

ORDINANCE NO. O-2018-34

AN ORDINANCE providing for the issuance of General Obligation Bonds, Series 2018A in an aggregate amount not to exceed \$10,000,000, of the City of Wheaton, DuPage County, Illinois, to provide for certain capital improvements within said City, and providing for the levy of a direct annual tax sufficient to pay the principal of and interest on said bonds, and authorizing the sale of said bonds to the purchaser thereof.

WHEREAS, the City of Wheaton, DuPage County, Illinois (the "*City*"), has a population in excess of 25,000 as determined by the last official census, and pursuant to the provisions of Section 6 of Article VII of the Constitution of the State of Illinois, the City is a home rule unit and may exercise any power or perform any function pertaining to its government and affairs including, but not limited to, the power to tax and to incur debt; and

WHEREAS, pursuant to the provisions of said Section 6, the City has the power to incur debt payable from ad valorem property tax receipts or from any other lawful source and maturing within 40 years from the time it is incurred without prior referendum approval; and

WHEREAS, the City Council of the City (the "*Council*") has considered the needs of the City and does hereby determine that it is necessary, desirable and in the best interests of the City to borrow at this time the sum of not to exceed \$10,000,000 for the purpose of paying the cost of capital improvements in and for the City, including but not limited to, certain downtown streetscape projects, and to pay the cost of issuing bonds for said purpose (the "*Project*"); and

WHEREAS, it is in the best interest of the City to issue bonds of the City in the aggregate principal amount of not to exceed \$10,000,000 to evidence said borrowing and for the purpose of paying costs of the Project:

NOW THEREFORE Be It Ordained by the City Council of the City of Wheaton, DuPage County, Illinois, in the exercise of its home rule powers, as follows:

Section 1. Incorporation of Preambles. The Council hereby finds that all of the recitals contained in the preambles to this Ordinance are true, correct and complete and does incorporate them into this Ordinance by this reference.

Section 2. Authorization. It is hereby found and determined that pursuant to the provisions of the Illinois Municipal Code, as supplemented and amended, and the home rule powers of the City under Section 6 of Article VII of the Illinois Constitution of 1970 (in the event of conflict between the provisions of said code and home rule powers, the home rule powers shall be deemed to supersede the provisions of said code) (the "*Act*"), the Council has been authorized by law to borrow an amount not to exceed \$10,000,000 for the Project, upon the credit of the City and as evidence of such indebtedness to issue bonds of the City to said amounts, the proceeds of said bonds to be used to provide for the Project, and that it is necessary and for the best interests of the City that there be issued an amount not to exceed \$10,000,000 of the bonds so authorized for the Project, and these findings and determinations, together with those set forth in the preambles to this Ordinance, shall be deemed conclusive.

Section 3. Bond Details. There be borrowed by, for and on behalf of the City an amount not to exceed \$10,000,000 for the purposes aforesaid, and that bonds of the City shall be issued to said amount and shall be designated as "General Obligation Bonds, Series 2018A" (the "*Bonds*"), shall be dated such date (not later than November 1, 2018) as set forth in the Bond Notification (as hereinafter defined), and shall also bear the date of authentication, shall be in fully registered form, shall be in denominations of \$5,000 each or authorized integral multiples thereof (but no single Bond shall represent installments of principal maturing on more than one date), and shall be numbered 1 and upward.

The Bonds shall become due and payable serially or be subject to mandatory redemption (subject to prior optional redemption as hereinafter described) on December 1 of each of the

years (not later than 2032), bearing interest at the rates per annum (not exceeding 5.00% per annum) and in the amounts (not to exceed a maximum principal amount of \$1,750,000 per year) all as set forth in the Bond Notification.

The Bonds shall bear interest from their date or from the most recent interest payment date to which interest has been paid or duly provided for, until the principal amount of the Bonds is paid, such interest (computed upon the basis of a 360-day year of twelve 30-day months) being payable semi-annually commencing with the first interest payment date as set forth in the Bond Notification, and on June 1 and December 1 of each year thereafter to maturity.

Interest on each Bond shall be paid by check or draft of U.S. Bank, National Association, Chicago, Illinois, as bond registrar and paying agent for the Bonds (or such other bond registrar and paying agent as set forth in the Bond Notification), or successors or assigns (the "*Bond Registrar*"), payable upon presentation in lawful money of the United States of America, to the person in whose name such Bond is registered at the close of business on the 15th day of the month next preceding the interest payment date. The principal of the Bonds shall be payable in lawful money of the United States of America at the office of the Bond Registrar.

Section 4. Execution; Authentication. The Bonds shall be executed on behalf of the City by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk, as they may determine, and shall have impressed or imprinted thereon the corporate seal or facsimile thereof of the City. In case any such officer whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. All Bonds shall have thereon a certificate of authentication, substantially in the form hereinafter set forth, duly executed by the Bond Registrar as authenticating agent of the City and showing the date of authentication. No Bond

shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until such certificate of authentication shall have been duly executed by the Bond Registrar by manual signature, and such certificate of authentication upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Ordinance.

Section 5. Registration of Bonds; Persons Treated as Owners. (a) General. The City shall cause books (the "*Bond Register*") for the registration and for the transfer of the Bonds as provided in this Ordinance to be kept at the office of the Bond Registrar, which is hereby constituted and appointed the registrar of the City for the Bonds. The City is authorized to prepare, and the Bond Registrar or such other agent as the City may designate shall keep custody of, multiple Bond blanks executed by the City for use in the transfer and exchange of Bonds. Subject to the provisions of this Ordinance relating to the Bonds in book-entry form, any Bond may be transferred or exchanged, but only in the manner, subject to the limitations, and upon payment of the charges as set forth in this Ordinance. Upon surrender for transfer or exchange of any Bond at the office of the Bond Registrar, duly endorsed by or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Bond Registrar and duly executed by the registered owner or his or her attorney duly authorized in writing, the City shall execute and the Bond Registrar shall authenticate, date and deliver in the name of the transferee or transferees or, in the case of an exchange, the registered owner, a new fully registered Bond or Bonds of like tenor, of the same maturity, bearing the same interest rate, of authorized denominations, for a like aggregate principal amount. The Bond Registrar shall not be required to transfer or exchange any Bond during the period beginning at the close of business on the 15th day of the month next preceding any interest payment date on such Bond and ending at the opening of business on such interest payment date, nor to transfer or exchange any Bond

after notice calling such Bond for redemption has been mailed, nor during a period of fifteen (15) days next preceding mailing of a notice of redemption of any Bonds.

The execution by the City of any fully registered Bond shall constitute full and due authorization of such Bond, and the Bond Registrar shall thereby be authorized to authenticate, date and deliver such Bond; *provided, however*, the principal amount of Bonds of each maturity authenticated by the Bond Registrar shall not at any one time exceed the authorized principal amount of Bonds for such maturity less the amount of such Bonds which have been paid. The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of or interest on any Bond shall be made only to or upon the order of the registered owner thereof or his or her legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

No service charge shall be made to any registered owner of Bonds for any transfer or exchange of Bonds, but the City or the Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, except in the case of the issuance of a Bond or Bonds for the unredeemed portion of a Bond surrendered for redemption.

(b) *Global Book-Entry System.* The Bonds shall be initially issued in the form of a separate single fully registered Bond for each of the maturities of the Bonds determined as described in Section 3 hereof. Upon initial issuance, at the option of the Purchaser and as set forth in the Bond Notification, the ownership of each such Bond shall be registered in the Bond Register in the name of Cede & Co., or any successor thereto ("*Cede*"), as nominee of The Depository Trust Company, New York, New York, and its successors and assigns ("*DTC*"). All of the outstanding Bonds shall be registered in the Bond Register in the name of Cede, as

nominee of DTC, except as hereinafter provided. Any officer of the City who is a signatory on the Bonds, along with the City's Finance Director, is authorized to execute and deliver, on behalf of the City, such letters to or agreements with DTC as shall be necessary to effectuate such book-entry system (any such letter or agreement being referred to herein as the "*Representation Letter*"), which Representation Letter may provide for the payment of principal of or interest on the Bonds by wire transfer.

With respect to Bonds registered in the Bond Register in the name of Cede, as nominee of DTC, the City and the Bond Registrar shall have no responsibility or obligation to any broker-dealer, bank or other financial institution for which DTC holds Bonds from time to time as securities depository (each such broker-dealer, bank or other financial institution being referred to herein as a "*DTC Participant*") or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Bond Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of a Bond as shown in the Bond Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than a registered owner of a Bond as shown in the Bond Register, of any amount with respect to the principal of or interest on the Bonds. The City and the Bond Registrar may treat and consider the person in whose name each Bond is registered in the Bond Register as the holder and absolute owner of such Bond for the purpose of payment of principal and interest with respect to such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Bond Registrar shall pay all principal of and

interest on the Bonds only to or upon the order of the respective registered owners of the Bonds, as shown in the Bond Register, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of the principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than a registered owner of a Bond as shown in the Bond Register, shall receive a Bond evidencing the obligation of the City to make payments of principal and interest with respect to any Bond. Upon delivery by DTC to the Bond Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the provisions in Section 3 hereof with respect to the payment of interest to the registered owners of Bonds at the close of business on the 15th day of the month next preceding the applicable interest payment date, the name "Cede" in this Ordinance shall refer to such new nominee of DTC.

In the event that (i) the City determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter, (ii) the agreement among the City, the Bond Registrar and DTC evidenced by the Representation Letter shall be terminated for any reason or (iii) the City determines that it is in the best interests of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the City shall notify DTC and DTC Participants of the availability through DTC of certificated Bonds and the Bonds shall no longer be restricted to being registered in the Bond Register in the name of Cede, as nominee of DTC. At that time, the City may determine that the Bonds shall be registered in the name of and deposited with such other depository operating a universal book-entry system, as may be acceptable to the City, or such depository's agent or designee, and if the City does not select such alternate universal book-entry system, then the Bonds may be registered in whatever name

or names registered owners of Bonds transferring or exchanging Bonds shall designate, in accordance with the provisions of Section 5(a) hereof.

Notwithstanding any other provisions of this Ordinance to the contrary, so long as any Bond is registered in the name of Cede, as nominee of DTC, all payments with respect to principal of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the name provided in the Representation Letter.

Section 6. Redemption. (a) *Optional Redemption.* All or a portion of the Bonds due on and after the date, if any, specified in the Bond Notification shall be subject to redemption prior to maturity at the option of the City from any available funds, as a whole or in part, and if in part in integral multiples of \$5,000 in any order of their maturity as determined by the City (less than all of the Bonds of a single maturity to be selected by the Bond Registrar), on the date specified in the Bond Notification, and on any date thereafter, at the redemption prices (expressed as a percentage of the principal amount redeemed and not to exceed 100%) plus accrued interest to the date fixed for redemption, as set forth in the Bond Notification.

(b) *Mandatory Redemption.* The Bonds maturing on the date or dates, if any, indicated in the Bond Notification are subject to mandatory redemption, in integral multiples of \$5,000 selected by lot by the Bond Registrar, at a redemption price of par plus accrued interest to the redemption date, on December 1 of the years, if any, and in the principal amounts, if any, as indicated in the Bond Notification.

The principal amounts of Bonds to be mandatorily redeemed in each year may be reduced through the earlier optional redemption thereof, with any partial optional redemptions of such Bonds credited against future mandatory redemption requirements in such order of the mandatory redemption dates as the City may determine. In addition, on or prior to the 60th day preceding any mandatory redemption date, the Bond Registrar may, and if directed by the City,

shall purchase Bonds required to be retired on such mandatory redemption date. Any such Bonds so purchased shall be cancelled and the principal amount thereof shall be credited against the mandatory redemption required on such next mandatory redemption date.

(c) *General.* The Bonds shall be redeemed only in the principal amount of \$5,000 and integral multiples thereof. The City shall, at least forty-five (45) days prior to any optional redemption date (unless a shorter time period shall be satisfactory to the Bond Registrar) notify the Bond Registrar of such redemption date and of the principal amount and maturity or maturities of Bonds to be redeemed. For purposes of any redemption of less than all of the outstanding Bonds of a single maturity, the particular Bonds or portions of Bonds to be redeemed shall be selected by lot by the Bond Registrar from the Bonds of such maturity by such method of lottery as the Bond Registrar shall deem fair and appropriate; *provided* that such lottery shall provide for the selection for redemption of Bonds or portions thereof so that any \$5,000 Bond or \$5,000 portion of a Bond shall be as likely to be called for redemption as any other such \$5,000 Bond or \$5,000 portion. The Bond Registrar shall make such selection upon the earlier of the irrevocable deposit of funds with an escrow agent sufficient to pay the redemption price of the Bonds to be redeemed or the time of the giving of official notice of redemption.

The Bond Registrar shall promptly notify the City in writing of the Bonds or portions of Bonds selected for redemption and, in the case of any Bond selected for partial redemption, the principal amount thereof to be redeemed.

Section 7. Redemption Procedure. Unless waived by any holder of Bonds to be redeemed, notice of the call for any such redemption shall be given by the Bond Registrar on behalf of the City by mailing the redemption notice by first class mail at least thirty (30) days and not more than sixty (60) days prior to the date fixed for redemption to the registered owner

of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such registered owner to the Bond Registrar.

All notices of redemption shall state:

- (1) the redemption date,
- (2) the redemption price,
- (3) if less than all outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed,
- (4) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,
- (5) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the principal corporate trust office of the Bond Registrar, and
- (6) such other information then required by custom, practice or industry standard.

Unless moneys sufficient to pay the redemption price of the Bonds to be redeemed at the option of the City shall have been received by the Bond Registrar prior to the giving of such notice of redemption, such notice may, at the option of the City, state that said redemption shall be conditional upon the receipt of such moneys by the Bond Registrar on or prior to the date fixed for redemption. If such moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds, and the Bond Registrar shall give notice, in the same manner in which the notice of redemption shall have been given, that such moneys were not so received and that such Bonds will not be redeemed. Otherwise, prior to any redemption date, the City shall deposit with the Bond Registrar an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date.

Subject to the provisions for a conditional redemption described above, notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Bond Registrar at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the registered holder a new Bond or Bonds of the same maturity in the amount of the unpaid principal.

If any Bond or portion of Bond called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid, bear interest from the redemption date at the rate borne by the Bond or portion of Bond so called for redemption. All Bonds which have been redeemed shall be cancelled and destroyed by the Bond Registrar and shall not be reissued.

Section 8. Form of Bond. The Bonds shall be in substantially the form hereinafter set forth; *provided, however,* that if the text of the Bonds is to be printed in its entirety on the front side of the Bonds, then the second paragraph on the front side and the legend "See Reverse Side for Additional Provisions" shall be omitted and the text of paragraphs set forth for the reverse side, as appropriate, shall be inserted immediately after the first paragraph.

[FORM OF BOND - FRONT SIDE]

REGISTERED
No. _____

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF ILLINOIS
COUNTY OF DUPAGE
CITY OF WHEATON
GENERAL OBLIGATION BOND, SERIES 2018A

See Reverse Side for
Additional Provisions.

Interest _____ Maturity _____ Dated _____
Rate: _____% Date: December 1, 20__ Date: _____, 2018 [CUSIP: 962727_____]

Registered Owner: [CEDE & CO.]

Principal Amount: _____

KNOW ALL PERSONS BY THESE PRESENTS that the City of Wheaton, DuPage County, Illinois, a municipality and unit of local government created under the provisions of the laws of the State of Illinois (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns as hereinafter provided, on the Maturity Date identified above, the Principal Amount identified above and to pay interest (computed on the basis of a 360-day year of twelve 30-day months) on such Principal Amount from the later of the Dated Date of this Bond identified above or from the most recent interest payment date to which interest has been paid or duly provided for, at the Interest Rate per annum identified above, such interest to be payable on June 1 and December 1 of each year, commencing _____ 1, 20__, until said Principal Amount is paid or duly provided for. The principal of this Bond is payable in lawful money of the United States of America upon presentation hereof at the office of _____, in _____, _____, as bond registrar and paying agent (the "Bond Registrar"). Payment of interest shall be made to the Registered Owner hereof as shown on the registration books of the City maintained by the

Bond Registrar, at the close of business on the 15th day of the month next preceding the interest payment date. Interest shall be paid by check or draft of the Bond Registrar, payable upon presentation in lawful money of the United States of America, mailed to the address of such Registered Owner as it appears on such registration books, or at such other address furnished in writing by such Registered Owner to the Bond Registrar. For the prompt payment of this Bond both principal and interest at maturity, the full faith, credit and resources of the City are hereby irrevocably pledged.

Reference is hereby made to the further provisions of this Bond set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as if set forth at this place.

It is hereby certified and recited that all conditions, acts and things required by the Constitution and Laws of the State of Illinois to exist or to be done precedent to and in the issuance of this Bond, including the Act, have existed and have been properly done, happened and been performed in regular and due form and time as required by law; that the indebtedness of the City, represented by the Bonds, and including all other indebtedness of the City, howsoever evidenced or incurred, does not exceed any constitutional or statutory or other lawful limitation; and that provision has been made for the collection of a direct annual tax, in addition to all other taxes, on all of the taxable property in the City sufficient to pay the interest hereon as the same falls due and also to pay and discharge the principal hereof at maturity.

This Bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Bond Registrar.

IN WITNESS WHEREOF, the City of Wheaton, DuPage County, Illinois, by its City Council, has caused this Bond to be executed by the manual or duly authorized facsimile signature of its Mayor and attested by the manual or duly authorized facsimile signature of its City Clerk and its corporate seal or a facsimile thereof to be impressed or reproduced hereon, all as appearing hereon and as of the Dated Date identified above.

Mayor, City of Wheaton
DuPage County, Illinois

ATTEST:

City Clerk, City of Wheaton
DuPage County, Illinois

[SEAL]

Date of Authentication: _____, 2018

CERTIFICATE
OF
AUTHENTICATION

Bond Registrar and Paying Agent:

_____,

This Bond is one of the Bonds described in the within mentioned ordinance and is one of the General Obligation Bonds, Series 2018A, of the City of Wheaton, DuPage County, Illinois.

_____,
as Bond Registrar

By _____
Authorized Officer

[FORM OF BOND - REVERSE SIDE]

**CITY OF WHEATON
DUPAGE COUNTY, ILLINOIS
GENERAL OBLIGATION BOND, SERIES 2018A**

This Bond is one of a series of bonds (the "*Bonds*") issued by the City for the purpose of paying the cost of capital improvements in and for the City, including but not limited to, certain downtown streetscape projects, and to pay the costs of issuing the Bonds, all as described and defined in the Ordinance of the City, adopted by the City Council of the City on the 18th day of June, 2018, authorizing the Bonds (as supplemented by the Notification of Sale of the Bonds authorized therein and executed in connection with the sale of the Bonds, the "*Ordinance*"), pursuant to and in all respects in compliance with the applicable provisions of the Illinois Municipal Code, as supplemented and amended, and as further supplemented and, where necessary, superseded, by the powers of the City as a home rule unit under the provisions of Section 6 of Article VII of the Illinois Constitution of 1970 (such code and powers being the "*Act*"), and with the Ordinance, which has been duly passed by the City Council, approved by the Mayor, and published, in all respects as by law required.

[Optional and Mandatory Redemption provisions, as applicable, will be inserted here.]

[Notice of any such redemption shall be sent by first class mail not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed at the address shown on the registration books of the City maintained by the Bond Registrar or at such other address as is furnished in writing by such registered owner to the Bond Registrar. When so called for redemption, this Bond will cease to bear interest on the specified redemption date, provided funds for redemption are on deposit at the place of payment at that time, and shall not be deemed to be outstanding.]

This Bond is transferable by the Registered Owner hereof in person or by his or her attorney duly authorized in writing at the office of the Bond Registrar in _____, Illinois,

but only in the manner, subject to the limitations and upon payment of the charges provided in the Ordinance, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds of authorized denominations of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange therefor.

The Bonds are issued in fully registered form in the denomination of \$5,000 each or authorized integral multiples thereof. This Bond may be exchanged at the office of the Bond Registrar for a like aggregate principal amount of Bonds of the same maturity of other authorized denominations, upon the terms set forth in the Ordinance. The Bond Registrar shall not be required to transfer or exchange any Bond during the period beginning at the close of business on the 15th day of the month next preceding any interest payment date on such Bond and ending at the opening of business on such interest payment date, nor to transfer or exchange any Bond after notice calling such Bond for redemption has been mailed[, nor during a period of fifteen (15) days next preceding mailing of a notice of redemption of any Bonds].

The City and the Bond Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary.

This Bond is a "qualified tax-exempt obligation" under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assign, and transfers unto

Here insert Social Security Number,
Employer Identification Number or
other Identifying Number

(Name and Address of Assignee)

the within Bond and does hereby irrevocably constitute and appoint

as attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

Signature guaranteed: _____

NOTICE: The signature to this transfer and assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Section 9. Sale of Bonds. A. SALE OF BONDS AUTHORIZED. Any two of the "Designated Representatives" (being the Mayor, any City Council member, the City Manager and the City Finance Director), at least one of whom shall be an elected official, are hereby authorized to proceed, without any further authorization or direction whatsoever from the City Council, to sell and deliver the Bonds, upon the terms as prescribed in this Section, pursuant to the Bond Notification. The Designated Representatives must find and determine in the Bond Notification that no person holding any office of the City either by election or appointment, is in any manner financially interested either directly, in his or her own name, or indirectly in the name of any other person, association, trust or corporation in said Bond Purchase Contract (as hereinafter defined) with the purchaser (the "*Purchaser*") for the purchase of the Bonds. The

Purchaser shall be one of (a) the best bidder for the Bonds at a competitive sale conducted by Ehlers, Chicago, Illinois, as municipal advisor of the City ("*Ehlers*") or (b) a bank or financial institution (i) authorized to do business in the State of Illinois or (ii) listed in the Dealers & Underwriters or Municipal Derivatives sections of the most recent edition of The Bond Buyer's Municipal Marketplace; provided, however that the Purchaser as set forth in (b) shall only be selected upon receipt by the City of the written recommendation of Ehlers that the sale of the Bonds on a negotiated or private placement basis to the Purchaser is in the best interests of the City because of (i) the pricing of the Bonds by the Purchaser, (ii) then current market conditions or (iii) the timing of the sale of the Bonds. Each series of Bonds shall be sold and delivered to the Purchaser at the price of not less than 98% of the par value of the principal amount thereof (net of any original issue discount or premium), plus accrued interest, if any, to the date of delivery. In the event that the Bonds are sold on a private placement basis to the Purchaser, Hutchinson, Shockey, Erley & Co., Chicago, Illinois, is authorized to serve as placement agent for the City, for the sale of the Bonds. Such sale shall be made upon the advice (in the form of a written certificate or report) of Ehlers, that the terms of the Bonds are fair and reasonable in view of current conditions in the bond markets. Nothing in this Section shall require the Designated Representatives to sell any of the Bonds if in their judgment, aided by Ehlers, the conditions in the bond markets shall have deteriorated from the time of adoption thereof or the sale of all or any portion of the Bonds shall for some other reason not be deemed advisable, but the Designated Representatives shall have the authority to sell the Bonds in any event so long as the limitations set forth in this Ordinance and the conditions of this Section shall have been met. As a further exercise of this authority, the Designated Representatives may sell the Bonds in more than one series; and, in such event, shall be authorized to change the name of the Bonds for each such series so that such series may properly be identified separately. Further, in such event, the

provisions for registration, redemption and exchange of Bonds shall be read as applying to Bonds only of each series, respectively, and not as between series.

B. BOND NOTIFICATION AND SALE DOCUMENTS. Upon the sale of the Bonds or any series of the Bonds, the Designated Representatives and any other officers or officials of the City as shall be appropriate, shall be and are hereby authorized and directed to approve or execute, or both, a relevant Notification of Sale of the Bonds (a "*Bond Notification*") and such additional documents of sale of the Bonds as may be necessary, including, without limitation, a Term Sheet or other offering documents, a Bond Purchase Contract (as hereinafter defined), and closing documents, all as prepared by Bond Counsel or counsel for the Purchaser and approved as to form by the Corporation Counsel. The distribution of a Term Sheet or other offering document in form as prepared by Ehlers is hereby in all respects authorized and approved, and the proposed use by the Purchaser of a Term Sheet or other offering document is hereby approved. The Designated Representatives shall execute a bond purchase contract or term sheet for the sale of the Bonds to the Purchaser (a "*Bond Purchase Contract*") in the form approved by Ehlers. Upon the sale of the Bonds, the Designated Representatives shall prepare the relevant Bond Notification, which shall include the pertinent details of sale as provided herein, and such shall be entered into the records of the City and made available to the City Council at the next public meeting thereof. The Designated Representatives shall also file with the County Clerk each Bond Notification or like document including a statement of taxes. The Designated Representatives are hereby authorized to take any action as may be required on the part of the City to consummate the transactions contemplated by the Bond Purchase Contract, this Ordinance, said Term Sheet or other offering documents, and the Bonds, but the authority granted in this Ordinance to the Designated Representatives to sell Bonds as provided herein shall expire on November 1, 2018.

Section 10. Tax Levy. In order to provide for the collection of a direct annual tax sufficient to pay the interest on the Bonds as it falls due, and also to pay and discharge the principal thereof at maturity, there be and there is hereby levied upon all the taxable property within the City a direct annual tax for each of the years while the Bonds or any of them are outstanding, in amounts sufficient for that purpose, and that there be and there is hereby levied upon all of the taxable property in the City, in addition to all other taxes, the direct annual taxes in the amounts and for the tax years as shall be provided in the Bond Notification. Principal or interest maturing at any time when there are not sufficient funds on hand from the foregoing tax levy to pay the same shall be paid from the general funds of the City, and the fund from which such payment was made shall be reimbursed out of the taxes hereby levied when the same shall be collected.

The City covenants and agrees with the purchasers and the holders of the Bonds that so long as any of the Bonds remain outstanding, the City will take no action or fail to take any action which in any way would adversely affect the ability of the City to levy and collect the foregoing tax levy and the City and its officers will comply with all present and future applicable laws in order to assure that the foregoing taxes will be levied, extended and collected as provided herein and deposited in the fund established to pay the principal of and interest on the Bonds.

To the extent that the taxes levied above exceed the amount necessary to pay debt service on the Bonds as set forth in the Bond Notification, the Mayor, City Clerk and City Treasurer are hereby authorized to direct the abatement of such taxes to the extent of the excess of such levy in each year over the amount necessary to pay debt service on the Bonds in the following bond year. Proper notice of such abatement shall be filed with the County Clerk of The County of DuPage, Illinois (the "*County Clerk*") in a timely manner to effect such abatement.

Section 11. Filing of Ordinance. Forthwith upon the passage of this Ordinance and the execution of a Bond Notification, the City Clerk is hereby directed to file a certified copy of this Ordinance, together with said Bond Notification, with the County Clerk, and it shall be the duty of the County Clerk to annually in and for each of the years set forth in this ordinance, as abated by any amounts set forth in the Bond Notification, ascertain the rate necessary to produce the tax herein levied, and extend the same for collection on the tax books against all of the taxable property within the City in connection with other taxes levied in each of said years for general municipal purposes, in order to raise the respective amounts aforesaid and in each of said years such annual tax shall be computed, extended and collected in the same manner as now or hereafter provided by law for the computation, extension and collection of taxes for general municipal purposes of the City, and when collected, the taxes hereby levied shall be placed to the credit of special fund to be designated "Bond and Interest Fund Account of 2018A" (the "*Bond Fund*"), which taxes are hereby irrevocably pledged to and shall be used only for the purpose of paying the principal of and interest on the Bonds.

Section 12. Use of Bond Proceeds. Accrued interest, if any, received on the delivery of the Bonds is hereby appropriated for the purpose of paying first interest due on the Bonds and is hereby ordered deposited into the Bond Fund.

The principal proceeds of the Bonds and any premium received from the sale of the Bonds are hereby appropriated to pay the costs of issuance of the Bonds and for the purpose of paying the cost of the Project, and that portion thereof not needed to pay such costs of issuance is hereby ordered deposited into the 2018A Capital Improvement Account of the City (the "*Project Fund*"). At the time of the issuance of the Bonds, the costs of issuance of the Bonds may be paid by the Purchaser on behalf of the City from the proceeds of the Bonds.

Section 13. Reimbursement. None of the proceeds of the Bonds will be used to pay, directly or indirectly, in whole or in part, for an expenditure that has been paid by the City prior to the date hereof except architectural or engineering costs incurred prior to commencement of the Project or expenditures for which the City declared an official intent to reimburse such expenditures not later than 60 days after the date such expenditures were paid. This Ordinance is in itself a declaration of official intent to reimburse as to all costs of the Project paid within 60 days prior to the date hereof or on any date after the date hereof and prior to issuance of the Bonds.

Section 14. General Tax Covenants. The City hereby covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Bonds) if taking, permitting, or omitting to take such action would cause any of the Bonds to be an arbitrage bond or a private activity bond within the meaning of the Code, would otherwise cause the interest on the Bonds to be includable in the gross income of the recipients thereof for federal income tax purposes. The City acknowledges that, in the event of an examination by the Internal Revenue Service of the exemption from Federal income taxation for interest paid on the Bonds under present rules, the City may be treated as a "taxpayer" in such examination and agrees that it will respond in a commercially reasonable manner to any inquiries from the Internal Revenue Service in connection with such an examination. In furtherance of the foregoing provisions, but without limiting their generality, the City agrees: (a) through its officers, to make such further specific covenants, representations as shall be truthful, and assurances as may be necessary or advisable; (b) to comply with all representations, covenants, and assurances contained in certificates or agreements as may be prepared by Bond Counsel; (c) to consult with such Bond Counsel and to comply with such advice as may be given; (d) to file such forms, statements, and

supporting documents as may be required and in a timely manner; and (e) if deemed necessary or advisable by its officers, to employ and pay fiscal agents, municipal advisors, financial advisors, attorneys, and other persons to assist the City in such compliance.

Section 15. Registered Form. The City recognizes that Section 149 of the Code requires the Bonds to be issued and to remain in fully registered form in order to be and remain exempt from federal income taxation. In this connection, the City agrees that it will not take any action to permit the Bonds to be issued in, or converted into, bearer or coupon form.

Section 16. Certain Specific Tax Covenants. A. None of the Bonds shall be a “private activity bond” as defined in Section 141(a) of the Code; and the City certifies, represents, and covenants as follows:

(1) Not more than 5% of the net proceeds and investment earnings of the Bonds is to be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit.

(2) Not more than 5% of the amounts necessary to pay the principal of and interest on the Bonds will be derived, directly or indirectly, from payments with respect to any private business use by any person other than a state or local governmental unit.

(3) None of the proceeds of the Bonds is to be used, directly or indirectly, to make or finance loans to persons other than a state or local governmental unit.

(4) No user of the infrastructure of the City to be improved as part of the Project other than the City or another governmental unit, will use the same on any basis other than the same basis as the general public; and no person, other than the City or another governmental unit, will be a user of such infrastructure as a result of (i) ownership or (ii) actual or beneficial use pursuant to a lease, a management or incentive payment contract other than as expressly permitted by the Code, or (iii) any other arrangement.

B. The Bonds shall not be "arbitrage bonds" under Section 148 of the Code; and the City certifies, represents, and covenants as follows:

(1) With respect to the Project, the City has heretofore incurred or within six months after delivery of the Bonds expects to incur substantial binding obligations to be paid for with money received from the sale of the Bonds, said binding obligations comprising binding contracts for the Project in not less than the amount of 5% of the proceeds of the Bonds allocable to the Project.

(2) More than 85% of the proceeds of the Bonds allocable to the Project will be expended on or before three years for the purpose of paying the costs of the Project.

(3) All of the principal proceeds of the Bonds allocable to the Project and investment earnings thereon will be used, needed, and expended for the purpose of paying the costs of the Project including expenses incidental thereto.

(4) Work on the Project is expected to proceed with due diligence to completion.

(5) Except for the Bond Fund, the City has not created or established and will not create or establish any sinking fund reserve fund or any other similar fund to provide for the payment of the Bonds. The Bond Fund has been established and will be funded in a manner primarily to achieve a proper matching of revenues and debt service and will be depleted at least annually to an amount not in excess of 1/12th the particular annual debt service on the Bonds. Money deposited into the Bond Fund will be spent within a 13-month period beginning on the date of deposit, and investment earnings in the Bond Fund will be spent or withdrawn from the Bond Fund within a one-year period beginning on the date of receipt.

(6) Amounts of money related to the Bonds required to be invested at a yield not materially higher than the yield on the Bonds, as determined pursuant to such tax certifications or agreements as the City officers may make in connection with the issuance of the Bonds, shall be so invested; and appropriate City officers are hereby authorized to make such investments.

(7) Unless an applicable exception to Section 148(f) of the Code, relating to the rebate of "excess arbitrage profits" to the United States Treasury (the "*Rebate Requirement*") is available to the City, the City will meet the Rebate Requirement.

(8) Relating to such applicable exceptions, any City officer charged with issuing the Bonds is hereby authorized to make such elections under the Code as such officer shall deem reasonable and in the best interests of the City. If such election may result in a "penalty in lieu of rebate" as provided in the Code, and such penalty is incurred (the "*Penalty*"), then the City shall pay such Penalty.

C. The City reserves the right to use or invest moneys in connection with the Bonds in any manner or to make changes in the Project lists or to use the City infrastructure acquired, constructed, or improved as part of the Project in any manner, notwithstanding the representations and covenants in (Sections 13 through 16 of) this Ordinance, *provided* it shall first have received an opinion from an attorney or a firm of attorneys of nationally recognized standing in matters pertaining to tax-exempt bonds to the effect that use or investment of such moneys or the changes in or use of such infrastructure as contemplated will not result in loss or impairment of tax-exempt status for the Bonds.

D. If so provided in the Bond Notification, each Bond may be designated as a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Code. In connection therewith the City, in the Bond Notification, shall affirm that:

(i) none of such Bonds will be at any time a “private activity bond” (as defined in Section 141 of the Code); (ii) in calendar year 2018, the City has not issued any Tax-exempt obligations of any kind nor have any other Tax-exempt obligations of any kind been issued on behalf of the City; (iii) during calendar year 2018, the City will not issue or cause to have issued on behalf of the City more than \$10,000,000 of Tax-exempt obligations, including the Bonds; (iv) not more than \$10,000,000 of obligations of any kind (including the Bonds) issued by or on behalf of the City during calendar year 2018 will be designated for purposes of Section 265(b)(3) of the Code; and (v) the City is not subject to control by any entity, and there are no entities subject to control by the City.

Section 17. Opinion of Counsel Exception. The City reserves the right to use or invest moneys in connection with the Bonds in any manner, notwithstanding the tax-related covenants set forth in Sections 13 through 16 herein, *provided* it shall first have received an opinion from Bond Counsel to the effect that use or investment of such moneys as contemplated is valid and proper under applicable law and this Ordinance and, further, will not adversely affect the tax-exempt status for the Bonds.

Section 18. List of Bondholders. The Bond Registrar shall maintain a list of the names and addresses of the holders of all Bonds and upon any transfer shall add the name and address of the new Bondholder and eliminate the name and address of the transferor Bondholder.

Section 19. Duties of Bond Registrar. If requested by the Bond Registrar, any two of the Designated Representatives of the City are authorized to execute the Bond Registrar’s standard form of agreement between the City and the Bond Registrar with respect to the obligations and duties of the Bond Registrar hereunder which may include the following:

(a) to act as bond registrar, authenticating agent, paying agent and transfer agent as provided herein;

(b) to maintain a list of Bondholders as set forth herein and to furnish such list to the City upon request, but otherwise to keep such list confidential;

(c) to give notice of redemption of the Bonds as provided herein;

(d) to cancel and/or destroy Bonds which have been paid at maturity or submitted for exchange or transfer;

(e) to furnish the City at least annually a certificate with respect to Bonds cancelled and/or destroyed; and

(f) to furnish the City at least annually an audit confirmation of Bonds paid, Bonds outstanding and payments made with respect to interest on the Bonds.

Section 20. Continuing Disclosure Undertaking. The City Finance Director is hereby authorized, empowered and directed to execute and deliver one or more Continuing Disclosure Undertakings (the "*Continuing Disclosure Undertaking*") in connection with the issuance of the Bonds, with such provisions therein as he or she shall approve, his or her execution thereof to constitute conclusive evidence of his or her approval of such provisions. When the Continuing Disclosure Undertaking is executed and delivered on behalf of the City as herein provided, the Continuing Disclosure Undertaking will be binding on the City and the officers, employees and agents of the City, and the officers, employees and agents of the City are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Continuing Disclosure Undertaking as executed. Notwithstanding any other provision of this Ordinance, the sole remedies for failure to comply with the Continuing Disclosure Undertaking shall be the ability of the beneficial owner of any Bond to seek mandamus or specific performance by court order, to cause the City to comply with its obligations under the Continuing Disclosure Undertaking.

Section 21. Superseder and Effective Date. All ordinances, resolutions, and orders, or parts thereof, in conflict herewith, are to the extent of such conflict hereby superseded; and this

Ordinance shall be in full force and effect immediately upon its passage, approval, and publication.

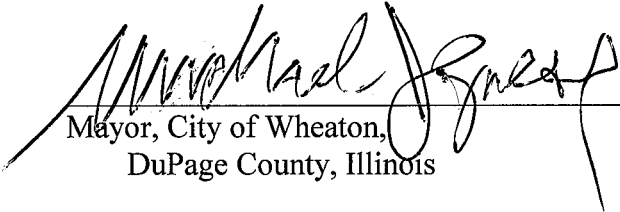
ADOPTED: June 18, 2018

AYES: Councilman Suess, Councilman Barbier, Councilwoman Fitch,
Mayor Gresk, Councilman Rutledge, Councilman Scalzo

NAYS: None

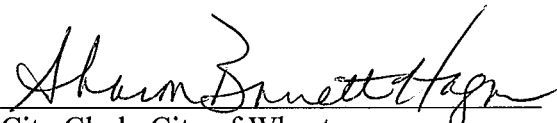
ABSENT: Councilman Prendiville

Approved: June 18, 2018



Mayor, City of Wheaton,
DuPage County, Illinois

ATTEST:



City Clerk, City of Wheaton,
DuPage County, Illinois

Recorded in the City Records on June 19, 2018.