of the System, including penalties and reconnect fees, have been fully paid, or a payment agreement in compliance with the West Virginia Public Service Commission regulations has been entered.

Section 6.13. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of any franchise or permit to any person, firm, corporation or body, or agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 6.14. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Note or Notes shall have the right at all reasonable times to inspect the System, and all parts thereof, and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles, to the extent allowable under and in accordance with the rules and regulations of the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner, on the forms, in the books

and along with other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as it shall direct.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by an Independent Certified Public Accountant.

Section 6.15. Operating Budget. The Issuer shall annually, at least 30 days preceding the beginning of each Fiscal Year, or at such earlier date required by State law, prepare and adopt by resolution a detailed budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year. The Issuer shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of Notes or anyone acting for and in behalf of such Holder who requests the same.

Section 6.16. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2020 Notes are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on such Series 2020 Notes during the term thereof is, under the terms of such Series 2020 Notes or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2020 Notes are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2020 Notes during the terms thereof is, under the terms of such Series 2020 Notes or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2020 Notes used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the System, or if the Series 2020 Notes are for the purpose of financing more than one project, a portion of the System, and shall not exceed the proceeds used for the governmental use of that portion of the System to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 2020 Notes or \$5,000,000 are used, directly or indirectly, to make or finance a loan to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2020 Notes to be directly or indirectly "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2020 Notes and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take all actions that may be required of it so that the interest on the Series 2020 Notes will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 6.17. Request for Proposals. The distribution of the Request for Proposals with respect to the Series 2020 Notes shall be and the same is hereby approved. The form of the Request for Proposals shall be in such form as may be approved by the Supplemental Resolution, with such changes, insertions and deletions as the Mayor may approve.

## **ARTICLE VII** **DEFAULTS AND REMEDIES**

Section 7.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2020 Notes:

(1) If default by the Issuer occurs in the due and punctual payment of the principal or interest on any Note;

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part in this Ordinance or any Supplemental Resolution or in the Series 2020 Notes contained, and such default shall have continued for a period of 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer by any Registered Owner of any Note;

(3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(4) If default occurs under the Prior Bonds, the Series 2018 Notes, or the Prior Ordinances.

Section 7.02. Enforcement. Upon the happening and continuance of any Event of Default, any Registered Owner of any Note may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights; provided, that all rights and remedies of the Registered Owner of the Series 2020 Notes shall, with respect to the parity pledge of Surplus Revenues, be on a parity with those of the Registered Owner of the Series 2018 Notes and junior and subordinate to those of the Registered Owner of the Prior Bonds, and, in particular:

(A) Bring suit for any unpaid principal or interest then due;

(B) By mandamus or other appropriate proceeding enforce all rights of the Registered Owner, including the right to require the Issuer to perform its duties under the Act and this Ordinance;

(C) Bring suit upon the Series 2020 Notes;

(D) By action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owner of the Series 2020 Notes; and



(E) By action or bill in equity enjoin any acts in violation of this Ordinance or the rights of the Registered Owner of the Series 2020 Notes; provided, that all rights and remedies of the Registered Owner of the Series 2020 Notes shall be on a parity, with respect to the parity first lien on Surplus Revenues, with the Series 2018 Notes, and junior and subordinate to those of the Registered Owner of the Prior Bonds.

No remedy by the terms of this Ordinance conferred upon or reserved to the Registered Owner is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Registered Owner hereunder or now or hereafter existing at law or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder by the Registered Owner shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

Section 7.03. Appointment of Receiver. If there be any Event of Default existing and continuing, any Registered Owner shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of the principal of and interest on the Series 2020 Notes, the deposits into the funds and accounts hereby established as herein provided and the payment of Operating Expenses of the System and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Ordinance and the Act.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate, maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Series 2020 Notes issued pursuant to this Ordinance and interest thereon and under any covenants of this Ordinance for reserve, sinking or other funds and accounts and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Ordinance shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and the Registered Owner of the Series 2020 Notes issued pursuant to this Ordinance. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and the Registered Owner of the Series 2020 Notes, and the curing and making good of any default under the provisions of this Ordinance, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage or otherwise dispose of any assets of the System.

Section 7.04. Restoration of Issuer and Registered Owner. In case any Registered Owner shall have proceeded to enforce any right under this Ordinance by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and such Registered Owner shall be restored to their former positions and rights hereunder, and all rights and remedies of such Registered Owner shall continue as if no such proceedings had been taken.

## **ARTICLE VIII** **REGISTRAR, PAYING AGENT AND DEPOSITORY BANK**

Section 8.01. Appointment of Registrar, Paying Agent and Depository Bank. The Registrar, Paying Agent and Depository Bank for the Series 2020 Notes shall be appointed pursuant to the Supplemental Resolution.

Section 8.02. Responsibilities of Registrar, Paying Agent and Depository Bank. The recitals of fact in the Series 2020 Notes shall be taken as statements of the Issuer, and the Registrar, Paying Agent and Depository Bank shall not be responsible for their accuracy. The Registrar, Paying Agent and Depository Bank shall not be deemed to make any representation as to, and shall not incur any liability on account of, the validity of the execution of the Series 2020 Notes by the Issuer. Notwithstanding the foregoing, the Registrar shall be responsible for any representation in its Certificate of Authentication on the Series 2020 Notes. The Registrar, Paying Agent and Depository Bank and any successor thereto shall agree to perform all the duties and responsibilities spelled out in this Ordinance and any other duties and responsibilities incident thereto, all as provided by said agreement described in Section 8.01.

Section 8.03. Evidence on Which Registrar, Paying Agent and Depository Bank May Act. Except as otherwise provided by Section 10.02, the Registrar, Paying Agent and Depository Bank shall be protected in acting upon any notice, resolution, request, consent, order, certificate, opinion or other document believed by them to be genuine and to have been signed or presented by the proper party or parties. Whenever the Registrar, Paying Agent or Depository Bank shall deem it necessary or desirable that a fact or matter be proved or established prior to taking or suffering any action, such fact or matter, unless other evidence is specifically prescribed, may be deemed to be conclusively proved and established by a certificate of an Authorized Officer of the Issuer, but in its discretion such Registrar, Paying Agent or Depository Bank may instead accept other evidence of such fact or matter.

Section 8.04. Compensation and Expenses. The Issuer shall pay to the Registrar, Paying Agent and Depository Bank from time to time reasonable compensation for all services, including the

transfer of registration of Series 2020 Notes and the first exchange of the Series 2020 Notes incurred in the performance of their duties hereunder.

Section 8.05. Resignation of Registrar. The Registrar may at any time resign and be discharged of its duties and obligations under this Ordinance by giving not less than 60 days' written notice to the Issuer. Such resignation shall take effect upon the day specified in such notice unless a successor shall have been previously appointed by the Issuer or Noteholders, in which event such resignation shall take effect immediately.

Section 8.06. Removal. The Registrar may be removed at any time by the Issuer or by the Registered Owner of the Series 2020 Notes by an instrument in writing signed and duly acknowledged by the Issuer or by such Registered Owner or their attorneys duly authorized in writing and delivered to the Issuer, as the case may be. Copies of each such instrument shall be delivered by the Issuer to the Registrar.

Section 8.07. Appointment of Successor. In case at any time the Registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Registrar or of its property shall be appointed, or if any public officer or court shall take charge or control of the Registrar or of its property or affairs, a successor may be appointed by the Registered Owner of the Series 2020 Notes by an instrument or concurrent instruments in writing signed by such Registered Owner or its attorney duly authorized in writing and delivered to the Issuer and such successor Registrar, notification thereof being given to the predecessor Registrar. Pending such appointment, the Issuer shall forthwith appoint a Registrar to fill such vacancy until a successor Registrar shall be appointed by such Registered Owner. Any successor Registrar appointed by the Issuer shall, immediately and without further act, be superseded by a Registrar appointed by such Registered Owner. If in a proper case no appointment of a successor Registrar shall be made within 45 days after the Registrar shall have given to the Issuer written notice of resignation or after the occurrence of any other event requiring such appointment, the Registrar or any Registered Owner may apply to any court of competent jurisdiction to appoint a successor. Any Registrar appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance.

In case at any time the Paying Agent shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Paying Agent or of its property shall be appointed, or if any public officer or court shall take charge or control of the Paying Agent or of its property or affairs, a successor may be appointed by the Registered Owner of the Series 2020 Notes by an instrument or concurrent instruments in writing signed by such Registered Owner or its attorney duly authorized in writing and delivered to the Issuer and such successor Paying Agent, notification thereof being given to the predecessor Paying Agent. Pending such appointment, the Issuer shall forthwith appoint a Paying Agent to fill such vacancy until a successor Paying Agent shall be appointed by such Registered Owner. Any successor Paying Agent appointed by the Issuer shall, immediately and without further act, be superseded by a Paying Agent appointed by such Registered Owner. If in a proper case no appointment of a successor Paying Agent shall be made within 45 days after the Paying Agent shall have given to the Issuer written notice of resignation or after the occurrence of any other event requiring such appointment, the Paying Agent or any Registered Owner may apply to any court of competent jurisdiction to appoint a successor. Any Paying Agent appointed under the provisions of this section shall be a bank, trust company or national banking association authorized to perform the duties imposed upon it by this Ordinance.

Section 8.08. Transfer of Rights and Property to Successor. Any predecessor Registrar or Paying Agent shall pay over, assign and deliver any moneys, books and records held by it and relating to the Series 2020 Notes to its successor.

Section 8.09. Merger or Consolidation. Any company into which the Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Registrar or any public officer or court may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Registrar without the execution or filing of any paper or the performance of any further act; provided, however, that such company shall be a bank, trust company or national banking association meeting the requirements set forth in Section 8.07.

Section 8.10. Adoption of Authentication. In case of the Series 2020 Notes shall have been authenticated but not delivered, any successor Registrar may adopt a Certificate of Authentication and Registration executed by any predecessor Registrar and deliver the Series 2020 Notes so authenticated, and, in case the Series 2020 Notes shall have been prepared but not authenticated, any successor Registrar may authenticate such Series 2020 Notes in the name of the predecessor Registrar or in its own name.

## **ARTICLE IX** **DEFEASANCE; DISCHARGE OF PLEDGE OF ORDINANCE**

Section 9.01. Defeasance; Discharge of Pledge of Ordinance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Registered Owner of the Series 2020 Notes the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Ordinance, then this Ordinance and the pledges of the moneys and securities pledged hereunder, and all covenants, agreements and other obligations of the Issuer on behalf of the Registered Owner of the Series 2020 Notes made hereunder, shall thereupon cease, terminate and become void and be discharged and satisfied.

## **ARTICLE X** **MISCELLANEOUS**

Section 10.01. Amendment of Ordinance. This Ordinance and any Supplemental Resolution may be amended or modified without the consent of Registered Owner or any other person, solely for the purpose of maintaining the tax-exempt status of the Series 2020 Notes. Otherwise, no materially adverse amendment or modification to this Ordinance, or of any Supplemental Resolution, may be made without the written consent of the Registered Owner, or its authorized representative, of the Series 2020 Notes, before any such modification or amendment may be made. No such modification or amendment shall extend the maturity of or reduce the interest rate on, or otherwise alter the terms of payment of the principal of or interest on, the Series 2020 Notes without the express written consent of the Registered Owner of the Series 2020 Notes.

Section 10.02. Evidence of Signatures of Registered Owner and Ownership of Series 2020 Notes. Any request, consent, revocation of consent or other instrument which this Ordinance may require or permit to be signed and executed by the Registered Owner of the Series 2020 Notes shall be signed or executed by such Registered Owner in person, by his attorney duly authorized in writing or his authorized representative. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney or authorized representative, shall be sufficient for any purpose of this Ordinance if made

in the following manner, or in any other manner satisfactory to the Issuer or the Registrar, as the case may be, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

A. The fact and date of the execution by the Registered Owner, his attorney or authorized representative of any such instrument may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgments of deeds to be recorded in the jurisdiction in which he purports to act that the person signing such instrument acknowledged to him the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, a trust company or a financial firm or corporation satisfactory to the Issuer or the Registrar, as the case may be, that the person signing such instrument acknowledged to such bank, trust company, firm or corporation the execution thereof.

B. The authority of a person or persons to execute any such instrument on behalf of the Registered Owner may be established without further proof if such instrument is signed by a person purporting to be the president or treasurer or a vice-president or an assistant treasurer of such corporation with a corporate seal affixed, and is attested by a person purporting to be its Secretary or assistant Secretary.

Any request, consent or other instrument executed by the Registered Owner of the Series 2020 Notes shall bind any future Registered Owner of the Series 2020 Notes in respect of anything done or suffered to be done hereunder by the Issuer or the Registrar in accordance therewith.

Section 10.03. Preservation and Inspection of Documents. To the extent allowable under law, all reports, certificates, statements and other documents received by the Registrar under the provisions of this Ordinance shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer or any Registered Owner, and their agents and their representatives, but any such reports, certificates, statements or other documents may, at the election of the Registrar, be destroyed or otherwise disposed of at any time after such date as the pledge created by this Ordinance shall be discharged as provided in Section 9.01.

Section 10.04. Cancellation of Series 2020 Notes. If the Series 2020 Notes are purchased or paid in full it shall, if surrendered to the Issuer, be canceled and delivered to the Registrar, or, if surrendered to the Registrar, be canceled by it. The Series 2020 Notes shall not be deemed outstanding under this Ordinance, nor shall a Series 2020 Note shall be issued in lieu thereof. The Series 2020 Notes shall be canceled and upon order of the Issuer shall be destroyed, and a certificate evidencing such destruction shall be delivered to the Issuer.

Section 10.05. Failure to Present Series 2020 Notes. Anything in this Ordinance to the contrary notwithstanding, any moneys held by the Commission or a Paying Agent in trust for the payment and discharge of the Series 2020 Notes which remains unclaimed for 1 year after the date on which the Series 2020 Notes have become due and payable, whether by maturity or upon call for redemption, shall at the written request of the Issuer be paid by the Commission or said Paying Agent to the Issuer as its absolute property and free from trust, and the Commission or said Paying Agent shall thereupon be released and discharged with respect thereto, and the Registered Owner of the Series 2020 Notes shall look only to the Issuer for the payment of such Series 2020 Notes; provided, however, that, before making any such payment to the Issuer, the Registrar, if so advised by the Commission, or said Paying Agent shall send to the Registered Owner, at the address listed on the Note Register, by certified mail, a notice that such moneys

remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of such notice is mailed, the balance of such moneys then unclaimed will be returned to the Issuer.

Section 10.06. Notices, Demands and Requests. Unless otherwise expressly provided, all notices, demands and requests to be given or made hereunder to or by the Issuer, the Paying Agent, the Registrar, the Depository Bank, or the Lender shall be in writing and shall be properly made if sent by United States mail, postage prepaid, and addressed as follows or if hand-delivered to the individual to whom such notice, demand or request is required to be directed as indicated below:

ISSUER:

The City of Wheeling  
1500 Chapline Street  
Wheeling, West Virginia 26003  
Attention: City Manager

PAYING AGENT:

West Virginia Municipal Bond Commission  
900 Pennsylvania Avenue  
Suite 1117  
Charleston, West Virginia 25301  
Attention: Executive Director

REGISTRAR:

[Name and address to be set forth in the Supplemental Resolution]

DEPOSITORY BANK:

[Name and address to be set forth in the Supplemental Resolution]

LENDER:

[Name and address to be set forth in the Supplemental Resolution]

Any party listed above may change such address listed for it at any time upon written notice of change sent by United States mail, postage prepaid, to the other parties.

Section 10.07. No Personal Liability. No member of the Governing Body or officer or employee of the Issuer shall be individually or personally liable for the payment of the principal of or the interest on any Series 2020 Notes, but nothing herein contained shall relieve any such member, official or employee from the performance of any official duty provided by law or this Ordinance.

Section 10.08. Law Applicable. The laws of the State shall govern the construction of this Ordinance and of all Series 2020 Notes issued hereunder.

Section 10.09. Parties Interested Herein. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or give to, any person or corporation, other than the Issuer, the Registrar, the Paying Agent and the Registered Owner of the Series 2020 Notes any right, remedy or claim under or by reason of this Ordinance. All the covenants, stipulations, promises and agreements contained in this Ordinance by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Registrar, the Paying Agent, and the Registered Owner of the Series 2020 Notes.

Section 10.10. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Ordinance.

Section 10.11. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 10.12. Conflicting Provisions Repealed. All orders, resolutions or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided however, that the Prior Ordinances shall remain in full force and effect so long as any of the Prior Bonds are outstanding.

Section 10.13. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, City Clerk and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 10.14. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in *The Intelligencer*, a newspaper published and of general circulation in The City of Wheeling, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2020 Notes, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Section 10.15. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Passed on First Reading: October 20, 2020

Passed on Second Reading: November 3, 2020

Passed on Final Reading  
Following Public  
Hearing: November 17, 2020

THE CITY OF WHEELING

---

Mayor



CERTIFICATION

Certified a true, correct and complete copy of an Ordinance duly enacted by THE CITY OF WHEELING on November 17, 2020.

[SEAL]

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

DRAFT

EXHIBIT A

FORM OF SERIES 2020 NOTES

No. R-1

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

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF WHEELING (WEST VIRGINIA)  
COMBINED WATERWORKS AND SEWERAGE SYSTEM BOND ANTICIPATION NOTES,  
SERIES 2020

INTEREST RATE

MATURITY DATE

NOTE DATE

\_\_\_\_\_, 20\_\_\_\_, 2020

REGISTERED OWNER:

\_\_\_\_\_

PRINCIPAL AMOUNT:

\_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That THE CITY OF WHEELING, a municipality organized and existing under the laws of the State of West Virginia (the "Issuer"), for value received, hereby promises to pay, but only from the special funds provided therefore, as hereinafter set forth, to \_\_\_\_\_ (the "Registered Owner"), on \_\_\_\_\_, 20\_\_\_\_, or upon issuance of revenue bonds or other obligations of the Issuer issued subsequent to the issuance of the Series 2020 Notes for the purpose of permanently financing the Project, whichever shall occur earlier. The interest on this Note on the principal amount advanced shall be at the rate of \_\_\_\_% per annum, payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 20\_\_\_\_ to and including \_\_\_\_\_, 20\_\_\_\_. The entire outstanding principal balance of this Note and all interest accrued hereon shall be payable in full on \_\_\_\_\_ 1, 20\_\_\_\_, or upon the issuance of revenue bonds or other obligations of the Issuer issued subsequent to the issuance of the Series 2020 Notes for the purpose of permanently financing the Project, whichever shall occur earlier.

Interest accruing on this Note and the principal thereof shall be payable by check or draft mailed by West Virginia Municipal Bond Commission, Charleston, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner or, at the option of the Registered Owner, by wire transfer in immediately available funds to a domestic bank account specified in writing by the Registered Owner, or by other mutually agreeable method. The Series 2020 Notes shall be payable as to principal and interest in any coin or currency which on the date of payment of principal and/or interest is legal tender for the payment of public and private debts under the laws of the United States of America. The Registered Owner of this Note shall not be required to surrender the Series 2020 Notes in order to receive payments of principal and interest during the term of the Series 2020 Notes, including without limitation, upon maturity.

The proceeds of this “Combined Waterworks and Sewerage System Bond Anticipation Notes, Series 2020 (the “Series 2020 Notes”) are to be used (i) to temporarily pay the costs of design, acquisition and construction of the Project as defined in the Ordinance, [(ii) to pay capitalized interest;] and (iii) to pay certain costs of issuance of the Series 2020 Notes and related costs.

This Note is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 of the Code of West Virginia, 1931, as amended (the "Act"), and an Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2020, and supplemented by a Supplemental Parameters Resolution adopted by the Issuer on \_\_\_\_\_, 2020 (hereinafter collectively referred to as the "Ordinance"), and is subject to all the terms and conditions of said Ordinance.

THIS NOTE IS ISSUED JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL REPECTS TO THE ISSUER’S:

(I) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2005 A (WEST VIRGINIA SRF PROGRAM), DATED MAY 3, 2005, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$14,500,000 (THE “SERIES 2005 A BONDS”);

(II) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2010 B (WEST VIRGINIA SRF PROGRAM), DATED DECEMBER 14, 2010, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$8,356,000 (THE “SERIES 2010 B BONDS”);

(III) COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS, SERIES 2013 (TAX-EXEMPT), DATED MAY 30, 2013, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$38,255,000 (THE “SERIES 2013 BONDS”);

(IV) COMBINED WATERWORKS AND SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 2015 A (BANK QUALIFIED), DATED SEPTEMBER 2, 2015, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$8,030,000 (THE “SERIES 2015 A BONDS”); AND

(V) COMBINED WATERWORKS AND SEWERAGE SYSTEM REFUNDING REVENUE BONDS, SERIES 2015 B (TAXABLE), DATED SEPTEMBER 2, 2015, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$2,425,000 (THE “SERIES 2015 B BONDS”) (COLLECTIVELY, THE “PRIOR BONDS”).

THE PRINCIPAL OF AND INTEREST ON THIS NOTE ARE PAYABLE SOLEY FROM AND SECURED BY (1) A FIRST LIEN ON THE PROCEEDS OF ANY COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS OR OTHER OBLIGATIONS OF THE ISSUER ISSUED SUBSEQUENT TO THIS NOTE FOR THE PURPOSE OF PERMANENTLY FINANCING THE PROJECT; AND (2) A FIRST LIEN ON THE SURPLUS REVENUES, IF ANY, AS DEFINED IN THE ORDINANCE ON A PARITY WITH THE FIRST LIEN ON SUCH SURPLUS REVENUES OF THE ISSUER’S COMBINED WATERWORKS AND SEWERAGE SYSTEM BOND

ANTICIPATION NOTES, DATED DECEMBER 20, 2018, AND ISSUED IN THE AGGREGATE ORIGINAL PRINCIPAL AMOUNT OF \$10,000,000 (THE "SERIES 2018 NOTES"). THIS NOTE DOES NOT CONSTITUTE AN INDEBTEDNESS OF THE ISSUER WITHIN ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION, NOR SHALL THE ISSUER BE OBLIGATED TO PAY THE SAME OR THE INTEREST HEREON EXCEPT FROM THE SOURCES SET FORTH ABOVE.

This Note is, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Note have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Note, together with all other obligations of said Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

This Note shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the certificate of authentication and registration hereon shall have been signed by the Registrar.

All provisions of the Ordinance, and the statutes under which this Note is issued, shall be deemed to be a part of the contract evidenced by this Note to the same extent as if written fully herein.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, THE CITY OF WHEELING has caused this Note to be signed by its Mayor and, and its corporate seal to be imprinted hereon and attested by its City Clerk, and has caused the Series 2020 Notes to be dated as of the date specified above.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

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

DRAFT

CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION

This Note is the fully registered Note described in the within-mentioned Ordinance and has been duly registered in the name of the Registered Owner on the date set forth below. Attached hereto is the complete text of the opinion of Steptoe & Johnson PLLC, bond counsel, signed originals of which are on file with the Registrar, delivered and dated on the date of the original delivery of and payment for the Series 2020 Notes.

Dated: \_\_\_\_\_, 2020.

\_\_\_\_\_  
as Registrar

By \_\_\_\_\_  
Its Authorized Officer

DRAFT

(Form of)

ASSIGNMENT TO SUCCESSOR CORPORATION

Social Security or Other Identifying Number of Assignee \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned hereby assigns and transfers unto its corporate successor,

\_\_\_\_\_ the within Note and  
does hereby irrevocably constitute and appoint

\_\_\_\_\_ to transfer the said Note on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_, 20\_\_\_\_.

SIGNATURE GUARANTEED:

\_\_\_\_\_  
(Bank, Trust Company or Firm)

\_\_\_\_\_  
(Authorized Officer)

NOTICE: The Assignor's signature to this Assignment to Corporate Successor must correspond with the name as it appears upon the face of the within Note in every particular, without alteration or any change whatever.