
FEDERAL TAX AGREEMENT

Dated as of March 30, 2021

OF

CITY OF KIRKSVILLE, MISSOURI,

**[\$Principal Amount]
City of Kirksville, Missouri
Combined Waterworks and Sewerage System Refunding Revenue Bonds
Series 2021**

FEDERAL TAX AGREEMENT

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FEDERAL TAX AGREEMENT

THIS FEDERAL TAX AGREEMENT (the “**Tax Agreement**”), is executed as of March 30, 2021, by the **CITY OF KIRKSVILLE, MISSOURI**, a third-class city and political subdivision organized and existing under the laws of the State of Missouri (the “**City**”).

RECITALS

1. This Tax Agreement is being executed and delivered in connection with the issuance by the City of \$[Principal Amount] principal amount of Combined Waterworks and Sewerage System Refunding Revenue Bonds, Series 2021 (the “**Bonds**”), under an Ordinance passed by the City Council of the City on March 1, 2021, and a Certificate of Final Terms executed by the Mayor and attested by the City Clerk on March 4, 2021 (collectively, the “**Ordinance**”), for the purposes described in this Tax Agreement and in the Ordinance.

2. The Internal Revenue Code of 1986, as amended (the “**Code**”), and the applicable Regulations and rulings issued by the U.S. Treasury Department (the “**Regulations**”), impose certain limitations on the uses and investment of the Bond proceeds and of certain other money relating to the Bonds and set forth the conditions under which the interest on the Bonds will be excluded from gross income for federal income tax purposes.

3. The City is executing this Tax Agreement in order to set forth certain facts, covenants, representations, and expectations relating to the use of Bond proceeds and the property financed or refinanced with those proceeds and the investment of the Bond proceeds and of certain other related money, in order to establish and maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, and to provide guidance for complying with the arbitrage rebate and yield reduction amounts provisions of Code § 148(f).

4. The City adopted a Tax and Disclosure Compliance Procedure on January 6, 2020 (the “**Tax Compliance Procedure**”), for the purpose of setting out general procedures for the City to continuously monitor and comply with the federal income tax requirements set out in the Code and the Regulations, a copy of which is attached hereto as **Exhibit F**.

5. This Tax Agreement is entered into as required by the Tax Compliance Procedure to set out specific tax compliance procedures applicable to the Bonds.

NOW, THEREFORE, the City represents, covenants and agrees as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. Except as otherwise provided in this Tax Agreement or unless the context otherwise requires, capitalized words and terms used in this Tax Agreement have the same meanings as set forth in the Ordinance, and certain other words and phrases have the meanings assigned in Code §§ 103, 141-150 and the Regulations. The following words and terms used in this Tax Agreement have the following meanings:

“**Annual Compliance Checklist**” means a checklist for Bonds designed to measure compliance with the requirements of this Tax Agreement and the Tax Compliance Procedure after the Issue Date as further described in **Section 4.2** and substantially in the form attached as **Exhibit C**.

“**Bona Fide Debt Service Fund**” means a fund, which may include Bond proceeds, that (a) is used primarily to achieve a proper matching of revenues with principal and interest payments within each Bond Year; and (b) is depleted at least once each Bond Year, except for a reasonable carryover amount not to exceed the greater of (1) the earnings on the fund for the immediately preceding Bond Year, or (2) one-twelfth of the principal and interest payments on the Bonds for the immediately preceding Bond Year.

“**Bond**” or “**Bonds**” means any Bond or Bonds described in the recitals, authenticated and delivered under the Ordinance.

“**Bond Compliance Officer**” means the City’s Finance Director or other person named in the Tax Compliance Procedure.

“**Bond Counsel**” means Gilmore & Bell, P.C., or other firm of nationally recognized bond counsel acceptable to the City.

“**Bond Year**” means each 1-year period (or shorter period for the first Bond Year) ending July 1 or another 1-year period selected by the City.

“**City**” means City of Kirksville, Missouri and its successors and assigns, or any body, agency or instrumentality of the State of Missouri succeeding to or charged with the powers, duties and functions of the City.

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

“**Debt Service Account**” means the Debt Service Account for the Bonds created by the Ordinance.

“**Final Written Allocation**” means the written allocation of expenditures of proceeds of the Original Obligations as set forth on **Exhibit D**.

“**Financed Facility**” means the portion of the Project being financed or refinanced, in whole or in part, with the proceeds of the Original Obligations as described on **Exhibit D**.

“**Gross Proceeds**” means (a) sale proceeds (any amounts actually or constructively received by the City from the sale of the Bonds, including amounts used to pay underwriting discount or fees, but excluding pre-issuance accrued interest), (b) Investment proceeds (any amounts received from investing sale proceeds, other Investment proceeds or transferred proceeds), (c) any amounts held in a sinking fund for the Bonds, (d) any amounts held in a pledged fund or reserve fund for the Bonds, (e) any other replacement proceeds and (f) any transferred proceeds. Specifically, Gross Proceeds includes (but is not limited to) amounts held in the following funds and accounts:

- (1) Debt Service Account.

“Guaranteed Investment Contract” is any Investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply Investments on 2 or more future dates (*e.g.*, a forward supply contract).

“Investment” means any security, obligation, annuity contract or other investment-type property that is purchased directly with, or otherwise allocated to, Gross Proceeds. This term does not include a tax-exempt bond, except for “specified private activity bonds” as defined in Code § 57(a)(5)(C), but it does include the investment element of most interest rate caps.

“IRS” means the United States Internal Revenue Service.

“Issue Date” means March 30, 2021.

“City” means City of Kirksville, Missouri and its successors and assigns, or any body, agency or instrumentality of the State of Missouri succeeding to or charged with the powers, duties and functions of the City.

“Management or Service Agreement” means a legal agreement defined in Regulations § 1.141-3(b) as a management, service, or incentive payment contract with an entity that provides services involving all or a portion of any function of the Financed Facility, such as a contract to manage the entire Financed Facility or a portion of the Financed Facility. Contracts for services that are solely incidental to the primary governmental function of the Financed Facility (for example, contracts for janitorial, office equipment repair, billing or similar services); however, are not treated as Management or Service Agreements.

“Measurement Period” means, with respect to each item of property financed as part of the Financed Facility with proceeds of the Original Obligations, the period beginning on the later of (a) the issue date of the Original Obligations or (b) the date the property was or will be placed in service, and ending on the earlier of (1) the final maturity date of the Bonds or (2) the end of the expected economic useful life of the property.

“Minor Portion” means the lesser of \$100,000 or 5% of the sale proceeds of the Bonds.

“Net Proceeds” means when used in reference to the Bonds, the sale proceeds (excluding pre-issuance accrued interest), less an allocable share of any proceeds deposited in a reasonably required reserve or replacement fund, plus an allocable share of all Investment earnings on such sale proceeds.

“Non-Qualified Use” means use of Bond proceeds or the Financed Facility in a trade or business carried on by any Non-Qualified User. The rules set out in Regulations § 1.141-3 determine whether Bond proceeds or the Financed Facility are “used” in a trade or business. Generally, ownership, a lease, or any other use that grants a Non-Qualified User a special legal right or entitlement with respect to the Financed Facility, will constitute use under Regulations § 1.141-3.

“Non-Qualified User” means any person or entity other than a Qualified User.

“Official Intent Date” means January 25, 2010, as described in **Section 2.1(i)**.

“Opinion of Bond Counsel” means the written opinion of Bond Counsel to the effect that the proposed action or the failure to act will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

“Ordinance” means, collectively, Ordinance No. [_____] passed by the City Council of the City on March 1, 2021, and the Certificate of Final Terms executed by the Mayor and attested by the City Clerk on March 4, 2021, as amended and supplemented in accordance with the provisions therein.

“Original Obligations” means the City’s Taxable Combined Waterworks and Sewerage System Revenue Bonds (Recovery Zone Economic Development Bonds), Series 2010, dated June 30, 2010, issued in the original principal amount of \$2,274,000 which was the first issue of tax-exempt governmental bonds that financed or refinanced a portion of the Financed Facility.

“Post-Issuance Tax Requirements” means those requirements related to the use of proceeds of the Bonds, the use of the Financed Facility and the investment of Gross Proceeds after the Issue Date of the Bonds.

“Project” means all of the property being acquired, developed, constructed, renovated, and equipped by the City using Original Obligation proceeds and Qualified Equity, including the costs of various improvements, renovations, expansions, repairs, replacements and additions to the City’s combined waterworks and sewerage system and related facilities as further described on **Exhibit D**.

“Qualified Equity” means funds that are not derived from proceeds of a tax-exempt financing that are spent on the Project at any time during the period beginning not earlier than the later of (a) 60 days prior to the Official Intent Date or (b) three years prior to the Issue Date, and ending not later than the date the Project is capable of and actually used at substantially its designed level. Qualified Equity excludes an ownership interest in real property or tangible personal property.

“Qualified Use Agreement” means any of the following:

(a) A lease or other short-term use by members of the general public who occupy the Financed Facility on a short-term basis in the ordinary course of the City’s governmental purposes.

(b) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 200 days in length pursuant to an arrangement whereby (1) the use of the Financed Facility under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (2) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Qualified User or Non-Qualified User using all or any portion of the Financed Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(c) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 100 days in length pursuant to arrangements whereby (1) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (2) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (3) the Financed Facility was not constructed for a principal purpose of providing the property for use by that Qualified User or Non-Qualified User. Any Qualified User or Non-Qualified User using all or any portion of the Financed Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(d) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 50 days in length pursuant to a negotiated arm's-length arrangement at fair market value so long as the Financed Facility was not constructed for a principal purpose of providing the property for use by that person.

“Qualified User” means a State, territory, possession of the United States, the City of Kirksville, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

“Refunded Obligations” means all of the City’s Taxable Combined Waterworks and Sewerage System Revenue Bonds (Recovery Zone Economic Development Bonds), Series 2010, maturing on July 1, 2021, and thereafter outstanding in the aggregate principal amount of \$1,325,000.

“Regulations” means all Regulations issued by the U.S. Treasury Department to implement the provisions of Code §§ 103 and 141 through 150 and applicable to the Bonds.

“Tax Agreement” means this Federal Tax Agreement as it may from time to time be amended and supplemented in accordance with its terms.

“Tax Compliance Procedure” means the City’s Tax and Disclosure Compliance Procedure, dated January 6, 2020, as it may from time to time be amended.

“Tax-Exempt Bond File” means documents and records for the Bonds, the Refunded Obligations and the Original Obligations maintained by the Bond Compliance Officer pursuant to the Tax Compliance Procedure.

“Transcript” means the Transcript of Proceedings relating to the authorization and issuance of the Bonds.

“Underwriter” means [_____], the underwriter of the Bonds.

“Yield” means yield on the Bonds, computed under Regulations § 1.148-4, and yield on an Investment, computed under Regulations § 1.148-5.

ARTICLE II

GENERAL REPRESENTATIONS AND COVENANTS

Section 2.1. Representations and Covenants of the City. The City represents and covenants as follows:

(a) *Organization and Authority.* The City (1) is a political subdivision organized and existing under the laws of the State of Missouri, and (2) has lawful power and authority to issue the Bonds for the purposes set forth in the Ordinance, to enter into, execute and deliver the Ordinance, the Bonds, and this Tax Agreement and to carry out its obligations under this Tax Agreement and under such documents, and (3) by all necessary action has been duly authorized to execute and deliver the Ordinance, the Bonds, and this Tax Agreement, acting by and through its duly authorized officials.

(b) *Tax-Exempt Status of Bonds—General Covenant and Allocation of Proceeds to Project.*

(1) The City (to the extent within its power or direction) will not use any money on deposit in any fund or account maintained in connection with the Bonds, whether or not such money was derived from the proceeds of the sale of the Bonds or from any other source, in a manner that would cause the Bonds to be “arbitrage bonds,” within the meaning of Code § 148, and will not (to the extent within its power or direction) otherwise use or permit the use of any Bond proceeds or any other funds of the City, directly or indirectly, in any manner, or take or permit to be taken any other action or actions, that would cause interest on the Bonds to be included in gross income for federal income tax purposes.

(2) The City financed the Project with proceeds of the Original Obligations and Qualified Equity. For purposes of the covenants in this **Section 2.1** relating to Non-Qualified Use of the Project, any Non-Qualified Use shall be treated as first allocated entirely to the portion of the Project financed with Qualified Equity, and then, but only to the extent of any excess Non-Qualified Use, to the portion of the Project financed by the Original Obligations (that is, the Financed Facility).

(c) *Governmental Obligations—Use of Proceeds.* Throughout the Measurement Period, all of the Financed Facility has been and is expected to be owned by the City or another Qualified User. Throughout the Measurement Period, no portion of the Financed Facility has been or is expected to be used in a Non-Qualified Use. Throughout the Measurement Period the City will not permit any Non-Qualified Use of the Financed Facility without first consulting with Bond Counsel.

(d) *Governmental Obligations—Private Security or Payment.* As of the Issue Date the City expects that none of the principal and interest on the Bonds will be and the payment of principal of and interest on the Refunded Obligations has not been (under the terms of the Bonds or any underlying arrangement) directly or indirectly:

(1) secured by (i) any interest in property used or to be used for a Non-Qualified Use, or (ii) any interest in payments in respect of such property; or

(2) derived from payments (whether or not such payments are made to the City) in respect of property, or borrowed money, used or to be used for a Non-Qualified Use.

For purposes of the forgoing, taxes of general application, including payments in lieu of taxes, are not treated as private payments or as private security. The City will not permit any private security or payment with respect to the Bonds without first consulting with Bond Counsel.

(e) *No Private Loan.* Not more than 5% of the net proceeds of the Bonds will be loaned directly or indirectly to any Non-Qualified User.

(f) *Management or Service Agreements.* As of the Issue Date, the City has no Management or Service Agreements with Non-Qualified Users. During the Measurement Period the City will not enter into or renew any Management or Service Agreement with any Non-Qualified User without first consulting with Bond Counsel.

(g) *Leases.* As of the Issue Date, the City has not entered into any leases of any portion of the Financed Facility other than Qualified Use Agreements during the Measurement Period. During the

Measurement Period the City will not enter into or renew any lease or similar agreement or arrangement other than a Qualified Use Agreement without first consulting with Bond Counsel.

(h) *Output Contracts.* As of the Issue Date, the City does not have any “Output Contract” (defined below). During the Measurement Period the City has not and will not enter into any “Output Contract” (defined below) without first consulting with Bond Counsel. The term “Output Contract” is defined in Regulations § 1.141-7, and generally includes any contract with a Non-Qualified User that provides for the purchase of the output of Financed Facility. A similar contract with a Qualified User is not an Output Contract.

(i) *Limit on Maturity of Bonds.* A list of the assets included in the Project and a computation of the “average reasonably expected economic life” is attached to this Tax Agreement as **Exhibit D**. Based on this computation, the “average maturity” of the Bonds as computed by Bond Counsel, does not exceed the average reasonably expected economic life of the Financed Facility. The “average reasonably expected economic life” of the Project was determined as follows: the average economic life of the Financed Facility as of the issue date of the Original Obligations was first multiplied by 120%, then reduced by the number of years elapsed from the issue date of the Original Obligations to the Issue Date. The “average maturity” of the Bonds, as computed by the Bond Counsel, does not exceed the average reasonably expected economic life of the Financed Facility, as such terms are used in Code § 147(b).

(i) *Expenditure of Bond Proceeds.*

(1) Allocation to Expenditures. The City evidenced each allocation of the proceeds of the Original Obligations and Qualified Equity for the Project to an expenditure in writing. No allocation was made more than 18 months following the later of (i) the date of the expenditure or (ii) the date the Financed Facility was placed in service.

(2) Reimbursement of Expenditures; Official Intent. On January 25, 2010, the governing body of the City adopted an ordinance declaring the intent of the City to finance the Financed Facility with tax-exempt bonds and to reimburse the City for expenditures made for the Financed Facility prior to the issuance of those bonds (the “**Official Intent Date**”). No portion of the Net Proceeds of the Original Obligations was used to reimburse an expenditure paid by the City more than 60 days prior to the date the ordinance was adopted, except as described in the Federal Tax Agreement for the Original Obligations.

(j) *Registered Bonds.* The Ordinance requires that all of the Bonds will be issued and held in registered form within the meaning of Code § 149(a).

(k) *Bonds Not Federally Guaranteed.* The City will not take any action or permit any action to be taken which would cause any Bond to be “federally guaranteed” within the meaning of Code § 149(b).

(l) *IRS Form 8038-G.* Bond Counsel will prepare Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) based on the representations and covenants of the City contained in this Tax Agreement or otherwise provided by the City. Bond Counsel will sign the return as a paid preparer following completion and will then deliver copies to the City for execution and for the City’s records. The City agrees to timely execute and return to Bond Counsel the execution copy of Form 8038-G for filing with the IRS. A copy of the “as-filed” copy along with proof of filing will be included as **Exhibit B**.

(m) *Hedge Bonds.* At least 85% of the net sale proceeds (the sale proceeds of the Original Obligations less any sale proceeds invested in a reserve fund) of the Original Obligations were used to carry

out the governmental purpose of the Original Obligations within 3 years after the issue date of the Original Obligations, and not more than 50% of the proceeds of the Original Obligations were invested in Investments having a substantially guaranteed Yield for 4 years or more.

(n) *Compliance with Future Tax Requirements.* The City understands that the Code and the Regulations may impose new or different restrictions and requirements on the City in the future. The City will comply with such future restrictions that are necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(o) *Single Issue; No Other Issues.* The Bonds constitute a single “issue” under Regulations § 1.150-1(c). No other debt obligations of the City (1) are being sold within 15 days of the sale of the Bonds, (2) are being sold under the same plan of financing as the Bonds, and (3) are expected to be paid from substantially the same source of funds as the Bonds (disregarding guarantees from unrelated parties, such as bond insurance).

(p) *Interest Rate Swap.* As of the Issue Date, the City has not entered into an interest rate swap agreement or any other similar arrangement designed to modify its interest rate risk with respect to the Bonds or the Refunded Obligations. The City will not enter into any such arrangement in the future without first consulting with Bond Counsel.

(q) *Guaranteed Investment Contract.* As of the Issue Date, the City does not expect to enter into a Guaranteed Investment Contract for any Gross Proceeds of the Bonds. The City will be responsible for complying with **Section 4.4(d)** if it decides to enter into a Guaranteed Investment Contract at a later date.

(r) *Bank Qualified Tax-Exempt Obligation.* The City designates the Bonds as “qualified tax-exempt obligations” under Code § 265(b)(3), and with respect to this designation certifies as follows:

(1) the City reasonably anticipates that the amount of tax-exempt obligations (other than private activity bonds that are not qualified 501(c)(3) bonds) that will be issued by or on behalf of the City (and all subordinate entities of the City) during the calendar year that the Bonds are issued, including the Bonds, will not exceed \$10,000,000; and

(2) the City (including all subordinate entities of the City) will not issue tax-exempt obligations (other than private activity bonds that are not qualified 501(c)(3) bonds) during the calendar year that the Bonds are issued, including the Bonds, in an aggregate principal amount or aggregate issue price in excess of \$10,000,000, without first obtaining advice of Bond Counsel that the designation of the Bonds as “qualified tax-exempt obligations” will not be adversely affected.

Section 2.2. Survival of Representations and Covenants. All representations, covenants and certifications contained in this Tax Agreement or in any certificate or other instrument delivered by the City under this Tax Agreement, will survive the execution and delivery of such documents and the issuance of the Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations. The foregoing covenants of this Section will remain in full force and effect notwithstanding the defeasance of the Bonds.

ARTICLE III

ARBITRAGE CERTIFICATIONS AND COVENANTS

Section 3.1. General. The purpose of this **Article III** is to certify, under Regulations § 1.148-2(b), the City's expectations as to the sources, uses and investment of Bond proceeds and other money, in order to support the City's conclusion that the Bonds are not arbitrage bonds. The person executing this Tax Agreement on behalf of the City is an officer of the City responsible for issuing the Bonds.

Section 3.2. Reasonable Expectations. The facts, estimates and expectations set forth in this **Article III** are based upon and in reliance upon the City's understanding of the documents and certificates that comprise the Transcript, and the representations, covenants and certifications of the parties contained therein. To the City's knowledge, the facts and estimates set forth in this Tax Agreement are accurate, and the expectations of the City set forth in this Tax Agreement are reasonable. The City has no knowledge that would cause it to believe that the representations, warranties and certifications described in this Tax Agreement are unreasonable or inaccurate or may not be relied upon.

Section 3.3. Purposes of the Financing. The Bonds are being issued for the purpose of providing funds to (a) refund the Refunded Obligations and (b) pay certain costs of issuing the Bonds. The purpose of refunding the Refunded Obligations is to achieve interest cost savings through early redemption of the Refunded Obligations and provide an orderly plan of financing.

Section 3.4. Funds and Accounts. The following funds and accounts have been established under the Ordinance:

- Revenue Fund.
- Operation and Maintenance Account.
- Debt Service Account.
- Depreciation and Replacement Account.
- Surplus Account.

Section 3.5. Amount and Use of Bond Proceeds and Other Money.

(a) *Amount of Bond Proceeds.* The total proceeds to be received by the City from the sale of the Bonds will be as follows:

Principal Amount	\$[Principal Amount].00
Original Issue Premium	[_____.]
Less Underwriting Discount	([_____.])
Total Proceeds Received by City	[_____.]

(b) *Use of Bond Proceeds.* The Bond proceeds in the amount of \$[_____] are expected to be allocated to expenditures as follows:

(1) \$[_____] from the sale proceeds of the Bonds shall be transferred to the paying agent for the Bonds, and used by the paying agent, on behalf of and at the direction of the City, to pay the costs of issuing the Bonds on the Issue Date as provided in the Ordinance. Any amount not so used by the redemption date of the Refunded Obligations will be transferred to the City for deposit in the Debt Service Account.

(2) \$[] representing the remaining sale proceeds of the Bonds, will be transferred to BOKF, N.A. (f/k/a Bank of Kansas City, N.A.), as paying agent for the Refunded Bonds, and used to pay the principal of and accrued interest on the Refunded Obligations on April 7, 2021, the redemption date of the Refunded Obligations. Any amount not so used on the redemption date will be transferred to the Debt Service Account.

Section 3.6. Multipurpose Issue. Pursuant to Regulations § 1.148-9(h), the City is applying the arbitrage rules to separate financing purposes of the issue that have the same initial temporary period as if they constitute a single issue for purposes of applying the arbitrage rules.

Section 3.7. Current Refunding.

(a) *Proceeds Used for Current Refunding.* Proceeds of the Bonds in the amount of \$[] will be transferred to BOKF, N.A. (f/k/a Bank of Kansas City, N.A.), as paying agent for the refunded bonds, and used to pay the principal of and accrued interest on the Refunded Obligations on April 7, 2021. All such proceeds of the Bonds will be spent not later than 90 days after the issue date of the Bonds.

(b) *Transferred Proceeds.* There are no unspent proceeds (sale proceeds, Investment proceeds or transferred proceeds) of the Refunded Obligations. Therefore, there are no transferred proceeds of the Bonds.

Section 3.8. Project Completion. The Financed Facility has previously been completed.

Section 3.9. Sinking Funds. The City is required to make periodic payments in amounts sufficient to pay the principal of and interest on the Bonds. Such payments will be deposited into the Debt Service Account. Except for the Debt Service Account, no sinking fund or other similar fund that is expected to be used to pay principal of or interest on the Bonds has been established or is expected to be established. The Debt Service Account is used primarily to achieve a proper matching of revenues with principal and interest payments on the Bonds within each Bond Year, and the City expects that the Debt Service Account will qualify as a Bona Fide Debt Service Fund.

Section 3.10. Reserve, Replacement and Pledged Funds.

(a) *Debt Service Reserve Fund.* No reserve or replacement fund has been established for the Bonds.

(b) *No Other Replacement or Pledged Funds.* None of the Bond proceeds will be used as a substitute for other funds that were intended or earmarked to pay costs of the Financed Facility or refund the Refunded Obligations, and that instead has been or will be used to acquire higher yielding Investments. Except for the Debt Service Account, there are no other funds pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest on the Bonds if the City encounters financial difficulty.

(c) *Other Funds and Accounts.* Money in the Revenue Fund will be entirely distributed to other funds, and money in the Operation and Maintenance Account, the Depreciation and Replacement Account and the Surplus Account will be used to operate and maintain the City's combined waterworks and sewerage system (the "System"), to replace and repair depreciated or obsolete System facilities and to

otherwise improve the System. Therefore, amounts held in these funds and accounts are not pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest on the Bonds if the City encounters financial difficulty.

Section 3.11. Purpose Investment Yield. The proceeds of the Bonds will not be used to purchase an Investment for the purpose of carrying out the governmental purpose of the financing.

Section 3.12. Issue Price and Yield on Bonds.

(a) *Issue Price.* Based on the Underwriter’s certifications in the Underwriter’s Receipt for Bonds and Closing Certificate and the Certificate of Municipal Advisor attached as **Exhibit E**, the City hereby elects to establish the issue prices of the Bonds pursuant to Regulations § 1.148-1(f)(2)(iii) (relating to the so-called “competitive sales rule”). Therefore, the aggregate issue price of the Bonds for such purpose is \$[_____].

(b) *Bond Yield.* Based on the issue price of the Bonds, the Yield on the Bonds is [_____]%, as computed by Bond Counsel as shown on **Exhibit A**. The City has not entered into an interest rate swap agreement with respect to any portion of the proceeds of the Bonds.

(c) *No Interest Rate Swap.* The City has not entered into an interest rate swap agreement with respect to any portion of the proceeds of the Bonds.

Section 3.13. Miscellaneous Arbitrage Matters.

(a) *No Abusive Arbitrage Device.* The Bonds are not and will not be part of a transaction or series of transactions that has the effect of (1) enabling the City to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (2) overburdening the tax-exempt bond market.

(b) *No Over-Issuance.* The sale proceeds of the Bonds, together with expected Investment earnings thereon and other money contributed by the City, do not exceed the cost of the governmental purpose of the Bonds as described above.

Section 3.14. Conclusion. On the basis of the facts, estimates and circumstances set forth in this Tax Agreement, the City does not expect that the Bond proceeds will be used in a manner that would cause any Bond to be an “arbitrage bond” within the meaning of Code § 148 and the Regulations.

ARTICLE IV

POST-ISSUANCE TAX REQUIREMENTS, POLICIES AND PROCEDURES

Section 4.1. General.

(a) *Purpose of Article.* The purpose of this Article is to supplement the Tax Compliance Procedure and to set out specific policies and procedures governing compliance with the federal income tax requirements that apply after the Bonds are issued. The City recognizes that interest on the Bonds will remain excludable from gross income only if the Post-Issuance Tax Requirements are followed after the Issue Date. The City further acknowledges that written evidence substantiating the Post-Issuance Tax Requirements must be retained in order to permit the Bonds to be refinanced with tax-exempt obligations

and substantiate the position that interest on the Bonds is exempt from gross income in the event of an audit of the Bonds by the IRS.

(b) *Written Policies and Procedures of the City.* The City intends for the Tax Compliance Procedure, as supplemented by this Tax Agreement, to be its primary written policies and procedures for monitoring compliance with the Post-Issuance Tax Requirements for the Bonds and to supplement any other formal policies and procedures related to tax compliance that the City has established. The provisions of this Tax Agreement are intended to be consistent with the Tax Compliance Procedure. In the event of any inconsistency between the Tax Compliance Procedure and this Tax Agreement, the terms of this Tax Agreement will govern.

(c) *Bond Compliance Officer.* The City when necessary to fulfill its Post-Issuance Tax Requirements will, through its Bond Compliance Officer, sign Form 8038-T in connection with the payment of arbitrage rebate or yield reduction amounts, participate in any federal income tax audit of the Bonds or related proceedings under a voluntary compliance agreement procedures (VCAP) or undertake a remedial action procedure pursuant to Regulations §§ 1.141-12. In each case, all costs and expenses incurred by the City shall be treated as a reasonable cost of administering the Bonds and the City shall be entitled to reimbursement and recovery of its costs to the same extent as provided in the Ordinance or State law.

Section 4.2. Record Keeping; Use of Bond Proceeds and Use of Financed Facility.

(a) *Record Keeping.* The Bond Compliance Officer will maintain the Tax-Exempt Bond File for the Bonds in accordance with the Tax Compliance Procedure. Unless otherwise specifically instructed in advice or a written Opinion of Bond Counsel or to the extent otherwise provided in this Tax Agreement, the Bond Compliance Officer shall retain records related to the Post-Issuance Tax Requirements until 3 years following the final maturity of (1) the Bonds or (2) any obligation issued to refund the Bonds. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22, which generally provides that an electronic storage system must (i) ensure an accurate and complete transfer of the hardcopy records which indexes, stores, preserves, retrieves and reproduces the electronic records, (ii) include reasonable controls to ensure integrity, accuracy and reliability of the electronic storage system and to prevent unauthorized alteration or deterioration of electronic records, (iii) exhibit a high degree of legibility and readability both electronically and in hardcopy, (iv) provide support for other books and records of the City and (v) not be subject to any agreement that would limit the ability of the IRS to access and use the electronic storage system on the City's premises.

(b) *Accounting and Allocation of Bond Proceeds and Qualified Equity to Expenditures.* Proceeds of the Bonds will be used as described in **Sections 3.5** and **3.7**. The Bond Compliance Officer will maintain accounting records showing the investment and expenditure of this money as part of the Tax-Exempt Bond File. The Bond Compliance Officer has prepared written substantiation records of the allocation of proceeds of the Original Obligations to the Financed Facility. This allocation is summarized on **Exhibit D** and is intended to constitute the Final Written Allocation for the Original Obligations.

(c) *Annual Compliance Checklist.* Attached as **Exhibit C** is a sample Annual Compliance Checklist for the Bonds. The Bond Compliance Officer will prepare and complete an Annual Compliance Checklist for the Financed Facility at least annually in accordance with the Tax Compliance Procedure. If the Annual Compliance Checklist identifies a deficiency in compliance with the requirements of this Tax Agreement, the Bond Compliance Officer will take the actions identified in advice of Bond Counsel or as described in the Tax Compliance Procedure to correct any deficiency.

(d) *Opinions of Bond Counsel.* The Bond Compliance Officer is responsible for obtaining and delivering to the City any advice or Opinion of Bond Counsel required by this Tax Agreement or the Annual Compliance Checklist.

Section 4.3. Temporary Periods/Yield Restriction. Except as described below, the City will not invest Gross Proceeds at a Yield greater than the Yield on the Bonds:

(a) *Proceeds Allocable to Current Refunding.* Bond proceeds deposited with the paying agent for the Refunded Obligations or otherwise allocable to a current refunding of the Refunded Obligations (see **Section 3.7**) may be invested without Yield restriction for up to 90 days after the Issue Date.

(b) *Debt Service Account.* To the extent that the Debt Service Account qualifies as a Bona Fide Debt Service Fund, money in such account may be invested without Yield restriction for 13 months after the date of deposit. Earnings on such amounts may be invested without Yield restriction for 1 year after the date of receipt of such earnings.

(d) *Other Funds and Accounts.* Money other than sale proceeds or Investment proceeds of the Bonds on deposit in the Revenue Fund, Operation and Maintenance Account, Depreciation and Replacement Account and Surplus Account may be invested without Yield restriction.

(e) *Minor Portion.* In addition to the amounts described above, Gross Proceeds not exceeding the Minor Portion may be invested without Yield restriction.

Section 4.4. Fair Market Value.

(a) *General.* No Investment may be acquired with Gross Proceeds for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with Regulations § 1.148-5.

(b) *Established Securities Market.* Except for Investments purchased for a Yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value must be established using 1 of the paragraphs below. The fair market value of Investments purchased for a Yield-restricted defeasance escrow must be determined in a bona fide solicitation for bids that complies with Regulations § 1.148-5.

(c) *Certificates of Deposit.* The purchase price of a certificate of deposit (a "CD") is treated as its fair market value on the purchase date if (1) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (2) the Yield on the CD is not less than the Yield on reasonably comparable direct obligations of the United States, and (3) the Yield is not less than the highest Yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.

(d) *Guaranteed Investment Contracts.* The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if all of the following requirements are met:

(1) Bona Fide Solicitation for Bids. The City makes a bona fide solicitation for the Guaranteed Investment Contract, using the following procedures:

(i) The bid specifications are in writing and are timely forwarded to potential providers, or are made available on an internet website or other similar electronic media that is regularly used to post bid specifications to potential bidders. A writing includes a hard copy, a fax, or an electronic e-mail copy.

(ii) The bid specifications include all “material” terms of the bid. A term is material if it may directly or indirectly affect the Yield or the cost of the Guaranteed Investment Contract.

(iii) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (A) that the potential provider did not consult with any other potential provider about its bid, (B) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the City or any other person (whether or not in connection with the bond issue), and (C) that the bid is not being submitted solely as a courtesy to the City or any other person, for purposes of satisfying the requirements of the Regulations.

(iv) The terms of the bid specifications are “commercially reasonable.” A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the yield of the Guaranteed Investment Contract.

(v) The terms of the solicitation take into account the City’s reasonably expected deposit and draw-down schedule for the amounts to be invested.

(vi) All potential providers have an equal opportunity to bid. If the bidding process affords any opportunity for a potential provider to review other bids before providing a bid, then providers have an equal opportunity to bid only if all potential providers have an equal opportunity to review other bids. Thus, no potential provider may be given an opportunity to review other bids that is not equally given to all potential providers (that is no exclusive “last look”).

(vii) At least 3 “reasonably competitive providers” are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of Investments being purchased.

(2) Bids Received. The bids received must meet all of the following requirements:

(i) At least 3 bids are received from providers that were solicited as described above and that do not have a “material financial interest” in the issue. For this purpose, (A) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the Issue Date of the issue, (B) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue, and (C) a provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(ii) At least 1 of the 3 bids received is from a reasonably competitive provider, as defined above.

(iii) If an agent or broker is used to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.

(3) Winning Bid. The winning bid is the highest yielding bona fide bid (determined net of any broker's fees).

(4) Fees Paid. The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.

(5) Records. The City retains the following records with the Bond documents until 3 years after the last outstanding Bond is redeemed:

(i) A copy of the Guaranteed Investment Contract.

(ii) The receipt or other record of the amount actually paid for the Guaranteed Investment Contract, including a record of any administrative costs paid by the City, and the certification as to fees paid, described in paragraph (d)(4) above.

(iii) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(iv) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

(e) *Other Investments*. If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(1) at least 3 bids on the Investment must be received from persons with no financial interest in the Bonds (*e.g.*, as underwriters or brokers); and

(2) the Yield on the Investment must be equal to or greater than the Yield offered under the highest bid.

Section 4.5. Bonds Expected to Qualify for Rebate Exception.

(a) *General*. All of the sale proceeds of the Bonds and Investment earnings thereon will be either (1) be used to pay principal of and accrued interest on the Refunded Obligations on the Redemption Date (within 90 days of the Issue Date), or (2) used to pay costs of issuing the Bonds within 6 months of the Issue Date. The City expects for the Debt Service Account to qualify as a Bona Fide Debt Service Fund in each Bond Year. Based on these certifications, Bond Counsel has advised the City that no rebate or Yield restriction computations are required with respect to the Bonds, if: (i) the sale proceeds and Investment earnings are invested and spent as described in this paragraph; (ii) the Debt Service Account qualifies as a Bona Fide Debt Service Fund in each Bond Year; and (iii) no reserve or replacement fund is created. If the

sale proceeds and Investment earnings are not invested and spent as described in this paragraph, the Debt Service Account does not qualify as a Bona Fide Debt Service Fund in any Bond Year, or if a reserve or replacement fund is established, then the City is obligated to engage Bond Counsel, an independent certified public accountant or a rebate analyst to compute arbitrage rebate and Yield reduction amounts on the Bonds and to pay arbitrage rebate or Yield reduction payments to the United States at least once every five years, and within 60 days after the discharge of the last Bond, in accordance with Code § 148(f). The City will hold all records showing investment of Bond proceeds in its Tax-Exempt Bond File.

(b) *Filing Requirements.* The City will file or cause to be filed with the IRS such reports or other documents as are required by the Code in accordance with an Opinion of Bond Counsel.

Section 4.6. Survival after Defeasance. Notwithstanding anything in the Ordinance to the contrary, the obligation to pay arbitrage rebate and yield reduction amounts to the United States will survive the payment or defeasance of the Bonds.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.1. Term of Tax Agreement. This Tax Agreement will be effective concurrently with the issuance and delivery of the Bonds and will continue in force and effect until the principal of, redemption premium, if any, and interest on all Bonds have been fully paid and all such Bonds are cancelled; provided that, the provisions of **Article IV** of this Tax Agreement regarding payment of arbitrage rebate and yield reduction amounts and all related penalties and interest will remain in effect until all such amounts are paid to the United States and the provisions of **Section 4.2** relating to record keeping shall continue in force for the period described therein for records to be retained.

Section 5.2. Amendments. This Tax Agreement may be amended from time to time by the parties to this Tax Agreement without notice to or the consent of any of the Bondowners, but only if such amendment is in writing and is accompanied by an Opinion of Bond Counsel to the effect that, under then existing law, assuming compliance with this Tax Agreement as so amended such amendment will not cause interest on any Bond to be included in gross income for federal income tax purposes. No such amendment will become effective until the City receives this Opinion of Bond Counsel.

Section 5.3. Opinion of Bond Counsel. The City may deviate from the provisions of this Tax Agreement if furnished with an Opinion of Bond Counsel to the effect that the proposed deviation will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes. The City will comply with any further or different instructions provided in an Opinion of Bond Counsel to the effect that the further or different instructions need to be complied with in order to maintain the validity of the Bonds or the exclusion from gross income of interest on the Bonds.

Section 5.4. Reliance. In delivering this Tax Agreement the City is making only those certifications, representations and agreements as are specifically attributed to them in this Tax Agreement. The City is not aware of any facts or circumstances which would cause it to question the accuracy of the facts, circumstances, estimates or expectations of any other party providing certifications as part of this Tax Agreement and, to the best of its knowledge, those facts, circumstances, estimates and expectations are reasonable. The City understands that its certifications will be relied upon by the law firm of Gilmore &

Bell, P.C., in rendering its opinion as to the validity of the Bonds and the exclusion from federal gross income of the interest on the Bonds.

Section 5.5. Severability. If any provision in this Tax Agreement or in the Bonds is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

Section 5.6. Benefit of Agreement. This Tax Agreement is binding upon the City its respective successors and assigns, and inures to the benefit of the parties to this Tax Agreement and the owners of the Bonds. Nothing in this Tax Agreement or in the Ordinance or the Bonds, express or implied, gives to any person, other than the parties to this Tax Agreement, their successors and assigns, and the owners of the Bonds, any benefit or any legal or equitable right, remedy or claim under this Tax Agreement.

Section 5.7. Default, Breach and Enforcement. Any misrepresentation of a party contained herein or any breach of a covenant or agreement contained in this Tax Agreement may be pursued by the Bondowners pursuant to the terms of the Ordinance or any other document which references this Tax Agreement and gives remedies for a misrepresentation or breach thereof.

Section 5.8. Execution in Counterparts. This Tax Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute the same instrument.

Section 5.9. Governing Law. This Tax Agreement will be governed by and construed in accordance with the laws of the State of Missouri.

Section 5.10. Electronic Transactions. The transaction described in this Tax Agreement may be conducted, and related documents may be sent, stored and received by electronic means.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned Mayor and Finance Director of the City, by their execution of this Tax Agreement hereby make the foregoing certifications, representations, and agreements contained in this Tax Agreement on behalf of the City, as of the Issue Date of the Bonds.

CITY OF KIRKSVILLE, MISSOURI

By: _____
Name: Zac Burden
Title: Mayor

Bond Compliance Officer:

By: _____
Name: Lacy A. King
Title: Finance Director

EXHIBIT A

DEBT SERVICE SCHEDULE AND PROOF OF BOND YIELD

EXHIBIT B

IRS FORM 8038-G

EXHIBIT C

**SAMPLE
ANNUAL COMPLIANCE CHECKLIST**

Name of tax-exempt bonds (“Bonds”):	Combined Waterworks and Sewerage System Refunding Revenue Bonds, Series 2021
Assets Financed with Series 2010 Bonds, which were refunded with proceeds of Series 2021 Bonds:	Improvements and renovations to the System, including acquiring rights of way, constructing, extending and improving storm water sewers
Issue Date of Bonds:	March 30, 2021
Placed in service date of Project Facility:	
Name of Bond Compliance Officer:	
Period covered by request (“Annual Period”):	

Item	Question	Response
1 Ownership	Was the entire Project Facility owned by the City during the entire Annual Period?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>If answer above was “No,” was an Opinion of Bond Counsel obtained prior to the transfer?</p> <p>If Yes, include a copy of the Opinion in the Tax-Exempt Bond File.</p> <p>If No, contact Bond Counsel and include description of resolution in the Tax-Exempt Bond File.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

2 Leases & Other Rights to Possession	During the Annual Period, was any part of the Project Facility leased at any time pursuant to a lease or similar agreement for more than 50 days?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>If answer above was “Yes,” was an Opinion of Bond Counsel obtained prior to entering into the lease or other arrangement?</p> <p>If Yes, include a copy of the Opinion in the Tax-Exempt Bond File.</p> <p>If No, contact Bond Counsel and include description of resolution in the Tax-Exempt Bond File.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Item	Question	Response
3 Management or Service Agreements	During the Annual Period, has the management of all or any part of the operations of the Financed Asset (e.g., coffee shop) been assumed by or transferred to another entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>If answer above was "Yes," was an Opinion of Bond Counsel obtained prior to entering into the management agreement?</p> <p>If Yes, include a copy of the Opinion in the Tax-Exempt Bond File.</p> <p>If No, contact Bond Counsel and include description of resolution in the Tax-Exempt Bond File.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
4 Other Use	Was any other agreement entered into with an individual or entity that grants special legal rights to the Financed Asset?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>If answer above was "Yes," was an Opinion of Bond Counsel obtained prior to entering into the agreement?</p> <p>If Yes, include a copy of the Opinion in the Tax-Exempt Bond File.</p> <p>If No, contact Bond Counsel and include description of resolution in the Tax-Exempt Bond File.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
5 Arbitrage	Has the City set aside money in any fund or account to pay debt service on the Bonds, where the amounts set aside are NOT expected to be used for that purpose within the next 12 months?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If Yes, contact Bond Counsel and incorporate rebate report or include description of resolution in the Tax-Exempt Bond File.	

Bond Compliance Officer: _____

Date Completed: _____

EXHIBIT D

**WRITTEN ALLOCATION OF ORIGINAL OBLIGATIONS;
DESCRIPTION OF PROPERTY COMPRISING THE FINANCED FACILITY**

EXHIBIT E

CERTIFICATE OF MUNICIPAL ADVISOR

EXHIBIT F

TAX AND DISCLOSURE COMPLIANCE PROCEDURE