

TOWN OF HARPERS FERRY

**WATER REVENUE BONDS, SERIES 2020
(UNITED STATES DEPARTMENT OF AGRICULTURE)**

BOND ORDINANCE

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TABLE OF CONTENTS

ARTICLE I
STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01	Authority for this Ordinance.....	1
Section 1.02	Findings and Determinations.....	1
Section 1.03	Bond Legislation Constitutes Contract.....	3
Section 1.04	Definitions.....	3

ARTICLE II
AUTHORIZATION OF PAYMENT, ACQUISITION AND
CONSTRUCTION OF THE PROJECT

Section 2.01	Authorization of Acquisition and Construction of the Project.....	8
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ARTICLE III
AUTHORIZATION, TERMS, EXECUTION, REGISTRATION
AND ISSUE OF SERIES 2020 BONDS

Section 3.01	Authorization of Series 2020 Bonds.....	8
Section 3.02	Description of Series 2020 Bonds.....	8
Section 3.03	Negotiability, Registration, Transfer and Exchange of Bonds.....	9
Section 3.04	Bond Registrar.....	9
Section 3.05	Execution of Bonds.....	10
Section 3.06	Bonds Mutilated, Destroyed, Stolen or Lost.....	10
Section 3.07	Bonds Secured by Pledge of Gross Revenues; Lien Positions with Respect to Prior Bonds.....	10
Section 3.08	Form of Bond.....	10

ARTICLE IV
SYSTEM REVENUES AND APPLICATION THEREOF;
DISPOSITION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01	Establishment of Funds and Accounts with Depository Bank.....	17
Section 4.02	Establishment of Funds and Accounts with Commission.....	17
Section 4.03	Bond Proceeds; Project Construction Account.....	17
Section 4.04	Covenants of the Issuer as to System Revenues and Funds.....	18
Section 4.05	Interim Construction Financing.....	21

**ARTICLE V
GENERAL COVENANTS, ETC.**

Section 5.01	General Statement.....	22
Section 5.02	Rates.....	22
Section 5.03	Sale of the System.....	22
Section 5.04	Issuance of Additional Parity Bonds or Obligations.....	23
Section 5.05	Insurance and Bonds.....	24
Section 5.06	Statutory Mortgage Lien.....	25
Section 5.07	Events of Default.....	25
Section 5.08	Remedies.....	25
Section 5.09	Appointment of Receiver.....	25
Section 5.10	Fiscal Year; Budget.....	26
Section 5.11	Covenant to Proceed and Complete.....	27
Section 5.12	Books and Records; Audits.....	27
Section 5.13	Maintenance of System.....	27
Section 5.14	No Competition.....	27
Section 5.15	Wetlands Covenant.....	27

**ARTICLE VI
RATES, ETC.**

Section 6.01	Initial Schedule of Rates and Charges; Rules.....	28
--------------	---	----

**ARTICLE VII
MISCELLANEOUS**

Section 7.01	Payment of Bonds.....	29
Section 7.02	Modification or Amendment.....	29
Section 7.03	Delivery of Bonds.....	29
Section 7.04	Severability of Invalid Provisions.....	29
Section 7.05	Conflicting Provisions Repealed.....	29
Section 7.06	Table of Contents and Headings.....	29
Section 7.07	Covenant of Due Procedure, Etc.	29
Section 7.08	Statutory Notice and Public Hearing.....	30
Section 7.09	Effective Time.....	30

- EXHIBIT A - DESCRIPTION OF PROJECT
- EXHIBIT B - NOTICE OF PUBLIC HEARING ON TOWN OF HARPERS FERRY BOND ORDINANCE

TOWN OF HARPERS FERRY

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE TOWN OF HARPERS FERRY, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN \$6,300,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2020 (UNITED STATES DEPARTMENT OF AGRICULTURE); DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDER OF THE BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE TOWN OF HARPERS FERRY:

**ARTICLE I
STATUTORY AUTHORITY, FINDINGS
AND DEFINITIONS**

Section 1.01 Authority for this Ordinance. This Ordinance is adopted and enacted pursuant to the provisions of Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the “Act”), and other applicable provisions of law. The Town of Harpers Ferry (the “Issuer”) is a duly created and validly existing municipal corporation and political subdivision of the State of West Virginia in Jefferson County of said State.

Section 1.02 Findings and Determinations. It is hereby found, determined and declared as follows:

A. The Issuer now owns and operates a public waterworks system. It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer, and, accordingly, it is hereby ordered, that there be acquired and constructed certain additions, betterments and improvements to the existing waterworks facilities of the Issuer, including without limitation the additions, betterments and improvements described in Exhibit A attached hereto and incorporated herein by reference, together with all necessary appurtenances (collectively, the “Project”), as such Project is more particularly described in and according to the plans and specifications prepared by Gwin, Dobson & Foreman, Inc. (the “Consulting Engineer”) and heretofore filed in the office of the Recorder of the Issuer. The existing waterworks facilities of the Issuer, together with the Project and any further additions, betterments, improvements or extensions thereto, are herein called the “System.” The acquisition and construction of the Project and the financing hereby authorized and provided for

are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

B. The estimated revenues to be derived in each year from the operation of the System after completion of the Project will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Bonds (as such term is hereinafter defined) and all funds and accounts and other payments provided for herein.

C. The estimated maximum cost of the acquisition and construction of the Project is \$6,300,000, which will be obtained from the proceeds of sale of the Series 2020 Bonds hereinafter authorized to the United States Department of Agriculture, Rural Utilities Service (the "Purchaser").

D. It is necessary for the Issuer to issue its Water Revenue Bonds, Series 2020 (the "Series 2020 Bonds") in the total aggregate principal amount of not more than \$6,300,000 to finance the cost of such acquisition and construction of the Project and to pay costs of issuance thereof and related costs in the manner hereinafter provided. The cost of such acquisition and construction shall be deemed to include, without being limited to, the acquisition and construction of the Project; the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest on the Series 2020 Bonds prior to, during and for six months after completion of such acquisition and construction of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the Project, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized and the acquisition and construction of the properties and the placement of same in operation; provided that, reimbursement to the Issuer for any amounts expended by it and the repayment of indebtedness incurred for costs of the Project by the Issuer shall be deemed costs of the Project.

E. The period of usefulness of the System after completion of the Project is not less than 40 years.

F. There are outstanding obligations of the Issuer which will rank on parity with the Series 2020 Bonds as to liens, pledges, sources of and security for payment, which obligations are designated and have the lien positions, as follows:

<u>Description</u>	<u>Lien Position</u>
Water Revenue Bonds, Series 1986 A Dated December 19, 1986, issued in the original aggregate principal amount of \$611,912 (the "Series 1986 A Bonds")	First Lien

Water Revenue Bonds, Series 2008
(United States Department of Agriculture),
Dated March 13, 2008, issued in the original
aggregate principal amount of \$350,000
(the “Series 2008 Bonds”)

First Lien

Water Revenue Bonds, Series 1986 B,
Dated December 19, 1986, issued in the original
aggregate amount of \$150,088
(the “Series 1986 B Bonds”)

Second Lien

The 2020 Bonds shall be issued on parity with the Series 1986 A Bonds and Series 2008 Bonds and senior and prior to the Series 1986 B Bonds with respect to liens, pledges and sources of and security for payment and in all other respects.

The Series 1986 A Bonds and Series 2008 Bonds are hereinafter sometimes collectively called the “First Lien Bonds” and the Series 1986 B Bonds are hereinafter sometimes called the “Second Lien Bonds.” The Series 1986 A Bonds, Series 1986 B Bonds and Series 2008 Bonds are hereinafter sometimes collectively called the “Prior Bonds.” The ordinances which authorized the issuance of the Prior Bonds are herein referred to as the “Prior Ordinances.” The Series 2008 Bonds were issued to and are currently held by the Purchaser and the Series 1986 A Bonds and Series 1986 B Bonds were issued to and are currently held by West Virginia Water Development Authority (the “Authority”).

Prior to the issuance of the Series 2020 Bonds, the Issuer will obtain (1) a certificate of an Independent Certified Public Accountant stating that the parity tests of the Series 1986 A Bonds and Series 2008 Bonds have been met and (2) the written consent from the Holders of the First Lien Bonds and the Second Lien Bonds to issue the Series 2020 Bonds on a parity with the lien on the Gross Revenues of the Holders of the First Lien Bonds and senior and prior to the lien on the Gross Revenues of the Holder of the Second Lien Bonds. The Issuer is in compliance with all the covenants of the Prior Bonds and the Prior Ordinances.

Other than the Prior Bonds, there are no outstanding obligations of the Issuer which will rank prior to, on a parity with or junior and subordinate to the Series 2020 Bonds as to liens, pledge and/or source of and security for payment and in all other respects.

G. It is in the best interest of the Issuer that the Series 2020 Bonds be sold to the Purchaser, pursuant to the terms and provisions of the Letter of Conditions, dated March 9, 2018, and all amendments thereto, if any (collectively, the “Letter of Conditions”).

H. The Issuer has complied with all requirements of law relating to the authorization of the acquisition and construction of the Project, the operation of the System, including, without limitation, the imposition of rates and charges, and the issuance of the Series 2020 Bonds, or will have so complied prior to issuance of the Series 2020 Bonds, including, among other things and without limitation, obtaining a certificate of public convenience and necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired or shall have been duly waived or otherwise provided for.

Section 1.03 Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2020 Bonds by those who shall be the Registered Owner of the same from time to time, this Ordinance (the “Bond Legislation”) shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owner, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Registered Owner of the Series 2020 Bonds.

Section 1.04 Definitions. In addition to capitalized terms defined elsewhere herein, the following terms shall have the following meanings herein unless the text otherwise expressly requires;

“Act” means Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended.

“Bond Legislation” or “Ordinance” means this Ordinance and all ordinances, orders and resolutions supplemental hereto and amendatory hereof.

“Bond Registrar” means the Issuer, which shall usually so act by its Recorder.

“Bonds” mean, collectively, the Series 2020 Bonds, the Prior Bonds and, where appropriate, any bonds on a parity with the Series 2020 Bonds authorized to be issued hereunder or by another ordinance of the Issuer.

“Closing Date” means the date upon which there is an exchange of the Series 2020 Bonds for the proceeds, or at least a *de minimus* portion, thereof representing the purchase price of the Series 2020 Bonds from the Purchaser.

“Commission” means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

“Consulting Engineer” means Gwin, Dobson & Foreman, Inc., or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineer for the System.

“Depository Bank” means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

“Facilities” or “waterworks facilities” means all the tangible properties of the System and also any tangible properties which may hereafter be added to the System by additions, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

“FDIC” means the Federal Deposit Insurance Corporation.

“First Lien Bonds” means, collectively, the Series 1986 A Bonds and Series 2008 Bonds.

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

“Governing Body” or “Council” means the Council of the Issuer.

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

“Herein” or “herein” means in this Bond Legislation.

“Independent Certified Public Accountant” shall mean any public accountant or certified public accountant or firm of public accountants or certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

“Issuer” or “Borrower” means the Town of Harpers Ferry, a municipal corporation and political subdivision of the State of West Virginia, in Jefferson County, West Virginia, and includes the Governing Body of the Issuer.

“Letter of Conditions” means, collectively, the Letter of Conditions of the Purchaser dated March 9, 2018, and all amendments thereto, if any.

“Minimum Reserve” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2020 Bonds in the then current or any succeeding year.

“Net Revenues” means the balance of the Gross Revenues, as defined below, remaining after deduction of Operating Expenses, as defined below.

“Operating Expenses” means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting principles and retention of a sum not to exceed one-sixth of the budgeted Operating Expenses stated above for the current year as working capital, and language herein requiring payment of Operating Expenses means also retention of not to exceed such sum as working capital; provided that, all monthly amortization payments upon the Bonds and into the Series 2020 Bonds Reserve Account and Renewal and Replacement Fund have been made to the last monthly payment date prior to the date of such retention.

“Prior Bonds” means the First Lien Bonds and the Second Lien Bonds.

“Prior Ordinances” means the ordinances authorizing the Prior Bonds.

“Project” shall have the meaning stated in Section 1.02A above.

“Purchaser” or “Government” means United States Department of Agriculture, Rural Utilities Service, and any successor thereof, acting for and on behalf of the United States of America.

“Qualified Investments” means and includes any of the following, to the extent such investments are permitted by law:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unamortized interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;
- (e) Time or demand accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC (hereinbefore defined) or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with, the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;
- (f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;
- (g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest

in the collateral therefor, must have (or its agent must have) possession of such collateral, and such collateral must be free of all claims by third parties;

(h) The West Virginia “consolidated fund” managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the Code of West Virginia, 1931, as amended; and

(i) Obligations of States or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least “A” by Moody’s Investors Service or Standard & Poor’s Corporation.

“Recorder” means the recorder, clerk or other municipal officer of the Issuer by whatever name called, charged with the responsibility of keeping the journal of proceedings of the Governing Body and other municipal records.

“Registered Owner,” “Bondholder,” “Holder of the Bonds” or any similar term means any person who shall be the registered owner of the Bonds.

“Revenues” or “Gross Revenues” means all rates, rents, fees, charges or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with sound accounting practices.

“Second Lien Bonds” means the Series 1986 B Bonds.

“Series 1986 A Bonds” means the Issuer’s Water Revenue Bonds, Series 1986 A , dated December 19, 1986, issued in the original principal amount of \$611,912.

“Series 1986 B Bonds” means the Issuer’s Water Revenue Bonds, Series 1986 B , dated December 19, 1986, issued in the original principal amount of \$150,088.

“Series 2008 Bonds” means the Issuer’s Water Revenue Bonds, Series 2008 (United States Department of Agriculture), dated March 13, 2008, issued in the original principal amount of \$350,000.

“Series 2020 Bonds” means the Water Revenue Bonds, Series 2020 (United States Department of Agriculture), authorized hereby to be issued pursuant to this Bond Legislation.

“Series 2020 Bonds Reserve Account” means the Series 2020 Bonds Reserve Account created by Section 4.02 of this Bond Legislation.

“Supplemental Resolution” means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article “the”, refers specifically to the supplemental resolution authorizing the sale of the Series 2020 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with

respect to the Series 2020 Bonds, and not so included may be included in another supplemental resolution.

“System” means the complete public waterworks system of the Issuer, presently existing in its entirety or any integral part thereof, and shall include the Project and any improvements and extensions thereto hereafter acquired or constructed for the System from any sources whatsoever.

“Tap Fees” means the fees, if any, paid by prospective customers of the System in order to connect thereto.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neuter gender shall include any other gender; and any requirement for execution or attestation of the Bonds or any certificate or other document by the Mayor or the Recorder shall mean that such Bonds, certificate or other document may be executed or attested by an Acting Mayor or Acting Recorder.

ARTICLE II AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01 Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated total cost of not more than \$6,300,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2020 Bonds hereby authorized shall be applied as provided in Article IV hereof.

The cost of the Project is estimated not to exceed \$6,300,000, which will be obtained from proceeds of the Series 2020 Bonds to be issued and sold to the Purchaser.

ARTICLE III AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF SERIES 2020 BONDS

Section 3.01 Authorization of Series 2020 Bonds. Subject and pursuant to the provisions of the Bond Legislation, the Series 2020 Bonds of the Issuer, to be known as the “Water Revenue Bonds, Series 2020 (United States Department of Agriculture),” are hereby authorized to be issued in the principal amount of not more than \$6,300,000 for the purpose of (i) financing all or a portion of the cost of the acquisition and construction of the Project; and (ii) paying certain costs of issuance and related costs not otherwise provided for, or any or all of such purposes.

Section 3.02 Description of Series 2020 Bonds. The Series 2020 Bonds shall be issued in single form, numbered R-1, only as a fully registered Bond in an original aggregate principal amount to be prescribed in the Supplemental Resolution and shall be dated on the date of delivery thereof. The Series 2020 Bonds shall bear interest from date of delivery, payable monthly at the

rate not to exceed 3.50% per annum, which interest rate shall be prescribed in the Supplemental Resolution and shall be sold for the par value thereof.

The Series 2020 Bonds shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, and shall be payable as provided in the Bond form hereinafter set forth.

Section 3.03 Negotiability, Registration, Transfer and Exchange of Series 2020 Bonds. The Series 2020 Bonds shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but the Series 2020 Bonds, and the right to principal of and stated interest on the Series 2020 Bonds, may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Series 2020 Bonds for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Bond Registrar.

Whenever the Series 2020 Bonds shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new Bond or Bonds in authorized denominations, for a like aggregate principal amount. The Bond Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Bond Registrar with respect to such transfer.

No registration of transfer of the Series 2020 Bonds shall be permitted to be made after the 15th day next preceding any installment payment date on the Series 2020 Bonds.

Section 3.04 Bond Registrar. The Issuer shall be the Bond Registrar and will keep, or cause to be kept by its agent, at its office, sufficient books for the registration and transfer of the Series 2020 Bonds, and, upon presentation for such purpose, the Bond Registrar shall under such reasonable regulations as it may prescribe, register the Series 2020 Bonds initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the Series 2020 Bonds as hereinbefore provided.

The Bond Registrar shall accept the Series 2020 Bonds for registration or transfer only if ownership thereof is to be registered in the name of the Purchaser, an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust and the federal employer identification number and date of each trust and the name of the trustee of each trust and/or such other identifying number and information as may be required by law. The Series 2020 Bonds shall initially be fully registered as to both principal and interest in the name of the United States of America. So long as the Series 2020 Bonds shall be registered in the name of the United States of America, the address of the United States of America for registration purposes shall be National Finance Office, St. Louis, Missouri 63103, or such other address as shall be stated in writing to the Issuer by the United States of America.

Section 3.05 Execution of Bonds. The Series 2020 Bonds shall be executed in the name of the Issuer by the Mayor and its corporate seal shall be affixed thereto and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2020 Bonds shall cease to be such officer of the Issuer before the Series 2020 Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. The Series 2020 Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.06 Bonds Mutilated, Destroyed, Stolen or Lost. In case the Series 2020 Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bonds or in lieu of and substitution for the Bonds destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Series 2020 Bonds so surrendered shall be canceled and held for the account of the Issuer. If the Series 2020 Bonds shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer may pay the same, and, if such Bond be destroyed, stolen or lost, without surrender thereof.

Section 3.07 Bonds Secured by Pledge of Gross Revenues; Lien Position with Respect to Prior Bonds. The payment of the debt service of the Series 2020 Bonds shall be secured forthwith by a first lien on the Gross Revenues derived from the System on a parity with the lien on the Gross Revenues in favor of the holders of the First Lien Bonds and senior and prior to the lien thereon in favor of the holder of the Second Lien Bonds. The Gross Revenues derived from the System in an amount sufficient to pay the principal of and interest on the Series 2020 Bonds and the Prior Bonds, and to make the payments as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2020 Bonds and Prior Bonds as the same become due.

Section 3.08 Form of Bond. Subject to the provisions hereof, the text of the Series 2020 Bonds and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or by any ordinance enacted after the date of enactment hereof and prior to the issuance thereof:

(FORM OF BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF HARPERS FERRY
WATER REVENUE BONDS, SERIES 2020
(UNITED STATES DEPARTMENT OF AGRICULTURE)

No. R-1

Date:

FOR VALUE RECEIVED, the TOWN OF HARPERS FERRY (herein called “Borrower”) promises to pay to the order of the United States of America (the “Government”), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of SIX MILLION THREE HUNDRED THOUSAND DOLLARS (\$6,300,000.00), plus interest on the unpaid principal balance at the rate of [3.50]% per annum. The said principal and interest shall be paid in the following installments on the following dates: commencing 30 days following delivery of this Bond and continuing on the corresponding day of each month thereafter for forty (40) years following delivery of this Bond, monthly payments in the amount of \$[24,444.00], covering principal and interest, except that the final installment shall be paid at the end of 40 years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government

on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond is issued to (i) pay all or a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public waterworks system of the Issuer, and (ii) to pay costs of issuance and related costs.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of additions, extensions and improvements to the waterworks system (the "System") of the Borrower, is payable solely from the revenues to be derived from the operation of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Ordinance and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 8, Article 19 of the Code of West Virginia, 1931, as amended (the "Act"), and an Ordinance of the Borrower, duly enacted on _____, 2020 as supplemented by Supplemental Resolution of the Issuer duly adopted on _____, 2020, authorizing issuance of this Bond (collectively, the "Ordinance").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farm and Rural Development Act of 1965, as amended. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND IS ISSUED ON A PARITY, AS TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, WITH THE BORROWER'S WATER REVENUE BONDS, SERIES 1986 A, DATED DECEMBER 19, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$611,912 AND THE BORROWER'S WATER REVENUE BONDS, SERIES 2008 (UNITED STATES DEPARTMENT OF AGRICULTURE), DATED MARCH 13, 2008, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$350,000.

THIS BOND IS ISSUED SENIOR AND PRIOR, AS TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL OTHER RESPECTS, TO THE ISSUER'S WATER REVENUE BONDS, SERIES 1986 B, DATED DECEMBER 19, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$150,088.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the TOWN OF HARPERS FERRY has caused this Bond to be executed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Recorder, all as of the date hereinabove written,

TOWN OF HARPERS FERRY

[CORPORATE SEAL)

Mayor
Harpers Ferry, West Virginia

ATTEST:

Recorder

EXHIBIT A

RECORD OF ADVANCES

AMOUNT DATE AMOUNT DATE

TOTAL \$ _____

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto _____
the within Bond and does hereby irrevocably constitute and appoint _____,
Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said
Issuer with full power of substitution in the premises.

Dated: _____, 20 ____.

In the presence of:

ARTICLE IV
SYSTEM REVENUES AND APPLICATION THEREOF;
DISPOSITION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01 Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created (or continued if created by the Prior Ordinances) with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund; and
- (3) Project Construction Account.

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

- (1) Series 1986 A Bonds Sinking Fund (established by the Prior Ordinances and continued hereby);
- (2) Series 1986 A Bonds Reserve Account (established by the Prior Ordinances and continued hereby);
- (3) Series 1986 B Bonds Sinking Fund (established by the Prior Ordinances and continued hereby);
- (4) Series 1986 B Bonds Reserve Account (established by the Prior Ordinances and continued hereby);
- (5) Series 2008 Bonds Reserve Account (created by the Prior Ordinances and continued hereby); and,
- (6) Series 2020 Bonds Reserve Account.

Section 4.03 Bond Proceeds; Project Construction Account. The proceeds of the sale of the Series 2020 Bonds shall be deposited upon receipt by the Issuer in the Project Construction Account. The monies in the Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by the Depository Bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Monies in the Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Monies in the Project Construction Account shall be used solely to pay the costs of acquisition and construction of the Project and the costs of issuance and related costs upon vouchers and other documentation approved by the Purchaser.

Until completion of acquisition and construction of the Project, the Issuer will additionally transfer from the Project Construction Account and pay to the Purchaser on or before the due date, such sums as shall be from time to time required to make the monthly installments on the Series 2020 Bonds if there are not sufficient Gross Revenues to make such monthly payment.

Pending application as provided in this Section 4.03, money and funds in the Project Construction Account shall be invested and reinvested at the direction of the Issuer, to the extent possible in accordance with applicable law, in Qualified Investments.

When acquisition and construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Project Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 4.04 Covenants of the Issuer as to System Revenues and Funds. So long as any of the Series 2020 Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Series 2020 Bonds Reserve Account, a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the Series 2020 Bonds remaining unpaid, together with interest accrued and to accrue thereon, the Issuer further covenants with the Holders of the Series 2020 Bonds as follows:

A. REVENUE FUND. The entire Gross Revenues derived from the operation of the System, and all parts thereof, and all Tap Fees received, shall be deposited as collected by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Ordinance and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in the Ordinance.

B. DISPOSITION OF REVENUES. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

1. The Issuer shall first, each month, transfer from the Revenue Fund and simultaneously (i) remit to the respective places designated in the First Lien Bonds the amounts required by the Prior Ordinances to pay interest on the First Lien Bonds; and (ii) on or before the due date of each installment on the Series 2020 Bonds, beginning 30 days following the Closing Date and continuing on each monthly anniversary of the Closing Date thereafter, remit to the National Finance Office, the amounts required to pay the interest on the Series 2020 Bonds.

2. The Issuer shall next, each month, transfer from the Revenue Fund and simultaneously (i) remit to the respective places designated in the First Lien Bonds the amounts required by the Prior Ordinances to make the principal payments on the First Lien Bonds; and (ii) on or before the due date of payment of each installment on the Series 2020 Bonds, beginning 30 days following the Closing Date and continuing on each monthly anniversary of the Closing Date thereafter, the Issuer shall transfer from the Revenue Fund and remit to the National Finance Office the amounts required to pay principal of the Series 2020 Bonds over the life of the Bond issue. All payments with respect to principal of and interest the Series 2020 Bonds and the

First Lien Bonds shall be made on an equal pro rata basis in accordance with the respective aggregate principal amounts thereof outstanding and on a parity with each other.

3. The Issuer shall next, transfer from the Revenue Fund and simultaneously (i) make the reserve account payments required by the Prior Ordinances with respect to the First Lien Bonds; and (ii) beginning on the date specified by the Purchaser, but in any event not later than 30 days following the Closing Date, and continuing on each monthly anniversary of the Closing Date thereafter, transfer from the Revenue Fund and remit to the Commission for deposit into the Series 2020 Bonds Reserve Account, 10% of the monthly payment amount on the Series 2020 Bonds, calculated monthly, until the amount in the Series 2020 Bonds Reserve Account equals the Minimum Reserve; provided that, no further payments shall be made into the Series 2020 Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Minimum Reserve. Monies in the Series 2020 Bonds Reserve Account shall be used solely to make up any deficiency for monthly payments of the principal of and interest on the Series 2020 Bonds to the National Finance Office as the same shall become due or for prepayment of installments on the Series 2020 Bonds, or for mandatory prepayment of the Series 2020 Bonds as hereinafter provided, and for no other purpose; provided, however, earnings from monies in the Series 2020 Bonds Reserve Account, so long as the Minimum Requirement is on deposit and maintained therein, shall be returned not less than once each year, by the Commission to the Issuer, to be deposited in the Revenue Fund.

4. The Issuer shall next, each month, pay from the Revenue Fund the Operating Expenses of the System.

5. The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in Qualified Investments. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

6. The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and pay to the Commission the amount required by the Prior Ordinances to be deposited in the Series 1986 B Bonds Sinking Fund for payment of principal of the Second Lien Bonds.

7. The Issuer shall next, on the first day of each month, transfer from the Revenue Fund to the Commission the amounts required by the Prior Ordinances to be deposited in the Series 1986 B Bonds Reserve Account.

8. After all the foregoing provisions for use of monies in the Revenue Fund have been fully complied with, any monies remaining therein may be used to prepay installments of the Bonds, pro rata, or for any lawful purpose.

Whenever the money in the Series 2020 Bonds Reserve Account shall be sufficient to prepay the Series 2020 Bonds in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the Series 2020 Bonds at the earliest practical date and in accordance with applicable provisions hereof.

The Commission is hereby designated as the Fiscal Agent for the administration of the Series 2020 Bonds Reserve Account as herein provided, and all amounts required for the Series 2020 Bonds Reserve Account will be deposited therein by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein. If required by the Purchaser at any time, the Issuer shall make the necessary arrangements whereby required payments into said account shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

The Issuer shall, on the first day of each month (if the first day is not a business day, then the first business day of each month), deposit with the Commission the required reserve account payments with respect to the Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

All the funds provided for in this Section shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Series 2020 Bonds on a parity and pro rata with the holders of the First Lien Bonds and senior and prior to the lien thereon in favor of the holder of the Second Lien Bonds.

If on any payment date the Revenues are insufficient to make the payments and transfers as hereinabove provided, the deficiency shall be made up in the subsequent payments and transfers in addition to those which would otherwise be required to be made on the subsequent payment dates.

Principal, interest or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Series 2020 Bonds and the First Lien Bonds, in accordance with the respective principal amounts then Outstanding, and senior and prior to the Second Lien Bonds.

The Commission and the Depository Bank, respectively, at the direction of the Issuer, shall keep the monies in the Revenue Fund, Renewal and Replacement Fund, Project Construction Account and Series 2020 Bonds Reserve Account invested and reinvested to the fullest extent possible in accordance with applicable law, and to the extent practicable, in Qualified Investments having maturities consonant with the required use thereof. Investments in any fund or account under this Bond Legislation shall, unless otherwise provided herein or required by law, be valued at the lower of cost or the then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including value of accrued interest and giving effect

to the amortization of discount, or at par if such investment is held by the “consolidated fund” managed by the West Virginia Board of Treasury Investments. Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. Earnings from monies in the Series 2020 Bonds Reserve Account, so long as the Minimum Reserve is on deposit and maintained therein, shall be returned not less than once each year, by the Commission to the Issuer, to be deposited in the Revenue Fund.

C. CHANGE OF DEPOSITORY BANK. The Issuer may designate another bank or trust company insured by FDIC as Depository Bank if the Depository Bank should cease for any reason to serve or if the Governing Body determines by resolution that the Depository Bank or its successor should no longer serve as Depository Bank. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser.

D. USER CONTRACTS. The Issuer shall, prior to delivery of the Series 2020 Bonds, provide evidence that there will be at least 814 (728 residential users and 86 nonresidential users) bona fide users on the System upon the completion of the Project, in full compliance with the requirements and conditions of the Purchaser.

E. CHARGES AND FEES. The Issuer shall remit from the Revenue Fund to the Commission or the Depository Bank such additional sums as shall be necessary to pay the charges and fees of the Commission or the Depository Bank then due.

F. INVESTMENT OF EXCESS BALANCES. The monies in excess of the sum insured by FDIC in any of such funds or accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State of West Virginia.

G. REMITTANCES. All remittances made by the Issuer to the Commission or the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

H. GROSS REVENUES. The Gross Revenues of the System shall only be used for purposes of the System.

Section 4.05 Interim Construction Financing; Authorization and General Terms. In order to pay certain costs of the Project pending receipt of the gross proceeds of the Series 2020 Bonds, the Issuer may issue and sell its Notes, in an aggregate principal amount not to exceed \$6,300,000. The Notes may be issued as evidence of a line of credit from a commercial bank or other lender, at the discretion of the Issuer, and as shall be set forth in a resolution supplemental hereto. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such date or dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the supplemental resolution authorizing such Notes.

The Notes shall be special obligations of the Issuer payable as to principal and interest solely from the surplus revenues as described in Section 4.04(B)(8) hereof, proceeds of the Series

2020 Bonds and other sources described in the supplemental resolution authorizing such Notes. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable and neither the full faith and credit nor the taxing power of the Issuer is pledged for the payment of the Notes. The holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth in the supplemental resolution authorizing such Notes.

ARTICLE V GENERAL COVENANTS, ETC.

Section 5.01 General Statement. So long as the Series 2020 Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Series 2020 Bonds Reserve Account a sum sufficient to prepay the entire principal of the Series 2020 Bonds remaining unpaid, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the issuer and the Holder of the Series 2020 Bonds.

Section 5.02 Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide Revenues in each Fiscal Year sufficient to produce Net Revenues equal to not less than 110% of the annual debt service on the Series 2020 Bonds and all other obligations secured by a lien on and payable from the Gross Revenues on a parity with the Series 2020 Bonds, including the First Lien Bonds, and sufficient to make the payments required herein into all funds and accounts and all the necessary expenses of operating and maintaining the System during such Fiscal Year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate Gross Revenues for such purposes. In addition, so long as any of the Series 1986 A Bonds or Series 1986 B Bonds are outstanding, the Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will (i) provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any Fiscal Year for payment of principal of and interest on the Series 2020 Bonds and all other obligations secured by or payable from such revenues, including without limitation the Prior Bonds; provided that, in the event that amounts equal to or in excess of the Minimum Reserve are on deposit in the Series 2020 Reserve Account and the reserve accounts for the Prior Bonds and any bonds prior to or on a parity with the Series 2020 Bonds or Prior Bonds are funded at least at the requirement therefor, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any Fiscal Year for payment of principal of and interest on the Series 2020 Bonds and all other obligations secured by or payable from such revenues.

Section 5.03 Sale of the System. The System will not be sold without the prior written consent of the Purchaser so long as the Series 2020 Bonds are outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 5.04 Issuance of Additional Parity Bonds or Obligations. So long as the First Lien Bonds and Second Lien Bonds are Outstanding, the limitations on the issuance of obligations issued on a parity with respect to the First Lien Bonds and Second Lien Bonds, respectively, set forth in the Prior Ordinances shall be applicable.

No additional Parity Bonds or obligations payable out of any of the Revenues of the System shall be issued, except with the prior written consent of the Purchaser. All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 2020 Bonds.

So long as the Series 2020 Bonds are Outstanding, no Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountant, reciting the conclusion that the Net Revenues for the Fiscal year following the year in which such Parity Bonds are to be issued shall be at least 120% of the average annual debt service requirement on the following:

- (1) The Bonds Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding;
- (3) The Parity Bonds then proposed to be issued.

The foregoing limitations may be waived or modified by the written consent of the Holders of the Series 2008 Bonds and Series 2020 Bonds representing 75% of the then outstanding principal indebtedness evidenced thereby.

No such Parity Bonds shall be issued except for the purpose of financing costs of the design, acquisition and/or construction of extensions, additions, improvements or betterments to the System or refunding all or a portion of one or more series of the Bonds or one or more subsequent series of Parity Bonds, or both such purposes.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the Revenues of the System is subject to the prior and superior lien of the Series 2020 Bonds on such Revenues. The Issuer shall not issue any obligations whatsoever payable from the Revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such Revenues, with the Series 2020 Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Bond Legislation and the Prior Ordinances with respect to the Series 2020 Bonds and the Prior Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

Section 5.05 Insurance and Bonds. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, early and maintain, so long as the Series 2020 Bonds remain outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

A. Fire, lightning, vandalism, malicious mischief and extended coverage insurance, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground structures of the System and mechanical and electrical equipment in place or stored on the site in an amount equal to the full insurable value thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

B. Public liability insurance, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the Series 2020 Bonds.

C. Vehicular public liability insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

D. Workers' compensation coverage for all employees of the Town eligible therefor and performance and payment bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each prime contractor, and such payment bonds have been or will be filed with the Clerk of the County Commission of Jefferson County prior to commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39. Workers' compensation coverage shall be maintained as required by the laws of the State of West Virginia.

E. Flood insurance to be procured, to the extent available at reasonable cost to the Issuer; however, if the System is located in a community which has been notified as having special flood or mudslide prone areas, flood insurance must be obtained.

F. Fidelity bonds will be provided as to every member of the Governing Body and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the Issuer in such amount as may be requested by the Purchaser from time to time.

G. Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Series 2020 Bonds are outstanding, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 5.06 Statutory Mortgage Lien. For the further protection of the Holder of the Series 2020 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon the delivery of the Series 2020 Bonds; provided, however, that the statutory mortgage lien in favor of the Holder of the Series 2020 Bonds shall be on a parity with the statutory mortgage lien in favor of the holders of the First Lien Bonds and senior and prior to the statutory mortgage lien in favor of the holder of the Second Lien Bonds.

Section 5.07 Events of Default. Each of the following events is hereby declared an “Event of Default”:

A. Failure to make payment of any monthly amortization installment upon the Series 2020 Bonds at the date specified for payment thereof;

B. Failure to duly and punctually observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained in the Series 2020 Bonds or herein, or violation of or failure to observe any provision of any pertinent law, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Purchaser or any other Holder of a Series 2020 Bond;

C. If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; and

D. If a default occurs under the Prior Bonds or the Prior Ordinances.

Section 5.08 Remedies. Upon the happening and continuance of any Event of Default specified above, any Holder of the Series 2020 Bonds may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Holder of the Series 2020 Bonds, including the right to require the Issuer to perform its duties under the Act and this Ordinance relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Series 2020 Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Holder of the Series 2020 Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Ordinance with respect to the Series 2020 Bonds, or the rights of such Holder; provided that all rights and remedies of the Holder or Holders of the Series 2020 Bonds shall be on a parity with the Holders of the First Lien Bonds and senior and prior to the rights and remedies of the Holder of the Second Lien Bonds.

Section 5.09 Appointment of Receiver. Any Holder of a Series 2020 Bonds, may, by proper legal action, compel the performance of the duties of the Issuer under this Bond Ordinance

and the Act, including the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Series 2020 Bonds, any Holder of a Series 2020 Bonds, shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other avenues in conformity with the provisions of this Ordinance and the Act.

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

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

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

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

Section 5.10 Fiscal Year; Budget. While the Series 2020 Bonds are Outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained

on a Fiscal Year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than 30 days prior to the beginning of each Fiscal Year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such Fiscal Year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each Fiscal Year.

If for any reason the Issuer shall not have adopted the Annual Budget before the 1st day of any Fiscal Year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the next year preceding by more than 10%; and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 5.11 Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the acquisition and construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer on file with the Recorder on the date of adoption hereof, subject to permitted changes.

Section 5.12 Books and Records; Audits. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall mail a copy of such audit report to the Purchaser. The Issuer shall further comply with the Act with respect to such books, records and accounts.

Section 5.13 Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the Series 2020 Bonds are outstanding.

Section 5.14 No Competition. To the extent legally allowable, the Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

Section 5.15 Wetlands Covenant. The Issuer shall not use any Series 2020 Bonds proceeds for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

**ARTICLE VI
RATES, ETC.**

Section 6.01 Initial Schedule of Rates and Charges; Rules. A. The initial schedule of rates and charges for the services and facilities of the System, subject to change consonant with the provisions hereof, shall be as set forth in a water rate ordinance of the Issuer enacted on February 22, 2018, which rates are incorporated herein by reference as a part hereof.

B. There shall not be any discrimination or differential in rates between customers in similar circumstances.

C. All delinquent fees, rates and charges for services or facilities of the System shall be liens on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes, as provided in the Act. The Issuer shall have all remedies and powers provided under the Act and other applicable provisions of law with regard to the collection and enforcement of such fees, rates and charges.

D. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the Issuer or any department, agency, officer or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other Revenues of the System.

E. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

F. The Issuer shall not be liable to any customer for any damage resulting from bursting or breakage of any pipe, line, valve, equipment or part or from discontinuance of the operation of any part of the System or from failure of any part thereof for any cause whatsoever.

G. In case of emergency, the Issuer shall have the right to restrict the use of any part of the System in any reasonable manner for the protection of the System and the inhabitants of the Issuer.

H. The fees, rates and charges above provided will be increased whenever such increase is necessary in order to comply fully with all provisions hereof, and the Issuer shall always be obligated to and shall fix, establish and collect fees, rates and charges for the services and facilities of the System which shall at all times be sufficient to provide revenues to meet its payments and obligations provided hereunder, but in any event, not less than 110% of the annual debt service on the Bonds outstanding after the Series 1986 A Bonds and Series 1986 B Bonds are paid in full.

ARTICLE VII MISCELLANEOUS

Section 7.01 Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Holder of the Series 2020 Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 2020 Bonds, the pledge of Gross Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Series 2020 Bonds, shall thereupon cease, terminate and become void and be discharged and satisfied.

Except through such direct payment to the Holder of the Series 2020 Bonds, the Issuer may not defease the Series 2020 Bonds or otherwise provide for payment thereof by escrow or like manner.

Section 7.02 Modification or Amendment. Prior to issuance of the Series 2020 Bonds, this Ordinance may be amended or supplemented in any way by ordinance or resolution. Following issuance of the Series 2020 Bonds, no modification or amendment of this Ordinance, or any ordinance or resolution amendatory hereof or supplemental hereto, shall be made without the prior written consent of the Purchaser.

Section 7.03 Delivery of Bonds. The Mayor is hereby authorized and directed to cause the Series 2020 Bonds, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 7.04 Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Series 2020 Bonds.

Section 7.05 Conflicting Provisions Repealed. Except for the Prior Ordinances, all ordinances, resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this section shall not be applicable to the Loan Resolution (Form FmHA 442-47).

Section 7.06 Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 7.07 Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption and enactment of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, Recorder and members of the Governing Body were at all times when any

actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 7.08 Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Bond Legislation, substantially in the form attached hereto as Exhibit B, which is determined by the Council to contain sufficient information as to give notice of the contents hereof, shall be published once a week for two successive weeks within a period of fourteen consecutive days, with at least six full days intervening between each publication, in the *Spirit of Jefferson* being a qualified newspaper of general circulation in the Town of Harpers Ferry, no newspaper being published therein, together with a notice stating that this Ordinance has been adopted, and that the Issuer contemplates the issuance of the Bonds, and that any person interested may appear before the Council upon a date certain, not less than ten days subsequent to the date of the first publication of the said abstract and notice and not prior to the last date of such publication, and present protests, and that a certified copy of the Ordinance is on file in the office of the Recorder of the Issuer for review by interested parties during regular office hours. At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Section 7.09 Effective Time. This Bond Legislation shall take effect following public hearing hereon in accordance with the Act.

Passed on First Reading: November 9, 2020

Passed on Second Reading: December 14, 2020

Passed on Final Reading
And Put into Effect
Following Public Hearing: _____, 2021

TOWN OF HARPERS FERRY

Mayor

EXHIBIT A

DESCRIPTION OF PROJECT

The acquisition, construction, and equipping of certain additions, betterments and improvements to the existing waterworks facilities of the Issuer for the benefit of the citizens of Harpers Ferry and surrounding areas, including, without limitation; the upgrade of the Issuer's existing water treatment facility and the replacement of a portion of the Issuer's water distribution system, together with all necessary appurtenances.

EXHIBIT B

**NOTICE OF PUBLIC HEARING
ON TOWN OF HARPERS FERRY BOND ORDINANCE**

A public hearing will be held on the following entitled Ordinance at a [regular] meeting of the Council of the Town of Harpers Ferry (the "Town") to be held on _____, _____, 2020, at _____ .m., at the Harpers Ferry Town Hall, 1000 Washington Street, Harpers Ferry, West Virginia, and at such hearing any person interested may appear before the Council and present protests and all protests and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF THE TOWN OF HARPERS FERRY, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN \$6,300,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2020 (UNITED STATES DEPARTMENT OF AGRICULTURE); DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDER OF THE BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT

The above-entitled Ordinance was adopted by the Council of the Town on _____, 2020.

The above quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bond issue contemplated thereby. The Town contemplates the issuance of the Bonds described in said Ordinance. The proceeds of the Bonds will be used to pay all or a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public waterworks system for the Town and to pay costs of issuance and related costs. The Bonds are payable solely from revenues derived from the ownership and operation of the water system of the Town. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

A certified copy of the above-entitled Ordinance is on file at the office of the City [Town Clerk] of the Town at the Harpers Ferry Town Hall, 1000 Washington Street, Harpers Ferry, West Virginia, for review by interested parties during regular office hours.

Following the said public hearing, the Council intends to enact said Ordinance on final reading and to put said Ordinance into effect.

Dated: _____, 2020.

/s/ Kevin Carden, Recorder

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the TOWN OF HARPERS FERRY on the ____ day of _____, 2020, and passed on final reading and put into effect following a public hearing held on _____, 2020.

Dated: _____, 2020

[SEAL]

Recorder