

AMENDED AND RESTATED WATER SYSTEM REVENUE BOND RESOLUTION

RESOLUTION AMENDING AND RESTATING  
RESOLUTION NOS. 3252, 3271 AND 3517  
RELATED TO THE CITY'S WATER SYSTEM REVENUE BONDS

CITY OF RED LODGE, MONTANA

Adopted: October 8, 2019

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RESOLUTION NO. 3531

RESOLUTION AMENDING AND RESTATING RESOLUTION  
NOS. 3252, 3271 AND 3517 RELATED TO THE CITY'S  
WATER SYSTEM REVENUE BONDS

WHEREAS, the City of Red Lodge, Montana (the "City"), pursuant to authority conferred by Montana Code Annotated, Title 7, Chapter 13, Parts 42 and 43 and Title 7, Chapter 7, Part 44, as amended, has established and presently owns and operates a municipal water system; and

WHEREAS, under the provisions of Montana Code Annotated, Title 7, Chapter 7, Parts 44 and 45, as amended (the "Act"), the City is authorized to issue and sell its revenue bonds payable during a term not exceeding forty years from their date of issue, to provide funds for the reconstruction, improvement, betterment and extension of a municipal water system and to issue refunding bonds to refund bonds issued for such purposes, provided that the bonds and the interest thereon are to be payable solely out of the income and revenues to be derived from rates, fees and charges for the services, facilities and commodities furnished by such water system, and are not to create any obligation for the payment of which taxes may be levied, except to pay for services provided by the water system to the City; and

WHEREAS, under the provisions of Montana Code Annotated, Chapter 6, Part 15, as amended (the "Resort Tax Act") and pursuant to the approval of the electorate of the City at an election held on November 4, 1997, the City is authorized to impose a resort tax on the retail value of certain goods and services sold within the City and, in accordance with Section 7-74424 of the Act, to pledge Resort Tax Revenues (as defined herein) to finance public facilities, improvements or undertakings; and

WHEREAS, the City has duly adopted the Resort Tax Ordinances (as defined herein), pursuant to which it has determined to use Pledged Resort Tax Revenues (as defined herein) to pay annual debt service on water system revenue bonds issued to finance capital improvements to the City's municipal water system; and

WHEREAS, pursuant to such authority and Resolution No. 3252, adopted by the City Council of the City on May 13, 2008, as amended and supplemented by Resolution Nos. 3271 and 3517, adopted November 25, 2008 and May 14, 2019, respectively (as so amended and supplemented, the "Prior Resolution"), the City has issued from time to time its Water System Revenue Bonds and Subordinate Obligations, of which its Series 1998 Bond, Series 2008 Bond, Series 2009 Bond, Series 2019A Bond and Series 2019B Bond (each, as hereinafter defined) are currently outstanding; and

WHEREAS, the City has determined to refund its Series 1998 Bond, Series 2008 Bond and Series 2009 Bond, all of which were issued to and are held by the USDA (as hereinafter defined); and

WHEREAS, following such refunding, the Series 2019A Bond and the Series 2019B Bond, which were issued to and are held by the DNRC (as hereinafter defined) will be the only indebtedness issued under the Prior Resolution that will remain outstanding; and

WHEREAS, the City desires to amend the Prior Resolution to clarify and simplify various provisions therein, and the City has determined that it is desirable for the City to amend and restate the Prior Resolution in its entirety; and

WHEREAS, the City reserved the right to amend the Prior Resolution with the written consent of the DNRC, and the DNRC has consented in writing to the amendment and restatement of the Prior Resolution as set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RED LODGE, MONTANA THAT THIS RESOLUTION SHALL AMEND, RESTATE AND SUPERSEDE THE PRIOR RESOLUTION IN ITS ENTIRETY AS FOLLOWS:

## ARTICLE I

### DEFINITIONS, RULES OF CONSTRUCTION AND APPENDICES

Section 1.1. Definitions. In this Resolution, unless a different meaning clearly appears from the context:

“Accountant” or “Accountants” means an independent certified public accountant or a firm of independent certified public accountants selected by the City and, so long as the Series 2019 Bonds are Outstanding, reasonably satisfactory to the DNRC.

“Acquisition and Construction Account” means the account within the Water System Fund established pursuant to Sections 8.1 and 8.2.

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

“Additional Bonds” means any Bonds issued pursuant to Article VII of this Resolution, excluding Subordinate Obligations.

“Administrative Expense Surcharge” means, (i) in respect of the 2019B Loan, in any event, and (ii) in respect of the 2019A Loan, upon the delivery of a Noncompliance Statement, a surcharge equal to twenty-five hundredths of one percent (0.25%) per annum on the outstanding principal amount of the 2019 Loans from the date of each advance thereof, payable by the City on a Payment Date.

“Bond Counsel” shall mean any firm of nationally recognized bond counsel experienced in matters relating to tax-exempt financing, selected by the City; provided that so long as the Series 2019 Bonds are Outstanding, such Bond Counsel shall be reasonably acceptable to the DNRC.

“Bond Register” means, with respect to the Series 2019 Bonds, the registration books maintained by the Registrar pursuant to Section 3.3 or, with respect to a series of Additional

Bonds, the registration books to be maintained by the Registrar pursuant to the Supplemental Resolution authorizing the issuance of such Additional Bonds.

“Bonds” means the Series 2019B Bond, any Additional Bonds and any Notes issued in anticipation of the issuance of Bonds. The Series 2019A Bond is a Subordinate Obligation and is not a “Bond.”

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

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

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

“Collateral Documents” means, with respect to the Series 2019 Bonds, any security agreement, guaranty or other document or agreement delivered to the DNRC securing the obligations of the City under this Resolution and the Series 2019 Bonds. If no Collateral Documents secure such obligations, any reference to Collateral Documents in this Resolution shall be without effect.

“Committed Amount” means, collectively, the 2019A Committed Amount and the 2019B Committed Amount.

“Compliance Certificate and Request” means the certificate and request substantially in the form of the attached Appendix B to be delivered by the DNRC to the City following the final advance of principal of the 2019A Loan, and to be completed, executed and delivered by the City to the DNRC pursuant to Section 5.1.2 of this Resolution.

“Council” means the City Council of the City.

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

“Determination Statement” means a Forgiveness Statement or a Noncompliance Statement.

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

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

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

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

“Fiscal Year” shall mean the period commencing on the first day of July of any year and ending on the last day of June of the next calendar year, or any other twelve-month period authorized by law and specified by this Council as the City’s Fiscal Year.

“Forgiveness Statement” means a written statement delivered to the City by the DNRC in response to a Compliance Certificate and Request that the City’s obligation to repay the principal of the Series 2019A Bond is forgiven.

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

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

“Gross Revenues” means all revenues and receipts from rates, fees, charges and rentals imposed for connections with and for the availability, benefit and use of the System and from any sales of property which is a part of the System and all income received from the investment of such revenues and receipts, including interest earnings on the Operating Account, the Reserve Account, the Replacement and Depreciation Account and the Surplus Account, but excluding any special assessments or taxes levied for construction of any part of the System and the proceeds of any grant or loan from the State or the United States, and any investment income thereon, to the extent such exclusion is a condition to such grant or loan.

“Holder” means the Person in whose name a Bond is registered in the Bond Register.

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

“Loan Loss Reserve Surcharge” means, (i) in respect of the 2019B Loan, in any event, and (ii) in respect of the 2019A Loan, upon the delivery of a Noncompliance Statement, a surcharge equal to twenty-five hundredths of one percent (0.25%) per annum on the outstanding principal amount of the 2019 Loans, from the date of each advance thereof, payable by the City on a Payment Date.

“Net Revenues” means (a) the Gross Revenues for a specified period less the Operating Expenses for the same period, and (b) the Pledged Resort Tax Revenues deposited to the Revenue Bond Account in such specified period.

“Note Account” means the account within the Water System Fund established pursuant to Sections 8.1 and 8.8.

“Notes” means all Notes issued pursuant to Section 7.5.



“Operating Account” means the account within the Water System Fund established pursuant to Sections 8.1 and 8.3.

“Operating Expenses” means the current expenses, paid or accrued, of operation, maintenance and current repair of the System and its facilities, as calculated in accordance with sound accounting practices, and shall include, without limitation, administrative expenses of the City relating solely to the System, premiums for insurance on the properties thereof, labor and the cost of materials and supplies used for current operation and for maintenance, and charges for the accumulation of appropriate reserves for current expenses which are not recurrent monthly but may reasonably be expected to be incurred in accordance with sound accounting practices. Operating Expenses shall not include interest expense or depreciation, renewals or replacements of capital assets of the System and shall not include any portion of the salaries or wages paid to any officer or employee of the City, except such portion as shall represent reasonable compensation for the performance of duties necessary to the operation of the System.

“Operating Reserve” means the reserve to be maintained in the Operating Account as required by Section 8.3.

“Outstanding” means, with reference to Bonds, as of the date of determination, all Bonds theretofore issued and delivered under this Resolution except:

- (a) Bonds theretofore cancelled by the City or delivered to the City cancelled or for cancellation;
- (b) Bonds and portions of Bonds for whose payment or redemption money or Government Obligations (as provided in Section 12.04) shall have been theretofore deposited in trust for the Holders of such Bonds; provided, however, that if such Bonds are to be redeemed, notice of such redemption shall have been duly given pursuant to this Resolution or irrevocable instructions to call such Bonds for redemption at a stated Redemption Date shall have been given by the City; and
- (c) Bonds in exchange for or in lieu of which other Bonds shall have been issued and delivered pursuant to this Resolution;

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

“Person” means any Private Person or Public Entity.

“Pledged Resort Tax Revenues” means, from the Resort Tax Revenues, an amount equal to the lesser of (1) \$100,000, or (2) the maximum amount that may be appropriated in a Fiscal Year for the System under the Resort Tax Ordinances of the City governing the application of Resort Tax Revenues and the Resort Tax Act.

“Prior Resolution” means Resolution No. 3252, adopted by the City Council of the City on May 13, 2008, as amended and supplemented by Resolution Nos. 3271 and 3517, adopted by the City Council of the City on November 25, 2008 and May 14, 2019, respectively.

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

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

“Project” means the designing, engineering, acquiring, constructing, installing, improving, or enlarging the System, or any part thereof, including the 2019 Project.

“Public Entity” means a State agency, municipality, city, county, school district, political or administrative subdivision of State government, irrigation district, county water and sewer district or other public body established by State law.

“Rebate Account” means the account within in the Water System Fund established pursuant to Sections 8.1 and 8.10.

“Redemption Date” means, with respect to any Bond, Note or Subordinate Obligation to be redeemed, the date on which it is to be redeemed pursuant hereto.

“Registrar” means, with respect to the Series 2019A Bond and the Series 2019B Bond, the Registrar appointed pursuant to Section 3.3 or, with respect to a series of Additional Bonds, the Registrar appointed pursuant to the Supplemental Resolution authorizing the issuance of such Additional Bonds.

“Regulations” shall mean the Treasury Regulations promulgated under the Code.

“Replacement and Depreciation Account” means the account within the Water System Fund established pursuant to Sections 8.1 and 8.6.

“Reserve Account” means the account within the Water System Fund established pursuant to Sections 8.1 and 8.5.

“Reserve Requirement” means, as of the date of calculation, an amount equal to one-half the maximum amount of principal and interest payable on the Bonds in the current or any future Fiscal Year (giving effect to any Sinking Fund Payment Dates with respect to any series of Bonds).

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

“Resort Tax Act” means Montana Code Annotated, Title 7, Chapter 6, Part 15, as heretofore and hereafter amended or supplemented.

“Resort Tax Ordinances” means Ordinance Nos. 832 and 833, as amended by Ordinance Nos. 833 Amended, 833 Second Amended, 833 Third Amended, 833 Fourth Amended, 833 Fifth Amended, Ordinance No. 834, and Ordinance No. 901, all duly adopted by the City, as may further be amended or supplemented from time to time.

“Resort Tax Revenues” means the revenues derived from the resort tax levied by the City pursuant to the Resort Tax Act and the Resort Tax Ordinances.

“Revenue Bond Account” means the account within the Water System Fund established pursuant to Sections 8.1 and 8.4.

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

“Series 1998 Bond” means the City’s Amended and Restated Water System Revenue Bond, Series 1998, dated, as originally issued, as of June 18, 2008, issued pursuant to the Prior Resolution as then in effect and held by the USDA.

“Series 2008 Bond” means the City’s Water System Revenue Refunding Bond, Series 2008, dated, as originally issued, as of June 18, 2008, issued pursuant to the Prior Resolution as then in effect and held by the USDA.

“Series 2009 Bond” means the City’s Water System Revenue Bond, Series 2009, dated, as originally issued, as of January 16, 2009, issued pursuant to the Prior Resolution as then in effect and held by the USDA.

“Series 2019 Bonds” means, collectively, the Series 2019A Bond and the Series 2019B Bond.

“Series 2019A Bond” means the \$500,000 Subordinate Lien Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Taxable Series 2019A.

“Series 2019B Bond” means the \$1,123,000 Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2019B.

“Sinking Fund Payment Date” means a date set forth in any applicable provision of this Resolution or a Supplemental Resolution for the making of a mandatory principal payment for the redemption of a Term Bond.

“State” means the State of Montana.

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

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

“Stated Maturity” means, with respect to any Obligation, the date specified in such Obligation as the fixed date on which the principal of such Obligation is due and payable.

“Subordinate Obligations” means the Series 2019A Bond and any other bonds, notes or obligations of the City issued on a subordinate basis to the Bonds as to Net Revenues pursuant to Section 7.4.

“Subordinate Obligations Account” means the account within the Water System Fund established pursuant to Sections 8.1 and 8.9.

“Supplemental Resolution” means any resolution supplemental to or amendatory of this Resolution adopted in accordance with the requirements of Article X.

“Surplus Account” means the account within the Water System Fund established pursuant to Sections 8.1 and 8.7.

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

“System” means the existing municipal water system of the City and all extensions, improvements and betterments thereof hereafter constructed and acquired, including, without limitation, each Project.

“Term Bond” shall mean any Bond for the payment of the principal of which mandatory payments are required by this Resolution or a Supplemental Resolution to be made at times and in amounts sufficient to redeem all or a portion of such Bond prior to its Stated Maturity.

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

“2019A Committed Amount” means the amount of the 2019A Loan committed to be lent by the DNRC to the City pursuant to Section 4.1 of this Resolution, as such amount may be reduced as described in this Resolution.

“2019B Committed Amount” means the amount of the 2019B Loan committed to be lent by the DNRC to the City pursuant to Section 4.1 of this Resolution, as such amount may be reduced as described in this Resolution.

“2019 Loan” means, collectively, the 2019A Loan and the 2019B Loan.

“2019A Loan” means the loan made to the City by the DNRC pursuant to the Program in the maximum amount of the 2019A Committed Amount to provide funds to pay a portion of the costs of the 2019 Project.

“2019B Loan” means the loan made to the City by the DNRC pursuant to the Program in the maximum amount of the 2019B Committed Amount to provide funds to pay a portion of the costs of the 2019 Project and to fund deposits to the Reserve Account.

“2019 Project” means the facilities, improvements and activities financed with proceeds of the Series 2019 Bonds, as more particularly described in Appendix A hereto.

“USDA” means the United States of America acting through the Rural Utilities Service United States Department of Agriculture or any successor agency under Public Law 103-354.

“Water System Fund” means the Water System Fund established pursuant to Section 8.1.

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

- (a) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted government accounting standards.
- (b) Terms in the singular include the plural and vice versa.
- (c) All references to time shall refer to Helena, Montana time, unless otherwise provided herein.
- (d) All references to mail shall refer to first-class mail postage prepaid.
- (e) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.
- (f) “Or” is not exclusive, but is intended to permit or encompass one, more or all of the alternatives conjoined.

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

- (a) Appendix A: Description of the 2019 Project
- (b) Appendix B: Form of Determination Statement
- (c) Appendix C: Representations and Covenants to DNRC and DEQ

## ARTICLE II

### THE BONDS

Section 2.1. General Title. The general title of the Bonds of all series shall be “Water System Revenue Bonds.” Bonds of each series shall be titled so as to distinguish them from Bonds of all other series.

Section 2.2. General Limitations; Issuable in Series. The aggregate principal amount of Bonds that may be authenticated and delivered and Outstanding under this Resolution is not limited, except as provided in Article VII, in any Supplemental Resolution under which any series of Bonds is issued, or as may be limited by law.

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

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

If the Stated Maturity for the payment of any interest on or principal of any Bond or if any Redemption Date or Sinking Fund Payment Date shall be a day which is not a Business Day, then such payment may be made on the next succeeding Business Day, with the same force and effect as if made on such Stated Maturity, Redemption Date or Sinking Fund Payment Date (whether or not such next succeeding Business Day occurs in a succeeding month).

Except as otherwise provided or required by the context hereof, the provisions of this Resolution shall be equally applicable and binding upon any Notes issued hereunder.

Section 2.3. Terms of Particular Series. Each series of Bonds (except the Series 2019 Bonds, which were created under the Prior Resolution and which exist and are confirmed and ratified pursuant to and are governed by this Resolution) shall be created by a Supplemental Resolution. The Bonds of each series (except the Series 2019 Bonds, which were created under the Prior Resolution and which exist and are confirmed and ratified pursuant to and are governed by this Resolution) shall bear such date or dates, shall be payable at such place or places, shall have such Stated Maturities and Redemption Dates, shall bear interest at such rate or rates, from such date or dates, shall be payable in such installments and on such dates and at such place or places, and may be redeemable at such price or prices and upon such terms (in addition to the prices and terms herein specified for redemption of all Bonds) as shall be provided in the Supplemental Resolution creating that series, all upon such terms as the City may determine. The City may, at the time of the creation of any series of Bonds or at any time thereafter, make, and the Bonds of that series may contain provision for:

- (a) a sinking, amortization, improvement or other analogous fund;
- (b) limiting the aggregate principal amount of the Bonds of that series and of additional Bonds thereafter to be issued;
- (c) exchanging Bonds of that series, at the option of the Holders thereof, for other Bonds of the same series of the same aggregate principal amount of a different authorized kind or authorized denomination or denominations; or
- (d) registration, transfer and delivery.

Section 2.4. Form and Denominations of Particular Series. The form of the Bonds of each series (except the Series 2019 Bonds, which were created under the Prior Resolution and

which exist and are confirmed and ratified pursuant to this Resolution) shall be established by the provisions of the Supplemental Resolution creating such series. The Bonds of each series shall be distinguished from the Bonds of other series in such manner as the City may determine.

The Bonds of each series shall be in such denominations as shall be provided in the Supplemental Resolution creating such series (except the Series 2019 Bonds, which were created under the Prior Resolution and which exist and are confirmed and ratified pursuant to this Resolution). In the absence of any such provision with respect to the Bonds of any particular series, the Bonds of such series shall be in the denomination of \$5,000 or any integral multiple thereof of single maturities.

Section 2.5. Execution and Authentication. The Bonds shall be executed on behalf of the City by the manual or facsimile signature of the Mayor and attested by the signature of the City Clerk-Treasurer (or other officers of the City authorized by Supplemental Resolution). The signature of any official may be facsimile, if permitted by applicable law. Any Bond bearing the manual or facsimile signature of an individual who was at any time an appropriate officer of the City shall be valid and sufficient for all purposes, regardless whether such individual held such office as of the date of sale, issue or delivery of such Bond. No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Resolution unless and until a certificate of authentication on such Bond has been duly executed by the manual signature of an authorized representative of the Registrar. Certificates of authentication on each Bond need not be signed by the same representative. The executed certificate of authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Resolution and in accordance with the provisions hereof. The seal of the City need not be affixed to or imprinted on any Bond.

Section 2.6. Priority of Payments. All Bonds shall be secured, equally and ratably, by a first lien upon the Net Revenues of the System (the Gross Revenues being subject to the prior appropriation thereof to the Operating Account for the payment of Operating Expenses) and secured by the Reserve Account, without preference or priority of any one Bond over any other by reason of serial number, date of issue, series designation or otherwise; provided that if at any time the Net Revenues on hand in the Water System Fund are insufficient to pay principal and interest then due on all such Bonds, any and all Net Revenues then on hand shall be first used to pay the interest accrued on all Outstanding Bonds (*pro rata*, if necessary), and the balance shall be applied *pro rata* toward payment of the maturing principal of such Bonds.

### ARTICLE III

#### SERIES 2019 BONDS

Section 3.1. Issuance and Sale of the Series 2019 Bonds. The Series 2019 Bonds were issued pursuant to the Act and the Prior Resolution. The Series 2019 Bonds were issued and sold to the DNRC without public sale pursuant to Section 7-7-4433 of the Act. The Series 2019 Bonds and their terms are herein confirmed and ratified and the Series 2019 Bonds shall be governed pursuant to this Resolution.

Section 3.2. Terms. Each of the Series 2019 Bonds was issued as a single, fully registered bond, in the maximum principal amount, with the dated date and bearing interest at the rate set forth in the form of such obligation, which have been issued to and are currently held by the DNRC. The Series 2019 Bonds continue to be in full force and effect as authorized by the Prior Resolution and confirmed hereby. The principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the Series 2019B Bond and, if a Noncompliance Statement is delivered, on the Series 2019A Bond, are payable on the same dates and in the same amounts as the principal of and interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the corresponding 2019 Loan are payable, as shown on Schedule B to each of the Series 2019 Bonds. The City may prepay each of the Series 2019 Bonds, in whole or in part, only upon the terms and conditions under which it can prepay the corresponding 2019 Loan. The Series 2019A Bond is a Subordinate Lien Obligation payable, if at all, only from the Surplus Net Revenues available in the Subordinate Obligations Account in the Water System Fund. The Series 2019B Bond is a Bond.

Section 3.3. Negotiability, Transfer and Registration. The Series 2019 Bonds are fully registered as to both principal and interest, and are initially registered in the name of and payable to the DNRC. While so registered, principal of and interest on the Series 2019 Bonds shall be payable to the DNRC at the Office of the Department of Natural Resources and Conservation, 1539 Eleventh Avenue, Helena, Montana 59620-1601 or such other place as may be designated by the DNRC in writing and delivered to the City. The Series 2019 Bonds are negotiable, subject to the provisions for registration and transfer contained in this Section 3.3. No transfer of the Series 2019 Bonds shall be valid unless and until (1) the holder, or his duly authorized attorney or legal representative, has executed the form of assignment appearing on the Series 2019 Bonds, and (2) the City Clerk-Treasurer of the City (or successors, the "Registrar"), as Bond Registrar, has duly noted the transfer on the Series 2019 Bonds and recorded the transfer on the registration books of the Registrar. The Registrar may, prior to noting and recording the transfer, require appropriate proof of the transferor's authority and the genuineness of the transferor's signature. The City shall be entitled to deem and treat the Person in whose name the Series 2019 Bonds is registered as the absolute owner of the Series 2019 Bonds for all purposes, notwithstanding any notice to the contrary, and all payments to the registered holder shall be valid and effectual to satisfy and discharge the City's liability upon such Series 2019 Bond to the extent of the sum or sums so paid.

Section 3.4. Execution and Delivery. Each of the Series 2019 Bonds was executed on behalf of the City by the manual or facsimile signatures of the Mayor and the City Clerk-Treasurer and was delivered to the DNRC, or its attorney or legal representative.

## ARTICLE IV

### THE 2019 LOANS

Section 4.1. The 2019 Loans; Disbursement of 2019 Loans.

(a) The DNRC has agreed to lend to the City, from time to time as the requirements of this Section 4.1 are met, an amount up to (i) \$500,000 (the "2019A Committed Amount") for the purposes of financing, refinancing, or reimbursing the City for a portion of the costs of the



2019 Project, and (ii) \$1,123,000 (the “2019B Committed Amount”) for the purposes of financing, refinancing or reimbursing the City for a portion of the costs of the 2019 Project and funding a deposit to the Reserve Account; provided the DNRC shall not be required to loan any proceeds of the State Bonds to the City after October 31, 2019. If all or any portion of the 2019 Project is cancelled or cut back or its costs are reduced or for any other reason the City will not require the full Committed Amount, the City shall promptly notify the DNRC in writing of such fact and the amount of the undisbursed Committed Amount, and the Committed Amount may be reduced accordingly.

(b) The DNRC will disburse the 2019 Loans through the Trustee.

(c) In order to obtain a disbursement of a portion of the 2019 Loans to pay costs of the 2019 Project, the City shall submit to the DNRC and the Trustee a signed request for disbursement on the form prescribed by the DNRC, with all attachments required by such form. The City may obtain disbursements only for costs which have been legally incurred and are due and payable. All 2019 Loan disbursements will be made to the City only upon proof that cost was incurred.

(d) The 2019 Loans shall be disbursed such that the total amount of each advance will be split equally between the 2019A Loan and the 2019B Loan, until the entire amount of the 2019A Loan is advanced. After the 2019A Loan is advanced in full, all advances will be from only the 2019B Loan.

(e) The City shall not be entitled to, and the DNRC shall have no obligation to make, any advance of amounts under the 2019B Loan until such time as the City shall have set aside and funded the Reserve Account in an amount then required to satisfy the Reserve Requirement.

(f) Notwithstanding anything else provided herein, the Trustee shall not be obligated to disburse the 2019 Loans any faster or to any greater extent than it has available EPA Capitalization Grants, State Bond proceeds and other amounts available therefor in the Revolving Fund. The DNRC shall not be required to do “overmatching” pursuant to Section 5.04(b) of the Indenture, but may do so in its discretion. The City acknowledges that if 2019 Project costs are incurred faster than the City projected, there may be delays in making 2019 Loan disbursements for such costs because of the schedule under which EPA makes EPA Capitalization Grant money available to the DNRC. The DNRC will use its reasonable best efforts to obtain an acceleration of such schedule if necessary.

(g) Upon making each 2019A Loan disbursement and 2019B Loan disbursement, the Trustee shall note such disbursement on Schedule A to the Series 2019A Bond and the Series 2019B Bond, respectively.

(h) The City agrees that it will deposit in the Reserve Account upon receipt thereof, on each subsequent disbursement date, any proceeds of the 2019B Loan borrowed for the purpose of increasing the balance in the Reserve Account to the Reserve Requirement.

(i) Compliance by the City with its representations, covenants and agreements contained in the Resolution and the Collateral Documents shall be a further condition precedent to the disbursement of the 2019 Loans in whole or in part. The DNRC and the Trustee, in their

sole and absolute discretion, may make one or more disbursements, in whole or in part, notwithstanding such noncompliance, and without liability to make any subsequent disbursement of the 2019 Loans.

Section 4.2. Termination of Loan Term. The City's obligations under this Resolution in respect of the Series 2019 Bonds shall terminate upon payment in full of all amounts due under the Series 2019 Bonds; provided, however, that the covenants and obligations provided in Sections 4 and 5(d) of Appendix C attached to this Resolution shall survive the termination of this Resolution with respect to the Series 2019 Bonds.

## ARTICLE V

### REPAYMENT OF 2019 LOANS

Section 5.1. Repayment of 2019 Loans. The City shall repay the amounts lent to it pursuant to Section 4.1 hereof in accordance with this Section 5.1.

5.1.1. Interest and Surcharges. Until a Determination Statement is delivered by the DNRC to the City and so long as the City's obligation to repay the principal of the 2019A Loan is forgiven as provided in Section 5.1.2 below, amounts disbursed by the DNRC under Section 4.1 hereof that are evidenced by the Series 2019A Bond bear interest at the rate of zero percent (0.00%) per annum from the date of each advance; provided, however, if the DNRC delivers to the City a Noncompliance Statement, then all principal of the Series 2019A Bond advanced by the DNRC shall be payable and amounts disbursed by the DNRC under Section 4.1 hereof that are evidenced by the Series 2019A Bond shall bear interest at the rate of two percent (2.00%) per annum and in addition the City shall pay the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the outstanding principal amounts of the 2019A Loan from the date of each advance thereof. The Series 2019B Bond shall bear interest at the rate of two percent (2.00%) per annum and the City shall pay the Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal amounts of the 2019B Loan from the date of each advance thereof. For purposes of this Resolution and the Program, with respect to the 2019A Loan and the 2019B Loan, the term "interest on the 2019 Loans" or "interest on the 2019A Loan" or "interest on the 2019B Loan" when not used in conjunction with a reference to any surcharges, shall include the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge. The City shall pay all Loan Repayments and surcharges in lawful money of the United States of America to the DNRC. Interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge shall be calculated on the basis of a year of 360 days comprising 12 months of 30 days each.

5.1.2. Repayment of 2019A Loan; Principal Forgiveness.

(a) The City is obligated to repay the principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the 2019A Loan, unless the DNRC forgives the City's obligation to repay the principal of the 2019A Loan as provided in Section 5.1.2(b). Subject to the provisions of Section 5.1.2(b), the Loan Repayments and the Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the 2019A Loan shall be due on each Payment Date, as follows:

- (1) interest and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the outstanding principal balance of the 2019A Loan shall be payable from and after the date of each advance of principal of the 2019A Loan on each Payment Date at the rate of 2.50% per annum, beginning on the first Payment Date following the date of delivery by the DNRC of a Noncompliance Statement and concluding on July 1, 2039; and
- (2) the principal of the 2019A Loan shall be repayable on each Payment Date, beginning on the Payment Date that is the first to occur following delivery by the DNRC of a Noncompliance Statement, and concluding on July 1, 2039, and the amount of each principal payment shall be calculated on the basis of a substantially level debt service at the rate of 2.50% per annum.

(b) Notwithstanding Section 5.1.2(a), so long as the City is proceeding diligently to completion of the 2019 Project and the City has executed and delivered the Compliance Certificate and Request to the DNRC in form and substance satisfactory to the DNRC and the DEQ, within thirty (30) days after the date that the Compliance Certificate and Request is provided to the City by the DNRC, the DNRC will, following review and approval of the Compliance Certificate and Request, deliver to the City a Forgiveness Statement and the City will thereafter have no obligation to repay amounts advanced under the Series 2019A Bond or interest or surcharges thereon and the Series 2019A Bond will be marked "CANCELLED" and returned by the DNRC to the City. However, in the event the City fails to deliver timely the Compliance Certificate and Request, or the City cannot submit the Compliance Certificate and Request because it cannot make the certifications required therein, or the Compliance Certificate and Request is delivered in a form that deviates materially from that attached hereto as Appendix B as determined in the sole and complete discretion of the DNRC or the DEQ, or the DNRC or the DEQ determine at any time that the 2019 Project or any portion thereof or of the work relating thereto fails to comply with Program requirements, then the DNRC will deliver to the City a Noncompliance Statement. Upon delivery of a Noncompliance Statement by the DNRC to the City, all principal advanced or to be advanced under the Series 2019A Bond, together with interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge thereon from the date of each advance, shall be payable as provided in Section 5.1.2 (a).

(c) In addition, in the event the DNRC delivers a Noncompliance Statement (i) the Series 2019A Bond will continue in effect as a Subordinate Lien Obligation, and (ii) the City will forthwith comply with the rate covenant set forth in Section 9.8, implemented as provided in Section 9.9, and, if necessary, increase the rates and charges of the System to satisfy such rate covenant as soon as practicable and in any event no later than three (3) months after the date of delivery to the City by the DNRC of a Noncompliance Statement.

5.1.3. Repayment of 2019B Loan. The Loan Repayments and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the 2019B Loan required by this Section 5.1 shall be due on each Payment Date, as follows:

- (1) interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal balance of the 2019B Loan shall be

payable on each January 1 and July 1, beginning on January 1, 2020 and concluding on July 1, 2039; and

- (2) the principal of the 2019B Loan shall be repayable on each January 1 and July 1, beginning on January 1, 2020, and concluding on July 1, 2039, and the amount of each principal payment shall be calculated on the basis of a substantially level debt service at a rate of 2.50% per annum.

5.1.4. Details Regarding 2019 Loan Repayments. Loan Repayments and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the 2019B Loan and, if applicable, on the 2019A Loan, shall be due on the dates specified above and on the dates and in the amounts shown in Schedule B to the Series 2019B Bond and, if applicable, on the 2019A Loan, as such Schedule B shall be modified from time to time as provided in Section 5.1.2 and below. Schedule B will first be attached to the Series 2019B Bond and the Series 2019A Bond at Closing. The portion of each such Loan Repayment consisting of principal and the portion consisting of interest and the amount of each Administrative Expense Surcharge and the amount of each Loan Loss Reserve Surcharge shall be set forth in Schedule B to the Series 2019A Bond and the Series 2019B Bond on and after Closing. Upon each disbursement of 2019 Loan amounts to the City pursuant to Section 4.1 hereof, the Trustee shall enter or cause to be entered the amount advanced on Schedule A to the applicable Series 2019A Bond and the Series 2019B Bond under "Advances" and the total amount advanced under Section 4.1, including such disbursement, under "Total Amount Advanced." Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on such advance shall accrue from the date the advance is made and shall be payable on each Payment Date thereafter. Once the completion certificate for the 2019 Project has been prepared and delivered to the DNRC, the Trustee shall revise Schedule B to the Series 2019B Bond in accordance with this Section 5.1 and the Trustee shall send a copy of such Schedule B to the City within one month after delivery of the completion certificate.

If the DNRC shall have delivered a Noncompliance Statement, then Schedule B to the Series 2019A Bond shall continue to reflect interest and surcharges on amounts advanced under the Series 2019A Bond at the rate of 2.50% per annum, as may be revised to reflect the full principal amount advanced under the Series 2019A Bond, the initial Payment Date, and the periodic total loan payment, and the Trustee shall send a copy of such schedules to the City within one month after delivery by the DNRC of the Noncompliance Statement. If the DNRC delivers a Forgiveness Statement, Schedule B to the Series 2019A Bond will be disregarded and of no effect.

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

Any payment of principal and interest as to the Series 2019B Bond and, if applicable, the Series 2019A Bond, and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge as to the Series 2019B Bond, and, if applicable, the Series 2019A Bond under this Section 5.1 shall be credited against the same payment obligation under each of the Series 2019B Bond and, as applicable, the Series 2019A Bond.

Section 5.2. Additional Payments. The City shall also pay, within 30 days after receipt of a bill therefor, from any legally available funds therefor, all reasonable expenses of the DNRC and the Trustee in connection with the Series 2019 Bonds, including, but not limited to:

- (i) the cost of reproducing this Resolution, the Collateral Documents and the Series 2019 Bonds;
- (ii) the fees and disbursements of Bond Counsel and other counsel utilized by the DNRC and the Trustee in connection with the Series 2019 Bonds and the enforcement thereof; and
- (iii) all taxes and other governmental charges in connection with the execution and delivery of the Series 2019 Bonds or the Collateral Documents, whether or not the Series 2019 Bonds are then outstanding, including all recording and filing fees relating to the Collateral Documents and the pledge of the State's right, title and interest in and to the Series 2019 Bonds, the Collateral Documents and this Resolution (and with the exceptions noted therein) and all expenses, including attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof or thereof.

Section 5.3. Prepayments. The City may not prepay all or any part of the outstanding principal amount of the Series 2019B Bond, and, if applicable, the Series 2019A Bond, unless (i) a Determination Statement has been delivered, (ii) it obtains the prior written consent of the DNRC thereto, and (iii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and, if applicable, Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2019 Bonds are prepaid in part pursuant to this Section 5.3, such prepayments shall be applied to principal payments in inverse order of maturity.

Section 5.4. Obligations of City Unconditional. The obligations of the City to make the payments required by this Resolution and the Series 2019 Bonds and to perform its other agreements contained in this Resolution, the Series 2019 Bonds and Collateral Documents shall be absolute and unconditional, except as otherwise provided herein or in such documents. The City (a) shall not suspend or discontinue any payments provided for in this Resolution and the Series 2019 Bonds, (b) shall perform all its other agreements in this Resolution, the Series 2019 Bonds and the Collateral Documents and (c) shall not terminate this Resolution, the Series 2019 Bonds or the Collateral Documents for any cause, including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the 2019 Project or the System, commercial frustration of purpose, any dispute with the DNRC or the EPA, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the DNRC to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with this Resolution.

Section 5.5. Limited Liability. All payments of principal of and interest on the 2019 Loans and other payment obligations of the City hereunder and under the Series 2019 Bonds shall be special, limited obligations of the City payable, with respect to the Series 2019B Bond,

solely out of the Net Revenues or, with respect to the Series 201A Bond solely out of Surplus Net Revenues, and shall not, except at the option of the City and as permitted by law, be payable out of any other revenues of the City. The obligations of the City under the Resolution and the Series 2019 Bonds shall never constitute an indebtedness of the City within the meaning of any state constitutional provision or statutory or charter limitation and shall never constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing power. The taxing powers of the City may not be used to pay principal of or interest on the Series 2019 Bonds, and no funds or property of the City other than the Net Revenues or, as appropriate, Surplus Net Revenues may be required to be used to pay principal of or interest on the Series 2019 Bonds.

## ARTICLE VI

### REPRESENTATIONS AND COVENANTS OF CITY TO THE DNRC AND DEQ

In the Prior Resolution, the City made certain representations and covenants to the DNRC and DEQ with respect to the Series 2019 Bonds and the 2019 Loans in order to comply with Program requirements, which representations and covenants are set forth in Appendix C hereto. The City hereby ratifies and confirms such representations and covenants to the DNRC and DEQ. For the avoidance of doubt, the representations and covenants set forth in Appendix C hereto are solely for the benefit of the DNRC and DEQ, and other Holders are not third party beneficiaries of such representations and covenants and are not entitled to rely upon them.

## ARTICLE VII

### ADDITIONAL BONDS AND SUBORDINATE OBLIGATIONS

Section 7.1. General Provisions. Additional Bonds may at any time and from time to time be issued, sold and delivered by the City but only upon compliance with the conditions of Sections 7.2 and 7.3, whichever may be applicable, and upon filing with the City Clerk-Treasurer the following:

(a) A Supplemental Resolution authorizing the issuance of such series of Additional Bonds and fixing the amount and the details thereof and the sale thereof to the purchaser or purchasers named therein for the purchase price set forth therein.

(b) A certificate executed by the Mayor and the City Clerk-Treasurer stating that upon the issuance of such series of Additional Bonds, no default hereunder has occurred and is continuing which would not be cured upon the issuance of such series of Additional Bonds and application of the proceeds thereof.

(c) An opinion of Bond Counsel (who may rely on factual representations of the City and which opinion may be qualified by customary qualifications and exceptions) stating that:

(i) all conditions precedent provided for in this Resolution relating to the issuance and delivery of such series of Additional Bonds have been complied with, including any conditions precedent specified in this Section 7.1; and

(ii) the series of Additional Bonds when issued and delivered by the City will be valid and binding special, limited obligations of the City in accordance with their terms and entitled to the benefits of and secured by this Resolution.

Any Additional Bonds shall be dated, shall bear interest at a rate or rates not exceeding the maximum rate, if any, permitted by law, shall have Stated Maturities and may be subject to redemption at such times and prices and on such terms and conditions, all as may be provided by the Supplemental Resolution authorizing their issuance. All Additional Bonds issued pursuant to Sections 7.2 and 7.3 shall be payable and secured ratably and equally and on a parity as to both principal and interest with the Series 2019B Bond and any Additional Bonds theretofore issued, entitled to the same benefits and security of this Resolution.

Section 7.2. Additional Bonds to Pay Costs of Projects. Additional Bonds may be issued under this Section 7.2, at one time or from time to time, subject to the conditions provided in Section 7.1 and this Section 7.2, for the purpose of providing funds, with any other funds available and committed therefor, for paying the cost of one or more Projects and any expenses in connection with such financing.

Prior to the execution and delivery of any series of Additional Bonds under this Section 7.2, there shall be filed with the City Clerk-Treasurer a certificate executed by the Mayor and the City Clerk-Treasurer stating that the Net Revenues of the System for the last complete Fiscal Year preceding the date of issuance of such Additional Bonds equaled at least 120% of the maximum amount of principal and interest payable from the Revenue Bond Account in any subsequent Fiscal Year during the term of the Outstanding Bonds, on all Bonds then Outstanding and on the Additional Bonds proposed to be issued.

For the purpose of the foregoing computation, the Net Revenues for the Fiscal Year preceding the issuance of Additional Bonds shall be those shown by the financial reports caused to be prepared by the City pursuant to this Resolution, except that if the rates and charges for services provided by the System have been changed since the beginning of such preceding Fiscal Year, then the rates and charges in effect at the time of issuance of the Additional Bonds or finally authorized to go into effect within 60 days thereafter shall be applied to the quantities of service actually rendered and made available during such preceding Fiscal Year to ascertain the Gross Revenues, from which there shall be deducted to determine the Net Revenues, the actual Operating Expenses plus any additional annual Operating Expenses which the City's engineer or other consultant estimates will be incurred because of the improvement or extension of the System to be constructed from the proceeds of the Additional Bonds proposed to be issued.

In no event shall any Additional Bonds be issued and made payable from the Revenue Bond Account if the City is then in default in any payment of principal of or interest on any Outstanding Bonds payable therefrom or if there then exists any deficiency in the balances required by this Resolution to be maintained in any of the accounts of the Water System Fund,

which will not be cured or restored upon the issuance of the Additional Bonds. In connection with the issuance of a series of Additional Bonds, the City shall cause amounts in the Reserve Account to be increased, from the proceeds of the Additional Bonds and/or from Surplus Net Revenues, to an amount equal to the Reserve Requirement during the term of the Outstanding Bonds.

Section 7.3. Additional Bonds for Refunding Purposes. Additional Bonds may be issued under this Section 7.3, at one time or from time to time, subject to the conditions provided in Section 7.1 and this Section 7.3, for the purpose of providing funds, with any other funds available and committed therefor, for paying at, or redeeming prior to, their Stated Maturities any Outstanding Bonds or Notes, including the payment of any redemption premium thereon and interest which will accrue on such Bonds to any Redemption Date or the Stated Maturities thereof, and any expenses in connection with such financing. Such Additional Bonds shall be designated substantially as the Bonds to be refunded, with the addition of the term “refunding.”

Prior to the execution and delivery of any series of Additional Bonds under this Section 7.3, there shall be filed with the City Clerk-Treasurer:

(a) such documents as shall be required to show that provisions have been duly made in accordance with this Resolution (or, for the Series 1998 Bond, Series 2008 Bond and Series 2009 Bond, the Prior Resolution) for the redemption of all of the Outstanding Bonds to be refunded;

(b) a certificate executed by the Mayor and the City Clerk-Treasurer to the effect that (a) the proceeds (excluding accrued interest but including any premium) of the Additional Bonds plus any moneys to be withdrawn from the Revenue Bond Account and Reserve Account for such purpose, together with any other funds deposited for such purpose, will be not less than an amount sufficient to pay the redemption price on the Outstanding Bonds to be refunded, or (b) from such proceeds there shall be deposited in trust, Government Obligations which do not permit the redemption thereof at the option of the issuer, the principal of and the interest on which when due and payable (or redeemable at the option of the holder thereof) will provide, together with any other moneys which shall have been deposited in trust irrevocably for such purpose, but without reinvestment, sufficient moneys to pay such principal, redemption premium and interest.

If Additional Bonds are to be issued to refund Outstanding Notes issued under Section 7.5 in anticipation of the issuance of such Additional Bonds, and if the average interest rate on such Additional Bonds exceeds the maximum rate assumed upon the issuance of the Notes, the conditions for the issuance of Additional Bonds pursuant to Section 7.2 must be satisfied in addition to the conditions of this Section 7.3.

If Additional Bonds are issued to refund Subordinate Obligations issued pursuant to Section 7.4, the conditions for the issuance of Additional Bonds pursuant to Section 7.2 must be satisfied in lieu of this Section 7.3.

Section 7.4. Subordinate Obligations. Nothing in this Resolution shall preclude the City from issuing additional Obligations which are expressly made a charge on only the Surplus



Net Revenues of the System subordinate to the pledge of Net Revenues to the Revenue Bond Account and the Reserve Account and payable only from amounts in the Subordinate Obligations Account, subject to the prior claims of the Operating Account, Revenue Bond Account, Reserve Account and Note Account (such additional obligations, the “Subordinate Obligations”). The Series 2019A Bond is a Subordinate Obligation.

Section 7.5. Notes. The City may from time to time issue Notes in anticipation of the issuance of Additional Bonds subject to the following conditions:

(a) The Additional Bonds in anticipation of which the Notes are issued, assuming a maximum rate of interest on such Bonds, shall be authorized to be issued under Section 7.2,

(b) The payment of principal and interest on the Notes from Net Revenues shall be subordinated to Outstanding Bonds and the principal of the Notes shall be payable solely from the proceeds of the Additional Bonds and other amounts then on hand in the Note Account, unless the City is unable to sell the Additional Bonds, in which case the Notes shall be exchanged for the Additional Bonds on a par-for-par basis bearing interest at the maximum rates assumed under subsection (a) of this Section 7.5, and

(c) The Notes shall have Stated Maturities within 3 years from their date of issuance.

## ARTICLE VIII

### WATER SYSTEM FUND

Section 8.1. Bond Proceeds and Revenues Pledged and Appropriated. A special Water System Fund is hereby created and shall be maintained as a separate and special bookkeeping account on the official books of the City until all Bonds and interest and redemption premiums due thereon have been fully paid, or the City’s obligations with reference to such Bonds have been discharged as provided in this Resolution. All proceeds of Bonds issued hereunder and all other funds presently on hand derived from the operation of the System are irrevocably pledged and appropriated to the Water System Fund. In addition, there is hereby irrevocably pledged and appropriated to the Water System Fund all Gross Revenues and to the Revenue Bond Account therein all Pledged Resort Tax Revenues. The Water System Fund shall be subdivided into separate accounts as designated and described in Sections 8.2 through 8.10, to segregate income and expenses received, paid and accrued for the respective purposes described in those sections. The Gross Revenues received in the Water System Fund shall be apportioned monthly, commencing as of the first day of the calendar month immediately following adoption of this Resolution. All Pledged Resort Tax Revenues shall be deposited in the Revenue Bond Account upon receipt.

Section 8.2. Acquisition and Construction Account. The City shall maintain an Acquisition and Construction Account in the Water System Fund. The Acquisition and Construction Account shall be used only to pay as incurred and allowed costs which under generally accepted accounting principles are capital costs of a Project and of such future constructions, improvements, betterments or extensions of the System as may be authorized in accordance with law, including but not limited to payments due for work and materials

performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, reimbursement of any advances made from other City funds, and all other expenses incurred in connection with the acquisition, construction and financing of any such undertaking, including, without limitation, amounts to pay costs of issuance. To the Acquisition and Construction Account shall be credited as received all proceeds of Bonds issued hereunder (except proceeds of refunding Bonds appropriated to the payment of Outstanding Bonds and amounts required to be credited to the Revenue Bond Account or the Reserve Account), all other funds appropriated by the City for the System and any other funds appropriated by the City to the Acquisition and Construction Account for improvements to the System. Upon completion of a capital improvement or program of capital improvements for the System, the balance remaining in the Acquisition and Construction Account shall be credited to the Revenue Bond Account to the extent required to establish the required balance therein or as required by the Code and, to the extent not so required, to the Replacement and Depreciation Account.

Section 8.3. Operating Account. The City shall maintain an Operating Account in the Water System Fund. On each monthly apportionment there shall first be set aside and credited to the Operating Account, as a first charge on the Gross Revenues, such amount as may be required over and above the balance then held in the account to pay the reasonable and necessary Operating Expenses of the System which are then due and payable, or are to be paid prior to the next monthly apportionment. There shall also be credited to this account a sum equal to the estimated average monthly Operating Expenses of the System to establish an Operating Reserve, which sum shall be maintained by additional transfers upon each monthly apportionment whenever necessary, or may be augmented by transfers of additional amounts from the Replacement and Depreciation Account and the Surplus Account if determined by the governing body of the City to be necessary to meet contingencies arising in the operation and maintenance of the System. Money in the Operating Account shall be used solely for the payment of current Operating Expenses of the System.

Section 8.4. Revenue Bond Account. The City shall maintain a Revenue Bond Account in the Water System Fund. Upon each monthly apportionment there shall be set aside and credited to the Revenue Bond Account out of the Net Revenues an amount equal to not less than one-sixth of the interest to become due within the next six months and one-twelfth of the principal to become due within the next twelve months with respect to Outstanding Bonds payable semiannually from the Revenue Bond Account; provided that the City shall be entitled to reduce any monthly credit by the amount of any Pledged Resort Tax Revenues or surplus previously credited and then on deposit in the Revenue Bond Account. Money from time to time held in the Revenue Bond Account shall be disbursed only to meet payments of principal of, premium, if any, and interest on the Bonds payable therefrom as such payments become due. If any payment of principal or interest becomes due when moneys in the Revenue Bond Account are temporarily insufficient therefor, such payment shall be advanced out of any amounts then on hand in the Reserve Account, the Replacement and Depreciation Account and the Surplus Account.

Section 8.5. Reserve Account. The City shall maintain a Reserve Account in the Water System Fund. Upon each monthly apportionment, from the Net Revenues remaining after the apportionment to the Revenue Bond Account, the City shall credit to the Reserve Account

such Net Revenues as may be required to establish and thereafter maintain the balance in an amount equal, as of the date of calculation, to the Reserve Requirement. Money in the Reserve Account shall be used only to pay maturing principal and interest on Outstanding Bonds when money within the Revenue Bond Account is insufficient therefor; provided that on any date when the balance then on hand in the Revenue Bond Account allocable to a series of Bonds, plus the balance then on hand in the Reserve Account allocable to the series of Bonds, is sufficient with other money available to pay or discharge all Outstanding Bonds of that series and the interest accrued thereon in full, and the balance thereafter on hand in the Reserve Account will be at least equal to the Reserve Requirement for all Outstanding Bonds and not to be discharged, it may be used for that purpose. If the balance in the Reserve Account is more than required, the excess shall be transferred to the Revenue Bond Account or the Replacement and Depreciation Account.

Section 8.6. Replacement and Depreciation Account. The City shall maintain a Replacement and Depreciation Account in the Water System Fund. Upon each monthly apportionment, there shall next be set aside and credited to the Replacement and Depreciation Account, Surplus Net Revenues required for the accumulation of a reasonable allowance as the governing body of the City shall determine for depreciation of the System and for replacement or renewal of worn out, obsolete or damaged properties and equipment. Money in the Replacement and Depreciation Account shall be used only for the purposes above stated or, if so directed by the governing body of the City, to redeem Bonds which are prepayable according to their terms, to pay maturing principal, premium and interest when money within the Revenue Bond Account is insufficient therefor, to fund any deficiency in the Reserve Account, or to pay the cost of improvements to the System; provided that Surplus Net Revenues in the Replacement and Depreciation Account shall be transferred to the Subordinate Obligations Account and used to pay Subordinate Obligations as they come due in advance of payments required to be made into the Replacement and Depreciation Account, subject to the prior lien on Net Revenues to pay any deficiency of the Revenue Bond Account, the Reserve Account and the Note Account.

Section 8.7. Surplus Account. The City shall maintain a Surplus Account in the Water System Fund. Any amount of the Surplus Net Revenues from time to time remaining after the above required applications thereof shall be credited to the Surplus Account (or such other account in the Water System Fund as the City may establish for bookkeeping purposes to account for Surplus Net Revenues in accordance with the purposes of this Resolution), and the money from time to time in that account, when not required to restore a current deficiency in the Operating Account, the Revenue Bond Account, the Reserve Account, the Note Account, or the Subordinate Obligations Account, may be used for any of the following purposes and not otherwise:

- (a) To redeem Bonds when and as such Bonds become prepayable according to their terms; or
- (b) To purchase Bonds on the open market, whether or not the Bonds may then be prepayable according to their terms; or
- (c) To be held as a reserve for redemption of Bonds which are not then but will later be prepayable according to their terms; or

(d) To be transferred to the Acquisition and Construction Account to pay costs authorized to be paid therefrom;

(e) To pay for repairs of or for the construction and installation of improvements or additions to the System; or

(f) To pay Operating Expenses or to restore the Operating Reserve or increase the same when determined to be necessary by the governing body of the City; or

(g) To pay Subordinate Obligations issued under Section 7.4; or

(h) To transfer to the Rebate Account to make payments of arbitrage rebate to the United States of America pursuant to Section 148(f) of the Code in respect of any series of Bonds.

No money shall at any time be transferred from the Surplus Account or any other account of the Water System Fund to any other fund of the City, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvement bonds or other obligations payable from other funds, except as provided in Section 8.11.

Section 8.8. Note Account. The City shall maintain a Note Account in the Water System Fund. If a Note is Outstanding, all Net Revenues remaining after the required credits to the Revenue Bond Account and the Reserve Account pursuant to this Resolution shall be credited to the Note Account to the extent necessary to cure a deficiency therein, subject to the prior lien of the Revenue Bond Account and the Reserve Account.

Section 8.9. Subordinate Obligations Account. The City shall maintain a Subordinate Obligations Account in the Water System Fund. So long as the Series 2019A Bond or any other Subordinate Obligation is outstanding, all Surplus Net Revenues shall be credited to the Subordinate Obligations Account to the extent needed to pay principal of and interest on such Subordinate Obligations.

Amounts on deposit in the Subordinate Obligations Account shall be used solely to pay the principal of and interest on Subordinate Obligations made payable therefrom; provided that if on any date the balance in the Revenue Bond Account, the Reserve Account or the Note Account is less than then required, an amount equal to such deficiency will be transferred from the Subordinate Obligations Account. Upon payment or discharge of a Subordinate Obligation and upon the making of the credits to the Subordinate Obligations Account required in connection with any other Subordinate Obligations made payable therefrom, all surplus funds therein shall be transferred to the Replacement and Depreciation Account or, if not needed therein, to the Surplus Account.

Section 8.10. Rebate Account. The City shall maintain a Rebate Account in the Water System Fund. The City shall make deposits to and disbursements from the Rebate Account pursuant to one or more rebate certificates executed and delivered by the City in connection with the issuance of Bonds, and for such purposes may make transfers, in the following order of priority, from the Surplus Account and the Replacement and Depreciation Account, as necessary, to meet the requirements of the Rebate Account. The City shall invest the Rebate Account in

accordance with the provisions of the rebate certificates and shall deposit income from such investments immediately upon receipt thereof in the Rebate Account.

Section 8.11. Deposit and Investment of Funds. The City Clerk-Treasurer shall cause all money appropriated to the Water System Fund to be deposited as received with one or more depository banks duly qualified in accordance with the provisions of Montana Code Annotated, Section 7-6-201, in a deposit account or accounts. The balance in such accounts, except such portion thereof as shall be guaranteed by federal deposit insurance, shall at all times be secured to its full amount by bonds or securities of the types set forth in said Section 7-6-201. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Water System Fund as defined and authorized in this Resolution; except that money from time to time on hand in the Water System Fund may at any time, in the discretion of the governing body of the City, be invested in securities which are direct, general obligations of, or obligations the prompt payment of the principal of and the interest on which is fully and unconditionally guaranteed by, the United States of America, bank repurchase agreements with respect to such obligations, certificates of deposits of national banks having a combined capital and surplus of at least \$1,000,000 or in the State short-term investment program administered by the Board of Investments, which investments mature and bear interest at the times and in the amounts estimated to be required to provide cash when needed for the purposes of the respective accounts; provided that funds on hand in the Reserve Account, the Replacement and Depreciation Account and the Surplus Account may be invested in said securities maturing not later than five years from the date of the investment; and provided, further, that money on hand in the Surplus Account may, in the discretion of the governing body of the City, be invested in any securities which are direct, general obligations of the City. Income received from the deposit or investment of moneys in said accounts shall be credited to the account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys in that account.

ARTICLE IX

AGREEMENTS OF CITY

Section 9.1. Maintenance of System; Liens. The City shall maintain the System in good condition and make all necessary renewals, replacements, additions, betterments and improvements thereto. The City shall not grant or permit to exist any lien on the Projects or any other property making up part of the System, other than liens herein provided for; provided that this Section 9.1 shall not be deemed to be violated if a mechanic's or contractor's lien is filed against any such property so long as the City uses its best efforts to obtain the discharge of such lien.

Section 9.2. Maintenance of Existence; Merger, Consolidation, Etc.; Disposition of Assets. The City shall maintain its corporate existence, except that it may consolidate with or merge into another Governmental Unit or permit one or more Governmental Units to consolidate with or merge into it or may transfer all or substantially all of its assets to another Governmental Unit and then dissolve if the surviving, resulting or transferee entity (if other than the City) (i) is a Public Entity and (ii) assumes in writing all of the obligations of the City under this Resolution,

the Outstanding Bonds and the Collateral Documents, and (a) such action does not result in any default in the performance or observance of any of the terms, covenants or agreements of the City under this Resolution, the Outstanding Bonds and the Collateral Documents, (b) such action does not violate the State Act or the Safe Drinking Water Act and does not adversely affect the exclusion of interest on State Bonds from gross income for federal income tax purposes, and (c) the City delivers to the Holders on the date of such action an opinion of Bond Counsel that such action complies with this Section 9.2. Other than pursuant to the preceding sentence, the City shall not transfer the System or any portion thereof to any other Person, except for property which is obsolete, outmoded, worn out, is being replaced or otherwise is not needed for the operation of the System.

Section 9.3. Competing Service. The City will not establish or authorize the establishment of any other system for the public supply of service or services in competition with any or all of the services supplied by the facilities of the System.

Section 9.4. Property Insurance. The City will cause all buildings, properties, fixtures and equipment constituting a part of the System to be kept insured with a reputable insurance carrier or carriers, qualified under the laws of the State, in such amounts as are ordinarily carried, and against loss or damage by such hazards and risks as are ordinarily insured against, by public bodies owning and operating properties of a similar character and size; provided that if at any time the City is unable to obtain insurance, it will obtain insurance in such amounts and against risks as are reasonably obtainable. The proceeds of all such insurance shall be available for the repair, replacement or reconstruction of damaged or destroyed property, and until paid out in making good such loss or damage, are pledged as security for the Outstanding Bonds. All insurance proceeds received in excess of the amount required for restoration of the loss or damage compensated thereby shall be and become part of the Gross Revenues appropriated to the Water System Fund. If for any reason insurance proceeds are insufficient for the repair, replacement and reconstruction of the insured property, the City shall supply the deficiency from amounts on hand in the Replacement and Depreciation Account and the Surplus Account.

Section 9.5. Books and Records. The City will cause proper and adequate books of record and account to be kept showing complete and correct entries of all receipts, disbursements and other transactions relating to the System, the Net Revenues derived from its operation, and the segregation and application of the Net Revenues in accordance with this Resolution, in such reasonable detail as may be determined by the City in accordance with generally accepted accounting practice and principles. It will cause such books to be maintained on the basis of a Fiscal Year.

Section 9.6. The Handling of Funds. The employees of the City, under the direction and control of the City Clerk-Treasurer, shall keep books of accounts and collect the rates, charges and rentals for the services and facilities provided by the System and for other money currently receivable on account thereof. All money collected with respect to the System shall be deposited as received with the City Clerk-Treasurer. The City Clerk-Treasurer shall be bonded at all times with a surety company authorized to do business in the State, in the amount of at least \$10,000, to assure the faithful carrying out of such duties, which requirement may be satisfied by a blanket bond covering other City employees as well as the City Clerk-Treasurer.

Section 9.7. Billing and Collections. The charges for water services shall be billed at least monthly, and if the bill is not paid within 60 days of the date of billing, or if the customer fails to comply with all rules and regulations established for the System within 60 days after notice of violation thereof (which notice shall be given promptly upon discovery of any such violation), the City shall take appropriate legal action to collect the unpaid charges.

Section 9.8. Rate Covenant. While any Bonds or Subordinate Obligations are Outstanding and unpaid, the rates, charges and rentals for all services and facilities furnished and made available by the System to the City and its inhabitants, and to all customers within or without the boundaries of the City, shall be reasonable and just, taking into consideration the cost and value of the System and the cost of maintaining and operating it, and the amounts necessary for the payment of all Outstanding Bonds and the interest accruing thereon and all Subordinate Obligations and the interest accruing thereon, and the proper and necessary allowances for the depreciation of the System. No free service shall be provided to any third parties. It is covenanted and agreed that the rates, charges and rentals to be charged to all recipients of water services shall be maintained and shall be revised whenever and as often as may be necessary, according to schedules such that the Gross Revenues for each Fiscal Year shall be sufficient to pay the Operating Expenses and to maintain the Operating Reserve, to produce Net Revenues (including Pledged Resort Tax Revenues) during each Fiscal Year, commencing with the Fiscal Year ending June 30, 2020, not less than 120% of the maximum annual principal and interest payable on the Outstanding Bonds in the current or any future Fiscal Year and to maintain the balance in the Reserve Account equal to the Reserve Requirement, and to produce Surplus Net Revenues during each Fiscal Year sufficient to pay principal and interest on any Subordinate Obligations and to provide reserves for the replacement and depreciation of the System.

If at the close of any Fiscal Year the Gross Revenues and Net Revenues actually received during such year have been less than required hereby, the City will forthwith prepare a schedule of altered rates, charges and rentals which are just and equitable and sufficient to produce Gross Revenues and Net Revenues in such amounts, and place such schedule in operation at the earliest possible date.

Section 9.9. Implementation of Section 9.8 With Respect to Series 2019A Bond. The Series 2019A Bond is a Subordinate Obligation. For purposes of the calculation described in Section 9.8, principal of and interest on the Series 2019A Bond shall initially be disregarded. However, in the event the DNRC delivers a Noncompliance Statement, the City shall forthwith (and in any event no later than three (3) months after the delivery of such Noncompliance Statement) cause the rates, charges and rentals charged to all recipients of water services to be revised whenever and as often as may be necessary, according to schedules such that, in each Fiscal Year, the Gross Revenues of the System will be sufficient to pay the Operating Expenses and to produce Net Revenues (including Pledged Resort Tax Revenues) not less than 120% of the maximum Principal and Interest Requirements payable on the Outstanding Bonds in the current or any future Fiscal Year, to maintain the Reserve Account at the Reserve Requirement, and to produce Surplus Net Revenues adequate to pay the principal of and interest on the Series 2019A Bond as and when due.

The establishment of the ratio of Net Revenues available for the Revenue Bond Account and the provision for adequate Surplus Net Revenues in the event the City's obligation to repay

the principal of the Series 2019A Bond is not forgiven are deemed necessary for the DNRC to make the 2019 Loans to the City upon terms most advantageous. The excess of the Net Revenues over the maximum Principal and Interest Requirements, amounts required to maintain the Reserve Account at the Reserve Requirement and Surplus Net Revenues required to repay the Series 2019A Bond, if necessary, may be used as authorized in Article VIII hereof.

Section 9.10. Pledge of Resort Tax Revenues.

(a) The City hereby appropriates to the Revenue Bond Account, for each Fiscal Year any Bond is Outstanding, from Resort Tax Revenues an amount equal to the Pledged Resort Tax Revenues; provided, however, that:

(i) The City reserves the right to reduce or terminate such appropriation for the current or any future Fiscal Years if and to the extent that the Net Revenues of the System (not taking into account the Pledged Resort Tax Revenues so released) are otherwise sufficient to meet all the requirements of this Resolution and the City would not be in default in its covenants and agreements hereunder.

(ii) The City's current authorization to levy resort taxes expires December 31, 2022, unless the electorate of the City authorizes the City to continue levying the resort tax for a period of up to twenty-five years. There can be no assurance that the City Council will call for an election on extending the City's resort tax authorization; that the electors of the City will approve such an extension; or that the levy and collection of resort taxes will continue to be viable and lucrative for the City. The expiration or termination of the City's legal authority to levy the Resort Tax shall not constitute a default hereunder.

(b) The City covenants and agrees that, so long as it is permitted to levy the Resort Tax, it will not amend or repeal the Resort Tax Ordinances by decreasing the resort tax rate or otherwise reducing the amount of Pledged Resort Tax Revenues which would otherwise be collected and deposited in the Revenue Bond Account. However, nothing shall prevent the City from amending the Resort Tax Ordinances to make changes in the administration, collection or enforcement of the resort tax so long as such changes do not materially adversely affect the interests of the owners of or the security for Outstanding Bonds.

(c) The City will administer, enforce and collect, or cause to be administered, enforced or collected, the Pledged Resort Tax Revenues as authorized by the Resort Tax Ordinances and the Resort Tax Act and shall take such action as may be necessary to collect, or cause to be collected, delinquent payments in accordance with law.

## ARTICLE X

### SUPPLEMENTAL RESOLUTIONS

Section 10.1. General. Notwithstanding Section 10.2, the City reserves the right to adopt Supplemental Resolutions from time to time and at any time, for the purpose of curing any ambiguity or of curing, correcting or supplementing any defective provision contained herein, or



of making such provisions with regard to matters or questions arising hereunder as the City may deem necessary or desirable and not inconsistent with this Resolution, and which shall not adversely affect the interests of the Holders of Outstanding Bonds or owners of Subordinate Obligations, or for the purpose of adding to the covenants and agreements herein contained, or to the revenues herein pledged, other covenants and agreements thereafter to be observed and additional revenues or income thereafter appropriated to the Water System Fund, or for the purpose of surrendering any right or power herein reserved to or conferred upon the City, or for the purpose of authorizing the creation and issuance of a series of Additional Bonds, Subordinate Obligations or Notes, as provided in and subject to the conditions and requirements of Article VII. Any such Supplemental Resolution may be adopted pursuant to this Section 10.1 without notice to or the consent of the Holder of any of the Bonds or the owner of any Subordinate Obligations issued hereunder.

Section 10.2. Consent of Holders. With the consent of the Holders of at least two-thirds in principal amount of the Outstanding Bonds affected thereby, the City may from time to time and at any time adopt a Supplemental Resolution for the purpose of amending this Resolution by adding any provisions hereto or changing in any manner or eliminating any of the provisions hereof or of any Supplemental Resolution, except that no Supplemental Resolution shall be adopted at any time without the consent of the Holders of all Outstanding Bonds and/or the owners of all Subordinate Obligations affected thereby, if it would extend the time of payment of interest thereon or principal thereof, would reduce the interest rate thereon or the amount of the principal or the redemption price thereof, would give to any Bond(s) any privileges over any other Bond(s), would give to any Subordinate Obligation(s) any privileges over any other Subordinate Obligation(s), would reduce the sources of revenues or income appropriated to the Water System Fund, or would reduce the percentage in principal amount of Bonds required to authorize or consent to any such Supplemental Resolution.

Section 10.3. Notice. Notice of the Supplemental Resolution to be adopted pursuant to Section 10.2 shall be mailed by first-class mail to the Holders of all Outstanding Bonds and/or the owners of Outstanding Subordinate Obligations, if applicable, at their addresses appearing in the Bond Register, and shall become effective only upon the filing of written consents with the City Clerk-Treasurer, signed by the Holders or owners of the requisite principal amount of the Outstanding Bonds or Subordinate Obligations affected thereby. Any written consent to the Supplemental Resolution may be embodied in and evidenced by one or any number of concurrent written instruments of substantially similar tenor signed by Holders or owners in person or by agent duly appointed in writing, and shall become effective when delivered to the City Clerk-Treasurer. Any consent by the Holder of any Bond shall bind it and every future Holder of the same Bond, and any consent by the owner of any Subordinate Obligation shall bind it and every future owner of the same Subordinate Obligation, with respect to any Supplemental Resolution adopted by the City pursuant to such consent; provided that any Holder or owner may revoke its consent with reference to any Bond or Subordinate Obligation by written notice received by the City Clerk-Treasurer before the Supplemental Resolution has become effective. In the event that unrevoked consents of the Holders or owners of the required amount of Bonds or Subordinate Obligations have not been received by the City Clerk-Treasurer within one year after the mailing of notice of the Supplemental Resolution, the Supplemental Resolution and all consents theretofore received shall be of no further force and effect.

Section 10.4. Manner of Consent. Proof of the execution of any consent, or of a writing appointing any agent to execute the same, or of the ownership by any Person of Bonds or Subordinate Obligations shall be sufficient for any purpose of this Resolution and shall be conclusive in favor of the City if made in the manner provided in this Section 10.4. The fact and date of the execution by any Person of any such consent or appointment may be proved by the affidavit of a witness of such execution or by the certification of any notary public or other officer authorized by law to take acknowledgment of deeds, certifying that the Person signing it acknowledged to him the execution thereof. The fact and date of execution of any such consent may also be proved in any other manner which the City may deem sufficient; but the City may nevertheless, in its discretion, require further proof in cases where it deems further proof desirable. The ownership of Bonds and Subordinate Obligations shall be proved by the Bond Register.

## ARTICLE XI

### REMEDIES

No Holder of any Bond shall have the right to institute any proceeding, judicial or otherwise, for the enforcement of the covenants herein contained, without the written concurrence of the Holders of not less than 25% in aggregate principal amount of all such Bonds which are at the time Outstanding; but the Holders of such amount of Bonds may, either at law or in equity, by suit, action or other proceedings, protect and enforce the rights of all Holders of Bonds and compel the performance of any and all of the covenants required herein to be performed by the City and its officers and employees, including but not limited to the fixing and maintaining of rates, fees and charges and the collection and proper segregation of the Gross Revenues and the application and use thereof. The Holders of a majority in principal amount of Outstanding Bonds shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Holders or the exercise of any power conferred on them and the right to waive a default in the performance of any such covenant, and its consequences, except a default in the payment of the principal of or interest on any Bond when due. Nothing herein, however, shall impair the absolute and unconditional right of the Holder of each Bond to receive payment of the principal of, premium, if any, and interest on such Bond as such principal, premium and interest respectively become due, and to institute suit for any such payment. Any court having jurisdiction of the action may appoint a receiver to administer the System on behalf of the City with power to charge and collect rates, fees and charges sufficient to provide for the payment of any Bonds, and to apply the Net Revenues in conformity with this Resolution and the laws of the State.

## ARTICLE XII

### DEFEASANCE

Section 12.1. General. When the liability of the City on all Bonds and Subordinate Obligations issued under and secured by this Resolution and all interest thereon has been discharged as provided in this Article XII, all pledges, covenants and other rights granted by this Resolution to the Holders of such Bonds and Subordinate Obligations shall cease, other than to the payment of such Bonds and Subordinate Obligations from money segregated for such

purpose. The City may also discharge its liability with respect to one or more Bonds or Subordinate Obligations in accordance with this Article XII.

Section 12.2. Maturity. The City may discharge its liability with reference to any Bonds or Subordinate Obligations and interest thereon which are due on any date by depositing with the Registrar for such Bonds on or before the date a sum sufficient for the payment thereof in full; or if any Bond or Subordinate Obligation or interest thereon shall not be paid when due, the City may nevertheless discharge its liability with reference thereto by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.

Section 12.3. Prepayment. The City may also discharge its obligations with respect to any prepayable Bonds or Subordinate Obligations called for redemption on any date when they are prepayable according to their terms, by depositing with the Registrar therefor on or before the Redemption Date a sum sufficient for the payment thereof in full; provided that notice of the redemption thereof has been duly given as provided in this Resolution or any Supplemental Resolution relating thereto.

Section 12.4. Escrow. The City may at any time discharge its liability with reference to any Bonds or Subordinate Obligations, subject to the provisions of law now or hereafter authorizing and regulating such action and this Section 12.4, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or Government Obligations authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal, interest and redemption premiums, if any, to become due on such Bonds or Subordinate Obligations at their Stated Maturities or, if such Bonds or Subordinate Obligations are prepayable and notice of redemption thereof has been duly given or irrevocably provided for, to such earlier Redemption Date.

## ARTICLE XIII

### MISCELLANEOUS

Section 13.1. Notices. All notices or other communications hereunder shall be sufficiently sent or given and shall be deemed sent or given when delivered or mailed by certified mail, postage prepaid, to the parties at the following addresses:

DNRC: Department of Natural Resources and Conservation  
1539 Eleventh Avenue  
Helena, Montana 59620  
Attn: Conservation and Resource Development Division

Trustee: U.S. Bank National Association  
c/o Corporate Trust Services  
1420 Fifth Avenue, 7<sup>th</sup> Floor  
Seattle, Washington 98101  
Attn: Corporate Trust Department

City: City of Red Lodge

1 South Platt  
P.O. Box 9  
Red Lodge, Montana 59068  
Attn: City Clerk

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

Section 13.2. Binding Effect. This Resolution shall inure to the benefit of and shall be binding upon the DNRC with respect to the Series 2019 Bonds, the City and their respective permitted successors and assigns.

Section 13.3. Assignment. During the time that any of the Series 2019 Bonds remain Outstanding, the City may not assign its rights and obligations under this Resolution or the Series 2019 Bonds. During the time that any of the Series 2019 Bonds remain Outstanding, the DNRC will pledge its rights under and interest in this Resolution, the Series 2019 Bonds and the Collateral Documents (except to the extent otherwise provided in the Indenture) as security for the payment of the State Bonds.

Section 13.4. Severability. If any provision of this Resolution shall be determined to be unenforceable at any time, it shall not affect any other provision of this Resolution or the enforceability of that provision at any other time.

Section 13.5. Amendments. So long any Series 2019 Bonds are Outstanding, this Resolution may not be effectively amended pursuant to Section 10.2 without the written consent of the DNRC.

Section 13.6. Applicable Law. This Resolution shall be governed by and construed in accordance with the laws of the State without giving effect to the conflicts-of-laws principles thereof.

Section 13.7. Captions; References to Sections. The captions in this Resolution are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this Resolution. References to Articles and Sections are to the Articles and Sections of this Resolution, unless the context otherwise requires.

Section 13.8. No Liability of Individual Officers, Directors or Council Members. No recourse under or upon any obligation, covenant or agreement contained in this Resolution shall be had against any director, officer or employee, as such, past, present or future, of the DNRC, the DEQ or the Trustee, either directly or through the DNRC, the DEQ or the Trustee, or against any officer, or member of the governing body or employee of the City, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or member of the governing body or employee of the DNRC, the Trustee or the City is hereby expressly waived and released by the City and by the DNRC as a condition of and in consideration for the adoption of this Resolution and the making of the 2019 Loan.

Section 13.9. Payments Due on Holidays. If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Resolution or the Series 2019 Bonds, shall not be Business Day, such payments may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Resolution or the Series 2019 Bonds.

Section 13.10. Right of Others to Perform City's Covenants. In the event the City shall fail to make any payment or perform any act required to be performed hereunder with respect to the Series 2019 Bonds, then and in each such case the DNRC or the provider of any Collateral Document may (but shall not be obligated to) remedy such default for the account of the City and make advances for that purpose. No such performance or advance shall operate to release the City from any such default and any sums so advanced by the DNRC or the provider of any Collateral Document shall be paid immediately to the party making such advance and shall bear interest at the rate of ten percent (10.00%) per annum from the date of the advance until repaid. The DNRC and the provider of any Collateral Document shall have the right to enter the 2019 Project or the facility or facilities of which the 2019 Project is a part or any other facility which is a part of the System in order to effectuate the purposes of this Section 13.10.

Section 13.11. Authentication of Transcript. The officers of the City are hereby authorized and directed to furnish to the DNRC and to Bond Counsel certified copies of all proceedings relating to the issuance of the Series 2019 Bonds and such other certificates and affidavits as may be required to show the right, power and authority of the City to issue the Series 2019 Bonds, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the City as to the truth of the statements purported to be shown thereby.

Section 13.12. Repeals and Effective Date.

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

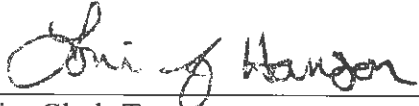
(b) Effectiveness. If the City's Water System Revenue Refunding Bond, Series 2019C is not issued and the Series 1998 Bond, Series 2008 Bond and Series 2009 Bond are not prepaid, refunded and defeased within 60 days of the date hereof, the Prior Resolution shall remain in effect and this Resolution shall be repealed and shall be of no further effect.

PASSED AND ADOPTED by the City Council of the City of Red Lodge, Montana on this 8<sup>th</sup> day of October, 2019.



\_\_\_\_\_  
Mayor

Attest:



\_\_\_\_\_  
City Clerk-Treasurer

(SEAL)

## APPENDIX A

### Description of the 2019 Project

The 2019 Project generally consists of engineering, design, and constructing various improvements to the System, including replacing water distribution lines and water services, adding valves and hydrants, and related improvements.

APPENDIX B

\$1,623,000  
Water System Revenue Bonds  
(DNRC Drinking Water State Revolving Loan Program)  
consisting of \$500,000 Subordinate Lien Taxable Series 2019A Bond  
and \$1,123,000 Series 2019B Bond  
City of Red Lodge, Montana

COMPLIANCE CERTIFICATE AND REQUEST

We, \_\_\_\_\_ and \_\_\_\_\_, hereby certify that we are on the date hereof the duly qualified and acting Mayor and the City Clerk-Treasurer, respectively, of the City of Red Lodge, Montana (the "Borrower"), and that:

1. Pursuant to Resolution No. 3252, adopted by the City Council of the City on May 13, 2008, as amended and supplemented by Resolutions No. 3271, duly adopted by the City Council on November 25, 2008 (as so amended and supplemented, the "Original Resolution"), as amended and supplemented by Resolution No. 3517, adopted on May 14, 2019, entitled "Resolution Relating to \$1,623,000 Water System Revenue Bonds (DNRC Drinking Water State Revolving Loan Program), Consisting of \$500,000 Subordinate Lien Taxable Series 2019A Bond and \$1,123,000 Series 2019B Bond; Authorizing the Issuance and Fixing the Terms and Conditions Thereof" (the "Supplemental Resolution"), the Borrower issued its Subordinate Lien Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Taxable Series 2019A, dated, as originally issued, as of \_\_\_\_\_, 2019, in the maximum aggregate principal amount of \$500,000 (the "Series 2019A Bond"), and its Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2019B, dated, as originally issued, as of \_\_\_\_\_, 2019, in the maximum aggregate principal amount of \$1,123,000 (the "Series 2019B Bond"). The Borrower has reviewed the Supplemental Resolution, including, without limitation, Articles II and III thereof, and the definitions relating thereto. The Borrower acknowledges and agrees that the Series 2019A Bond evidences a loan made to the Borrower from the DNRC from funds made available to the DNRC from an EPA Capitalization Grant, and that this Certificate is being relied upon by the DNRC for ensuring compliance with requirements applicable to the Borrower, the DNRC, and the 2019 Project (as hereinafter defined). Capitalized terms used herein without definition shall have the meanings given them in the Original Resolution, as amended and supplemented by the Supplemental Resolution (as so amended and supplemented, the "Resolution").

The Series 2019A Bond is issued to finance a portion of the costs of construction and installation of various improvements to the System, generally described as the 2019 Project (the "2019 Project") in the Resolution. Construction of the 2019 Project has complied with all federal and state standards, including, without limitation, EPA regulations and standards. The 2019 Project is expected to be completed and placed in service on or about \_\_\_\_\_, 20\_\_.

Costs of the 2019 Project in the amount of \$\_\_\_\_\_ have been paid as of the date of delivery of this Certificate. The Borrower hereby waives its right to any remaining 2019A



Committed Amount not advanced or to be advanced upon delivery hereof. The Borrower specifically confirms and agrees that any remaining amounts of the 2019 Loans to be lent to the Borrower, if any, shall be evidenced by the Series 2019B Bond.

As of the date hereof, the Borrower has spent the following amounts in connection with the 2019 Project and costs related thereto:

Personnel Costs	
Office Costs	
Professional Services (Grant Admin.)	
Legal Costs	
Audit Fees	
Loan Reserves	
Bond Counsel and Related Costs	
Engineering Design	
Construction Engineering Services	
Construction	
Contingency	
<b>TOTAL PROJECT COSTS</b>	

Of such amounts, \$ \_\_\_\_\_ were paid from advances of proceeds of the Series 2019A Bond.

The Trustee has delivered to the Borrower a copy of Schedule B to be attached to the Series 2019A Bond, which reflects the amortization of all advances made or to be made on the date hereof of proceeds of the Series 2019A Bond (i.e., \$ \_\_\_\_\_). The Borrower hereby acknowledges and agrees that Schedule B has been calculated in accordance with the provisions of the Resolution and the Indenture, and that the Series 2019A Bond, with said Schedule B attached thereto, has been duly issued pursuant to the Resolution and is a valid and binding obligation of the Borrower in accordance with its terms and the terms of the Resolution; provided, however, if the DNRC delivers a Forgiveness Statement, the Borrower's obligation to repay the principal of the Series 2019A Bond and interest and surcharges thereon is thereupon forgiven, and if the DNRC delivers a Noncompliance Certificate, amounts advanced under the 2019A Loan evidenced by the Series 2019A Bond shall bear interest from and after the first advance of principal of the Series 2019A Bond at the rate of two percent (2.00%) per annum and the Borrower shall pay currently with interest the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge, all as described in Section 5.1.2 of the Supplemental Resolution authorizing the Series 2019A Bond.

The representations of the Borrower contained in Articles II and III of the Supplemental Resolution are true and complete as of the date hereof as if made on this date, except to the extent that the Borrower has specifically advised the DEQ and the DNRC otherwise in writing.

No default in any covenant or agreement on the part of the Borrower contained in the Resolution has occurred and is continuing.

The Borrower is delivering this Certificate to the DNRC, in part, to ensure compliance with EPA regulations and standards. The Borrower certifies that all laborers and mechanics employed by contractors and subcontractors on the 2019 Project have been and will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code, and that the iron and steel products used in the 2019 Project comply with the "American Iron and Steel" requirements of Section 436 of the Consolidated Appropriations Act of 2014 (P.L. 113-76), as those requirements are further interpreted by applicable EPA guidance.

The Borrower acknowledges and agrees that this Certificate completed by the Borrower in form satisfactory to the DNRC must be executed and delivered to the DNRC by the date that is 30 days after receipt of the form of this Certificate from the DNRC. By submitting this Certificate, the Borrower requests that the DNRC forgive the obligation of the Borrower to repay the principal of the Series 2019A Bond, together with interest and surcharges thereon. The Borrower acknowledges and agrees that (i) the forgiveness of principal of and interest and surcharges on the Series 2019A Bond by the DNRC is contingent on the timely delivery of this Certificate by the Borrower in satisfactory form as determined in the DNRC's sole and complete discretion, (ii) the DNRC has no obligation to grant such forgiveness, and (iii) if the DNRC delivers to the Borrower a Noncompliance Certificate, (a) the obligation of the Borrower to repay the principal of the Series 2019A Bond plus interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge thereon shall continue in full force and effect until the principal of the Series 2019A Bond advanced and interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge thereon are paid in full, as set forth in Schedule B delivered pursuant to paragraph 5 above, and as provided in the Series 2019A Bond and the Resolution, and (b) the Borrower shall, as necessary, within the 3-month period specified in the Supplemental Resolution, adjust its rates and charges to produce Net Revenues and Surplus Net Revenues required by the rate covenant in the Resolution.

WITNESS our hands on behalf of the Borrower and the seal of the Borrower as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF RED LODGE, MONTANA

(SEAL)

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

By \_\_\_\_\_  
City Clerk-Treasurer

## APPENDIX C

### Representations and Covenants for the Benefit of the DNRC and DEQ

Section 1. Representations and Warranties. The City represents and warrants to the DNRC as of the date issuance of the Series 2019 Bonds and as of the date hereof as follows:

(a) Organization and Authority. The City:

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

(ii) has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the System and to carry on its current activities with respect to the System, to adopt this Resolution, to issue the Series 2019 Bonds and to enter into the Collateral Documents and to carry out and consummate all transactions contemplated by this Resolution, the Series 2019 Bonds and the Collateral Documents;

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

(iv) has taken all proper action to authorize the execution, delivery and performance of its obligations under this Resolution, the Series 2019 Bonds and the Collateral Documents and the incurrence of the debt evidenced by the Series 2019 Bonds.

(b) Litigation. There is no litigation or proceeding pending, or to the knowledge of the City threatened, against or affecting the City in any court or before or by any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the existence, corporate or otherwise, of the City, or the ability of the City to make all payments and otherwise perform its obligations under this Resolution, the Series 2019 Bonds and the Collateral Documents, or the financial condition of the City, or the transactions contemplated by this Resolution, the Series 2019 Bonds and the Collateral Documents or the validity and enforceability of this Resolution, the Series 2019 Bonds and the Collateral Documents. No referendum petition has been filed with respect to any resolution or other action of the City relating to the 2019 Project, the Series 2019 Bonds or any Collateral Documents.

(c) Borrowing Legal and Authorized. The adoption of this Resolution, the execution and delivery of the Series 2019 Bonds and the Collateral Documents and the consummation of the transactions provided for in this Resolution, the Series 2019 Bonds and the Collateral Documents and compliance by the City with the provisions of this Resolution, the Series 2019 Bonds and the Collateral Documents:

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

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

(d) No Defaults. No event has occurred and no condition exists that constitutes a default under this Resolution or the Collateral Documents. The City is not in violation of any term of any agreement, bond resolution, trust indenture, charter or other instrument to which it is a party or by which it or its property may be bound which violation would materially and adversely affect the transactions contemplated hereby or the compliance by the City with the terms hereof or of the Series 2019 Bonds and the Collateral Documents.

(e) Governmental Consent. The City has obtained or made all permits, findings and approvals required to the date of adoption of this Resolution by any governmental body or officer for the making and performance by the City of its obligations under this Resolution, the Series 2019 Bonds and the Collateral Documents or with respect to the 2019 Project, the financing or refinancing thereof or the reimbursement of the City for the costs thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the City as a condition to adopting this Resolution, issuing the Series 2019 Bonds or entering into the Collateral Documents and the performance of the City's obligations hereunder and thereunder.

(f) Binding Obligation. This Resolution, the Series 2019 Bonds and the Collateral Documents are the valid and binding special, limited obligations of the City, enforceable against the City in accordance with their terms except to the extent that the enforceability thereof may be limited by laws relating to bankruptcy, moratorium, reorganization, insolvency or similar laws affecting creditors' rights and general principles of equity.

(g) The 2019 Project. The 2019 Project consists of the facilities, improvements and activities described in Appendix A hereto. The City has complied with all covenants and agreements contained in the Prior Resolution as then in effect with respect to the 2019 Project. The 2019 Project comprises facilities of a type that, as determined by the EPA, will facilitate compliance with the national primary drinking water regulations applicable to the System or will otherwise significantly further the health protection objectives of the Safe Drinking Water Act. Construction of the 2019 Project complied with applicable federal and State standards, including, without limitation, EPA regulations and standards. The 2019 Project is a project of the type permitted to be financed under the Act, the State Act, the Program and the Safe Drinking Water Act.

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

(i) Full Disclosure. There is no fact that the City has not specifically disclosed in writing to the DNRC that materially and adversely affects or (so far as the City can now foresee), except for pending or proposed legislation or regulations that are a matter of general public information, that will materially and adversely affect the properties, operations and finances of the System, the City’s status as a Public Entity and Governmental Unit, its ability to own and operate the System in the manner it is currently operated or the City’s ability to perform its obligations under this Resolution, the Series 2019 Bonds and the Collateral Documents and to pledge any revenues or other property pledged to the payment of the Series 2019 Bonds.

(j) Compliance With Law. The City:

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

(ii) has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of the System and the operation thereof and agrees to obtain all such licenses, permits, franchises or other governmental authorizations as may be required in the future for the System and the operation thereof, which failure to obtain might materially and adversely affect the ability of the City to conduct the operation of the System as presently conducted or the condition (financial or otherwise) of the System or the City’s ability to perform its obligations under this Resolution, the Series 2019 Bonds and the Collateral Documents.

Section 2. Covenants With Respect to Series 2019 Bonds. During the time that the Series 2019 Bonds remain Outstanding, the City covenants and agrees with the DNRC as follows:

(a) Insurance. The City at all times shall keep and maintain with respect to the System property and casualty insurance and liability insurance with financially sound and reputable insurers, or self-insurance as authorized by State law, against such risks and in such amounts, and with such deductible provisions, as are customary in the State in the case of entities of the same size and type as the City and similarly situated and shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for all such insurance. Nothing herein shall be construed to prohibit or preclude the City from self-insuring or participating in a self-insurance program in compliance with the provisions of State law. All such insurance policies shall name the DNRC as an additional insured to the extent permissible

under such policies. Each policy must provide that it cannot be cancelled by the insurer without giving the City and the DNRC 30 days' prior written notice. The City shall give the DNRC prompt notice of each insurance policy it obtains or maintains to comply with this paragraph (b) and of each renewal, replacement, change in coverage or deductible under or amount of or cancellation of each such insurance policy and the amount and coverage and deductibles and carrier of each new or replacement policy. Such notice shall specifically note any adverse change as being an adverse change.

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

(c) Further Assurance. The City shall execute and deliver to the DNRC all such documents and instruments and do all such other acts and things as may be necessary or required by the DNRC to enable the DNRC to exercise and enforce its rights under this Resolution, the Series 2019 Bonds and the Collateral Documents and to realize thereon, and record and file and re-record and refile all such documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or required by the DNRC to validate, preserve and protect the position of the DNRC under this Resolution, the Series 2019 Bonds and the Collateral Documents.

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

(i) The City shall, at its expense, take all necessary action to maintain and preserve the lien and security interest of this Resolution and the Collateral Documents so long as any amount is owing under this Resolution or the Series 2019 Bonds.

(ii) The City shall forthwith, after the execution and delivery of the Series 2019 Bonds and thereafter from time to time, cause this Resolution and any Collateral Documents granting a security interest in revenues or real or personal property and any financing statements or other notices or documents relating thereto to be filed, registered and recorded in such manner and in such places as may be required by law in order to perfect and protect fully the lien and security interest hereof and thereof and the security interest in them granted by this Resolution and, from time to time, shall perform or cause to be performed any other act required by law, including executing or causing to be executed any and all required continuation statements and shall execute or cause to be executed any further instruments that may be requested by the DNRC for such perfection and protection.

(iii) Except to the extent it is exempt therefrom, the City shall pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution

and acknowledgment of the documents described in subparagraph (ii) above, and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Series 2019 Bonds and the Collateral Documents and the documents described in subparagraph (ii) above.

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

(i) the preliminary budget for the System, with items for the 2019 Project shown separately; and

(ii) when adopted, the final budget for the System, with items for the 2019 Project shown separately.

The City will cause proper and adequate books of record and account to be kept showing complete and correct entries of all receipts, disbursements and other transactions relating to the System, the monthly Gross Revenues derived from its operation, and the segregation and application of the Gross Revenues in accordance with this Resolution, in such reasonable detail as may be determined by the City in accordance with generally accepted governmental accounting practice and principles. It will cause such books to be maintained on the basis of the same Fiscal Year as that utilized by the City. The City shall, within 365 days after the close of each Fiscal Year, cause to be prepared and supply to the DNRC a financial report with respect to the System for such Fiscal Year. The report shall be prepared at the direction of the City Clerk-Treasurer in accordance with applicable generally accepted governmental accounting principles and, in addition to whatever matters may be thought proper by the City Clerk-Treasurer to be included therein, shall include the following:

(A) A statement or statements showing in detail of the income and expenditures of the System for the Fiscal Year, identifying capital expenditures and separating them from operating expenditures;

(B) A balance sheet as of the end of the Fiscal Year; and

(C) The number of premises connected to the System at the end of the Fiscal Year;

(D) The amount on hand in the Water System Fund at the end of the Fiscal Year;

(E) A list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bond; and

(F) A determination that the report shows full compliance by the City with the provisions of this Resolution during the Fiscal Year covered thereby, including proper

segregation of the capital expenditures from operating expenses, maintenance of the required balance in the Revenue Bond Account and receipt of Net Revenues during each Fiscal Year at least equal to 120% of the maximum amount of principal and interest payable on outstanding Bonds in any subsequent Fiscal Year, or, if the report should reveal that the revenues have been insufficient for compliance with this Resolution, or that the methods used in accounting for such revenues were contrary to any provision of this Resolution, the report shall include a full explanation thereof, together with recommendations for such change in rates or accounting practices or in the operation of the System as may be required.

The City shall also have prepared and supplied to the DNRC and the DEQ, within 365 days of the close of each Fiscal Year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting principles and practice with respect to the financial statements and records of the System. The audit report shall include an analysis of the City's compliance with the provisions of this Resolution.

(f) Project Accounts. The City shall maintain 2019 Project accounts in accordance with generally accepted government accounting standards.

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

(h) Compliance with Safe Drinking Water Act. The City has complied and shall comply with all conditions and requirements of the Safe Drinking Water Act pertaining to the 2019 Loans and the 2019 Project and shall maintain sufficient financial, managerial and technical capability to continue to effect such compliance.

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

Section 3. Tax-Exempt Status of State Bonds. During the time that any of the Series 2019 Bonds remain Outstanding, the City covenants and agrees with the DNRC as follows:

(a) The City will not use or permit to be used any of the proceeds of the Series 2019 Bonds or any other funds of the City, directly or indirectly, in a manner that would cause, or take any other action that would cause, any State Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code or would otherwise cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

(b) The City agrees that it will not enter into, or allow any "related person" (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the State Bonds or any other obligations of the DNRC in an amount related to the



amount of the 2019 Loan or the portion of the 2019 Loan derived directly or indirectly from proceeds of the State Bonds.

(c) The City shall not use or permit the use of the 2019 Project directly or indirectly in any trade or business carried on by any Person who is not a Governmental Unit. For the purpose of this paragraph (c), use as a member of the general public shall not be taken into account and any activity carried on by a Person other than a natural person shall be treated as a trade or business.

(d) The portion of the 2019 Project financed with proceeds of the 2019B Loan was acquired by and is now and shall, during the term of the Series 2019B Bond, be owned by the City and not by any other Person. Notwithstanding the previous sentence, the City may transfer the 2019 Project or a portion thereof to another Governmental Unit which is also a Public Entity if such transfer is otherwise permitted hereunder and if such organization agrees with the DNRC to comply with the provisions of Section 2(g) and 2(h) of this Appendix C and of Section 9.2 of the Resolution and if the DNRC receives an opinion of Bond Counsel to the effect that such transfer will not violate the State Act or the Safe Drinking Water Act or adversely affect the exclusion of interest on the State Bonds from gross income for purposes of federal income taxation. In addition, except as otherwise provided in this Resolution or in any Collateral Documents, the City may sell or otherwise dispose of any portion of the 2019 Project which has become obsolete or outmoded or is being replaced or for other reasons is not needed by the City or beneficial to the general public or necessary to carry out the purposes of the Safe Drinking Water Act.

(e) The City shall comply with the arbitrage rebate requirements of Section 148 of the Code (the "Arbitrage Rebate Instructions"), if any, delivered to it by the DNRC at the time of delivery to the DNRC of the Series 2019B Bond. The Arbitrage Rebate Instructions may be amended or replaced by new Arbitrage Rebate Instructions delivered by the DNRC and accompanied by an opinion of Bond Counsel to the effect that the use of said amended or new Arbitrage Rebate Instructions will not adversely affect the excludability of interest on the State Bonds (except State Bonds the interest on which the State did not intend to be excluded from gross income for federal income tax purposes) from gross income of the recipients thereof for federal income tax purposes.

(f) The City agrees that during the term of the 2019 Loans it will not contract with or permit any Private Person to manage the 2019 Project or any portion thereof except according to a written management contract and upon delivery to the DNRC of an opinion of Bond Counsel to the effect that the execution and delivery of such management contract will not violate the State Act or the Safe Drinking Water Act or adversely affect the exclusion of interest on the State Bonds from gross income or purposes of federal income taxation.

(g) The City shall not lease all or any portion of the 2019 Project to any Person other than a nonexempt person which agrees in writing with the City and the State not to cause any default to occur under this Resolution, provided the City may lease all or any portion of the 2019 Project to a nonexempt person pursuant to a lease which in the opinion of Bond Counsel

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

(h) The City shall not change the use or nature of all or any portion of the 2019 Project (i) if such change will violate the Safe Drinking Water Act, or (ii) so long as the State Bonds are outstanding unless, in the opinion of Bond Counsel delivered to the DNRC, such change will not result in the inclusion in gross income of interest on the State Bonds for federal income tax purposes.

Section 4. Indemnification of DNRC and DEQ. The City shall, to the extent permitted by law, indemnify and save harmless the DNRC and the DEQ and their officers, employees and agents (each an “Indemnified Party” or, collectively, the “Indemnified Parties”) against and from any and all claims, damages, demands, expenses, liabilities and losses of every kind asserted by or on behalf of any Person arising out of the acts or omissions of the City or its employees, officers, agents, contractors, subcontractors, or consultants in connection with or with regard or in any way relating to the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation or financing of the 2019 Project. The City shall, to the extent permitted by law, also indemnify and save harmless the Indemnified Parties against and from all costs, reasonable attorneys’ fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand. If any proceeding is brought against an Indemnified Party by reason of such claim or demand, the City shall, upon notice from an Indemnified Party, defend such proceeding on behalf of the Indemnified Party. Notwithstanding the foregoing, the City shall not be obligated to indemnify an Indemnified Party or any of its officers, employees or agents or hold any of them harmless against or from or in respect of any claim, damage, demand, expense, liability or loss arising from the intentional or willful misconduct or gross negligence of the Indemnified Parties.

Section 5. Tax Matters. During the time that Series 2019B Bond remains Outstanding, the City covenants and agrees with the DNRC as follows:

(a) Use of 2019 Project. The 2019 Project has been and will continue to be owned and operated by the City and available for use by members of the general public on a substantially equal basis. The City shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the 2019 Project or security for the payment of the Series 2019B Bond which might cause the Series 2019B Bond to be considered a “private activity bond” or “private loan bond” within the meaning of Section 141 of the Code.

(b) General Covenant. The City covenants and agrees with the owners from time to time of the Series 2019B Bond that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Series 2019B Bond to become includable in gross income for federal income tax purposes under the Code and the Regulations, and covenants to take any and all actions within its powers to ensure that the interest on the Series 2019B Bond will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

(c) Arbitrage Certification. The Mayor and the City Clerk-Treasurer, being the officers of the City charged with the responsibility for issuing the Series 2019B Bond, executed and delivered to the DNRC, as authorized and directed under the Prior Resolution, certificates in accordance with the provisions of Section 148 of the Code and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2019B Bond, it was reasonably expected that the proceeds of the Series 2019B Bond would not be used in a manner that would cause the Series 2019B Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code and the Regulations.

(d) Arbitrage Rebate. The City hereby represents that the Series 2019B Bond qualified for the exception for small governmental units to the arbitrage rebate provisions contained in Section 148(f) of the Code. Specifically, at the time of issuance of the Series 2019B Bond, the City represented:

(i) Substantially all (not less than 95%) of the proceeds of the Series 2009B Bond (except for amounts to be applied to the payment of costs of issuance) will be used for local governmental activities of the City.

(ii) The aggregate face amount of all “tax-exempt bonds” (including warrants, contracts, leases and other indebtedness, but excluding private activity bonds) issued by or on behalf of the City and all subordinate entities thereof during 2019 is reasonably expected not to exceed \$5,000,000. To date in 2019, the City has not issued any tax-exempt bonds, except the Series 2019B Bond, and in the calendar years 2014 through 2018, the City issued no tax-exempt bonds, except its \$969,000 Special Improvement District No. 1 Bond, Series 2018, and \$989,000 Sewerage System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2017B.

(e) If notwithstanding the provisions of paragraph (a) of this section, the arbitrage rebate provisions of Section 148(f) of the Code apply to the Series 2019B Bond, the City covenants and agrees to make the determinations, retain records and rebate to the United States the amounts at the times and in the manner required by said Section 148(f).

Section 6. Continuing Disclosure. The City understands and acknowledges that the DNRC acquired the Series 2019 Bonds under the Program pursuant to which the State issues from time to time State Bonds to provide funds therefor. The City covenants and agrees that, so long as any Series 2019 Bonds are Outstanding, upon written request of the DNRC from time to time, the City will promptly provide to the DNRC all information that the DNRC reasonably determines to be necessary or appropriate to offer and sell State Bonds or to provide continuing disclosure in respect of State Bonds, whether under Rule 15c2-12 (17 C.F.R. § 240.15c2-12) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, or otherwise. Such information shall include, among other things and if so requested, financial statements of the City prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental

Accounting Standards Board or as otherwise provided under State law, as in effect from time to time (such financial statements to relate to a Fiscal Year or any period therein for which they are customarily prepared by the City, and, if for a Fiscal Year and so requested by the DNRC, subject to an audit report and opinion of an accountant or government auditor, as permitted or required by the laws of the State). The City will also provide, with any information so furnished to the DNRC, a certificate of the Mayor and the City Clerk-Treasurer to the effect that, to the best of their knowledge, such information does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make the statements made, in light of the circumstances under which they are made, not misleading.