

# **JOURNAL OF THE CITY COUNCIL**

*Regular Session – April 1, 2008*

## **COUNCIL & STAFF PRESENT:**

Martha Rowe	Mayor
Jill McCord	Council member
Tom Mayer	Council member
Aaron Rodgerson	Council member
Howard Hickman	City Attorney
Mari E. Macomber	City Manager
Vickie Brumbaugh	City Clerk
John Buckwalter	Public Works Director
Laura Guy	Finance Director
Jim Hughes	Police Chief

The City Council of the City of Kirksville, Missouri, met in a Regular Session on Tuesday, April 1, 2008, at 5:30 p.m. in the City Hall Council Chambers.

## **INVOCATION/PLEDGE**

The Mayor and City Council led the Pledge of Allegiance.

## **MINUTES**

Council member McCord moved to approve the minutes of the regular session of March 4, 2008; seconded by Council member Mayer. The motion carried by the following vote: Mayor Rowe – aye; Council members: Mayer - aye; McCord – aye; Rodgerson – absent. Ayes – 3; Nays – 0; Absent - 1.

[Council member Aaron Rodgerson entered the meeting at 5:35 p.m.]

## **ORDER OF AGENDA**

City Manager Macomber asked that two items be added to the agenda for tonight's meeting.  
– Consider the appointment of Laura Guy as the city representative on the Highway 63 Transportation Commission; and  
- Consider opting out of minimum 15-seat requirement on essential air service carrier.

Councilmember Rodgerson moved to approve the agenda as amended; seconded by Councilmember McCord. The motion carried by the following vote: Mayor Rowe, aye; Council members: Mayer – aye; McCord – aye; Rodgerson – aye. Nays, none.

## **INFORMATION PRESENTATION**

None.

## **CITIZEN PARTICIPATION**

Brenda Sewell, owner of Uptown Café, asked the Council how long they will be working on the downtown corners that are currently torn up. John Buckwalter answered it could be two weeks to finish up the corners. Ms. Sewell also asked if the city is tearing out the canopy poles? Mari Macomber responded that the Council has not made any decision on the canopies, and have not had any meetings. The TIF (Tax Increment Financing) Commission has met and will be recommending to the Council to remove the poles. Ms. Sewell asked who will be responsible for keeping the sidewalks clean if they take the canopies down? Ms.

Sewell also pointed out that the Council was going to look at profit/loss on no smoking, and asked if the Council had done this? The Council responded they had said the comparison would be done in a year from the time the ban took affect, and that will be in July.

### **ACTION PRESENTATIONS**

#### **BILL NO. 2008-10**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$1,500,000 PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS (STATE OF MISSOURI – DIRECT LOAN PROGRAM) SERIES 2008, OF THE CITY OF KIRKSVILLE, MISSOURI FOR THE PURPOSE OF EXTENDING AND IMPROVING THE CITY’S COMBINED WATERWORKS AND SEWERAGE SYSTEM; PRESCRIBING THE FORM AND DETAILS OF THE BONDS AND THE AGREEMENTS MADE BY THE CITY TO FACILITATE AND PROTECT THEIR PAYMENT**

Councilmember Rodgerson moved to adopt Bill No. 2008-10; seconded by Councilmember Mayer.

Laura Guy explained that \$4.375 million is available under the state revolving fund program to accomplish qualified sewerage system capital improvement projects. The City has been approved to receive \$1.5 million for the rehabilitation of Basins C and F.

The motion carried by the following vote: Mayor Rowe, aye; Council members: Mayer – aye; McCord – aye; Rodgerson – aye. Nays, none.

#### **BILL NO. 2008-11**

**AN ORDINANCE AMENDING CHAPTER 4 OF THE CODE OF THE CITY OF KIRKSVILLE, MISSOURI REGULATING ALCOHOLIC BEVERAGES.**

Councilmember Mayer moved to adopt Bill No. 2008-11 on first reading; seconded by Councilmember McCord.

Police Chief Hughes explained this will bring the City Code up to date and in alignment with the State regulations. It has been being enforced. The ordinance provides a definition for “intoxicated condition” and expands the definition of “purchase or possession”; and deletes reference to a state law that no longer exists.

The motion carried by the following vote: Mayor Rowe, aye; Council members: Mayer – aye; McCord – aye; Rodgerson – aye. Nays, none.

#### **BILL NO. 2008-12**

**AN ORDINANCE AMENDING CHAPTER 5 OF THE CODE OF THE CITY OF KIRKSVILLE, MISSOURI REGULATING ANIMALS AND FOWL.**

Councilmember McCord moved to adopt Bill No. 2008-12 on first reading; seconded by Councilmember Rodgerson.

Police Chief Hughes explained the language referring to the owner of an animal will also include whoever is in care of the animal to be responsible. The proposed ordinance includes a definition for “continuing public safety hazard”. Another change allows removal of a vicious animal from the city limits or to be humanely disposed of if removal is not an option. It also

allows the owner to retain the animal in their custody as opposed to relinquishing the animal for a ten-day observation period.

The motion carried by the following vote: Mayor Rowe, aye; Council members: Mayer – aye; McCord – aye; Rodgerson – aye. Nays, none.

**DREAM Program Scope of Services**

Councilmember Mayer moved to authorize the Mayor to execute the DREAM Program Scope of Services and Budget Agreement; seconded by Councilmember Rodgerson.

City Manager Macomber reported the City was selected as one of ten cities to participate in the Dream program. Communities were asked to provide a 20% match toward evaluations and market analysis that the state would be working on over the next three years. The TIF Commission is a funding source; and she has met with the Commission on several occasions. TIF asked if KDIC would participate financially, and they agreed to provide 10% of the local match - \$4,500. TIF approved \$40,000 support. Ms. Macomber further reported that Focus groups will meet on April 14 with six groups about perspectives, and they will put together surveys to help the downtown.

The motion carried by the following vote: Mayor Rowe, aye; Council members: Mayer – aye; McCord – aye; Rodgerson – aye. Nays, none.

**Highway 63 Corporation Appointment**

Councilmember McCord moved to appoint Laura Guy, as the City representative, to the Highway 63 Transportation Corporation; seconded by Councilmember Mayer.

The term of Debbie Boughton was completed.

The motion carried by the following vote: Mayor Rowe, aye; Council members: Mayer – aye; McCord – aye; Rodgerson – aye. Nays, none.

**Air Service – Opt out of 15- Seat Requirement**

Councilmember Rodgerson moved to opt out of the 15-seat requirement of the essential air service program; seconded by Councilmember Mayer.

City Manager Macomber reported the Airport and Transportation Commission met today and they recommend opting out of the 15-seat requirement which will allow more options to consider for an air service carrier.

The motion carried by the following vote: Mayor Rowe, aye; Council members: Mayer – aye; McCord – aye; Rodgerson – aye. Nays, none.

**BILL NO. 2008-10**

**ORDINANCE NO. 11829**

**OF THE**

**CITY COUNCIL**

**OF THE**

**CITY OF KIRKSVILLE, MISSOURI**

**PASSED APRIL 1, 2008**

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**AUTHORIZING:**

**\$1,500,000**

**COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS  
(STATE OF MISSOURI – DIRECT LOAN PROGRAM)  
SERIES 2008**

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**AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$1,500,000 PRINCIPAL AMOUNT OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS (STATE OF MISSOURI – DIRECT LOAN PROGRAM) SERIES 2008, OF THE CITY OF KIRKSVILLE, MISSOURI FOR THE PURPOSE OF EXTENDING AND IMPROVING THE CITY’S COMBINED WATERWORKS AND SEWERAGE SYSTEM; PRESCRIBING THE FORM AND DETAILS OF THE BONDS AND THE AGREEMENTS MADE BY THE CITY TO FACILITATE AND PROTECT THEIR PAYMENT AND PRESCRIBING OTHER RELATED MATTERS**

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WHEREAS, the City of Kirksville, Missouri (the “City”) is a city of the third class organized and existing under the constitution and laws of the State of Missouri; and

WHEREAS, prior to adoption of Ordinance No. 11740 on December 19, 2005 (the “Combined System Ordinance”), the City operated a Waterworks System and a Sewerage System; and

WHEREAS, by the Combined System Ordinance, the City combined the Waterworks System (thereafter, the “Waterworks Subsystem”) and the Sewerage System (thereafter, the “Sewerage Subsystem”), into a revenue producing combined waterworks and sewerage system serving the City, its inhabitants and others within its service area, including connected and related appurtenances and facilities and extensions, improvements, additions and enlargements made or acquired by the City after the date of this Ordinance (the “System”); and

WHEREAS, the City desires to extend and improve its System, such extensions and improvements to be financed in whole or in part by the issuance by the City pursuant to this Ordinance of its Combined Waterworks and Sewerage System Revenue Bonds (State of Missouri – Direct Loan Program) Series 2008 (the “Bonds”) in the original principal amount of \$1,500,000; and

WHEREAS, to provide for the most cost-effective financing of the extensions and improvements of the System the City desires to participate in the State of Missouri Direct Loan Program (the “Direct Loan Program”) of the Missouri Department of Natural Resources (“DNR”) and the Clean Water Commission of the State of Missouri (the “Commission”); and

WHEREAS, the City is authorized under the provisions of Chapter 250 of the Revised Statutes of Missouri (the “Act”) to issue and sell revenue bonds for the purpose of paying all or part of the cost of extending and improving the System, with the cost of operation and maintenance of the System and the principal of and interest on revenue bonds payable solely from the Net Revenues (as defined below); and

WHEREAS, pursuant to the Act, a special bond election was duly held in the City on April 4, 2006 on the following question:

## QUESTION

Shall the City of Kirksville, Missouri, issue its combined waterworks and sewerage system revenue bonds in the amount of \$7,000,000 for the purpose of paying a portion of the cost of improving the combined waterworks and sewerage system of the City, including rehabilitation of the city's waterworks treatment facility, replacement of the downtown water line, upgrade of the wastewater treatment facility and replacement of sewerage collection components, the cost of operation and maintenance of said combined waterworks and sewerage system and the principal of and interest on said revenue bonds to be payable solely from the revenues derived by the City from the operation of its combined waterworks and sewerage system, including all future improvements and extensions thereto?

and it was found and determined that more than a simple majority of the qualified electors of the City voting on the question had voted in favor of the question, the vote having been 1,925 votes for the question and 461 votes against the question; and

WHEREAS, the City Council (the "Governing Body") of the City has caused plans and specifications for extensions and improvements to the System and a cost estimate to be made by the Consulting Engineer (as defined below); and

WHEREAS, the plans and specifications and the cost estimate are accepted and approved and are on file in the office of the City Clerk, the amount of the estimated cost being not less than \$1,500,000; and

WHEREAS, the City has heretofore issued \$3,500,000 principal amount of the bonds authorized at said election (the Outstanding Parity Bonds as further described below), and finds and determines that it is necessary and advisable and in the best interest of the City and of its inhabitants to issue the Bonds in the principal amount of \$1,500,000; and

WHEREAS, by Ordinance No. 11316 adopted on November 13, 1997 (the "Series 1997 Ordinance"), the City has issued its Sewerage System Revenue Bonds (State Revolving Fund Program) Series 1997 (the "Series 1997 Bonds"), dated December 1, 1997, in the original principal amount of \$1,465,000, of which \$985,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11360 adopted on November 19, 1998 (the "Series 1998 Ordinance"), the City has issued its Sewerage System Revenue Bonds (State Revolving Fund Program) Series 1998 (the "Series 1998 Bonds"), dated December 1, 1998, in the original principal amount of \$1,180,000, of which \$775,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11422 adopted on November 18, 1999 (the "Series 1999 Ordinance"), the City has issued its Sewerage System Revenue Bonds (State Revolving Fund Program) Series 1999 (the "Series 1999 Bonds"), dated December 1, 1999, in the original principal amount of \$1,790,000, of which \$1,360,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11531 adopted on November 1, 2001 (the "Series 2001 Ordinance"), the City has issued its Sewerage System Revenue Bonds (State Revolving Fund Program) Series 2001 (the "Series 2001 Bonds"), dated November 1, 2001, in the original principal amount of \$565,000, of which \$470,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11596 adopted on October 24, 2002 (the "Series 2002 Ordinance"), the City has issued its Sewerage System Revenue Bonds (State Revolving Fund Program) Series 2002 (the "Series 2002 Bonds"), dated November 7, 2002, in the original principal amount of \$645,000, of which \$560,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11613 adopted on April 3, 2003 (the "Series 2003 Ordinance"), the City has issued its Sewerage System Revenue Bonds (State Revolving Fund Program) Series 2003 (the "Series 2003 Bonds"), dated April 9, 2003, in the original principal amount of \$1,385,000, of which \$1,135,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11733 adopted on October 17, 2005 (the "Series 2005A Ordinance," together with the Series 1997 Ordinance, the Series 1998 Ordinance, the Series 1999 Ordinance, the Series 2001 Ordinance, the Series 2002 Ordinance and the Series 2003 Ordinance, the "Outstanding Senior Sewer Bond Ordinance"), the City has issued its Sewerage System Revenue Bonds (State Revolving Fund Program) Series 2005A (the "Series 2005A Bonds," together with the Series 1997 Bonds, the Series 1998 Bonds, the Series 1999 Bonds, the Series 2001 Bonds, the Series 2002 Bonds and the Series 2003 Bonds, the "Outstanding Senior Sewer Bonds), dated November 30, 2005, in the original principal amount of \$1,595,000, of which \$1,510,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11692 adopted on November 18, 2004 (the "Series 2004 Ordinance"), the City has issued its Waterworks System Revenue Bonds (State Revolving Fund Program) Series 2004 (the "Series 2004 Bonds"), dated December 9, 2004, in the original principal amount of \$695,000, of which \$620,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 11732 adopted on October 17, 2005 (the "Series 2005B Ordinance", together with the Series 2004 Ordinance, the "Outstanding Senior Water Bond Ordinance"), the City has issued its Waterworks System Revenue Bonds (State Revolving Fund Program) Series 2005B (the "Series 2005B Bonds", together with the Series 2004 Bonds, the "Outstanding Senior Water Bonds"), dated November 30, 2005, in the original principal amount of \$1,805,000, of which \$1,745,000 remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, by Ordinance No. 2007-17 adopted on April 4, 2007 (the "Outstanding Parity Bond Ordinance"), the City has issued its Combined Waterworks and Sewerage System Revenue Bonds (State Revolving Fund Program) Series 2007 (the "Outstanding Parity Bonds), dated May 1, 2007, in the original principal amount of \$3,500,000, all of which remains outstanding as of the date of adoption of this Ordinance; and

WHEREAS, the City, upon the issuance of the Bonds, will not have outstanding any other bonds or other obligations payable from the applicable portion of the Net Revenues other than the Outstanding Senior Sewer Bonds, the Outstanding Senior Water Bonds, the Outstanding Parity Bonds and the Bonds; and

WHEREAS, it is hereby found and determined that it is necessary and advisable and in the best interest of the City and its inhabitants that revenue bonds be issued and secured in the form and manner provided in this Ordinance and be sold to DNR under the State of Missouri Direct Loan Program (the "Direct Loan Program"), and to provide the remainder of costs of extending and improving the System which may be required from subsequent issues of bonds or funds of the City otherwise available.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI AS FOLLOWS:

## **ARTICLE I**

### **DEFINITIONS**

Section 101. Definition of Words and Terms. Capitalized words and terms not otherwise defined in this Ordinance have the meanings set forth in the Purchase Agreement and the Escrow Agreement (each as identified below). In addition to the foregoing and words and terms defined in the Recitals and elsewhere in this Ordinance, capitalized words and terms have the following meanings in this Ordinance:

"Account" means any of the funds or accounts established by Section 4 of the Escrow Agreement.

"Additional Interest" means additional interest on the Bonds prior to the Completion of Disbursements, equal to the actual earnings on moneys in the Construction Fund less earnings calculated at the interest rate on the Bonds, computed by the Paying Agent on each Interest Payment Date. The Additional Interest for any period shall not be less than \$0. All references in this Ordinance to the payment of interest on the Bonds includes the Additional Interest.

"Administrative Expense Fund" means the fund designated as such and established by Section 4 of the Escrow Agreement. The Administrative Expense Fund does not constitute part of the Direct Loan Program.

"Administrative Fee" means the annual administrative fee of DNR equal to 0.50% of the aggregate amount of the Bonds Outstanding as of each Administrative Fee Calculation Date (including the final maturity date of the Bonds), payable to the Paying Agent within 30 days after the City's receipt of a statement from the Paying Agent for deposit to the Administrative Expense Fund and subsequent transfers to DNR as described in Section 9 of the Escrow Agreement.

"Administrative Fee Calculation Date" means the Business Day preceding each Principal Payment Date.

“Authority” means the State Environmental Improvement and Energy Resources Authority, a body corporate and politic and a governmental instrumentality of the State.

“Authority Program Bonds” means any bonds of the Authority issued under the SRF Leveraged Program, all or a portion of the proceeds of which are loaned to the City pursuant to the SRF Leveraged Program.

“Authorized Representative” means the representative of the City designated as such by the City in accordance with the Regulations.

“Bond Debt Service” means the amount of the principal of and interest due on the Bonds on the date of calculation required in this Ordinance.

“Bond Register” means the books for the registration, transfer and exchange of Bonds kept at the office of the Paying Agent.

“Bonds” means the Combined Waterworks and Sewerage System Revenue Bonds (State Revolving Fund – Direct Loan Program) Series 2008 in the original principal amount of \$1,500,000 authorized herein and issued hereunder.

“Consultant” means the Consulting Engineer or an independent certified public accountant or firm of independent certified public accountants.

“Consulting Engineer” means each independent engineer or engineering firm with experience in designing and constructing wastewater treatment, sanitary sewerage or water pollution control facilities, or, if applicable, water production and transmission facilities, and retained by the City.

“Construction Fund” means the Construction Fund established by Section 4 of the Escrow Agreement.

“Costs of Issuance” means the costs of issuance of the Bonds as certified by the City on the date of issuance of the Bonds.

“Current Expenses” means all reasonable and necessary expenses of ownership, operation, maintenance and repair of the System and keeping the System in good repair and working order, determined in accordance with generally accepted accounting principles, including current maintenance charges, expenses of reasonable upkeep and repairs, salaries, wages, costs of materials and supplies, Paying Agent fees and expenses, annual audits, periodic Consultant’s reports, properly allocated share of charges for insurance, the cost of purchased water, gas and power, obligations (other than for borrowed money or for rents payable under capital leases) incurred in the ordinary course of business, liabilities incurred by endorsement for collection or deposit of checks or drafts received in the ordinary course of business, short-term obligations incurred and payable within a particular Fiscal Year, obligations incurred for the purpose of leasing (pursuant to a true or operating lease) equipment, fixtures, inventory or other personal property, and all other expenses incident to the ownership and operation of the System, but excluding interest paid on System Revenue Bonds, depreciation, amortization and other noncash charges (including payments into the Depreciation and Replacement Account), and all general administrative expenses of the City not related to the operation of the System.

“Debt Service Fund” means the Debt Service Fund established by Section 4 of the Escrow Agreement.

“Debt Service Reserve Fund” means the Debt Service Reserve Fund established by Section 4 of the Escrow Agreement.

“Debt Service Reserve Requirement” means \$150,000, subject to reduction to an amount equal to 10% of the principal amount of the Bonds Outstanding upon the mandatory redemption of the Bonds in part under Section 302(b).

“Defeasance Securities” means:

- (a) Federal Securities;
- (b) obligations of the Resolution Funding Corporation or any successor, but only if the use of the obligations to pay and discharge Bonds pursuant to Article X will cause the discharged Bonds to be rated in the highest long-term category by the Rating Agency; or
- (c) obligations of any state of the United States of America or of any agency, instrumentality or local government unit of any state that:
  - (i) are not callable at the option of the obligor prior to maturity or for which irrevocable instructions have been given by the obligor to call on the date specified in the instructions, and
  - (ii) are fully secured as to principal, redemption premium and interest by a fund, consisting of cash or Federal Securities, that:
    - (A) may be applied only to the payment of principal, redemption premium and interest on the obligations, and
    - (B) is sufficient, as verified by an independent certified public accountant, to pay the principal, redemption premium and interest on the obligations.

“Depreciation and Replacement Account” means the fund or account designated as such and created or ratified and confirmed by Section 401.

“Escrow Agreement” means the Escrow Trust Agreement dated as of April 1, 2008, between the City and the Paying Agent, as supplemented, modified or amended in accordance with its terms, related to the Bonds.

“Excess Debt Service Reserve Amount” means the amount of the reduction in the Debt Service Reserve Fund Requirement that will result from the redemption of the Bonds in part pursuant to Section 302(b).

“Federal Securities” means any direct obligation of, or obligation the timely payment of the principal of and interest on which is unconditionally guaranteed by, the United States of America and backed by its full faith and credit.

“Interest Payment Date” means each January 1 and July 1, commencing January 1, 2009.

“Investment Securities” means any of the following securities legal for the investment of funds of the City at the time of purchase:

- (a) Federal Securities;
- (b) Direct and general obligations of the State, the payment of the principal of and interest on which the full faith and credit of the State is pledged;
- (c) Deposits which are fully insured by the Federal Deposit Insurance Corporation (“FDIC”) in one or more of the following institutions: banks, trust companies or savings and loan associations (including without limitation, the Paying Agent or any bank affiliated with the Paying Agent) organized under the laws of the United States of America or any state thereof;
- (d) Federal funds, unsecured certificates of deposit, time deposits and bankers acceptances (having maturities of not more than 365 days) of any bank, the short-term obligations of which are rated MIG1 or equivalent by the Rating Agency;
- (e) Unsecured promissory notes of any bank, trust company, national banking association or bank holding company equal in quality to such institution’s outstanding unsecured long-term debt which is rated in the highest rating category by the Rating Agency; and
- (f) Shares in money market mutual funds rated in the highest or second highest applicable rating category by the Rating Agency.

“Net Revenues” means Revenues less Current Expenses.

“Operation and Maintenance Account” means the fund or account designated as such and created or ratified and confirmed by Section 401.

“Ordinance” means this Ordinance as from time to time amended in accordance with its terms.

“Outstanding” means, as of the date of determination, all Bonds issued and delivered under this “Ordinance, except:

- (1) Bonds canceled by the Paying Agent or delivered to the Paying Agent for cancellation;
- (2) Bonds for the payment of the principal or redemption price of and interest on which money or Defeasance Securities are held under Section 1001;

(3) Bonds in exchange for which, or in lieu of which, other Bonds have been registered and delivered pursuant to this “Ordinance; and

(4) Bonds allegedly mutilated, destroyed, lost, or stolen and paid under Section 208.

“Owner” means the Program Bondowner and any other owner of the Bonds.

“Parity Bonds” means the Bonds, the Outstanding Parity Bonds and any other parity bonds issued under Section 902 payable from the Net Revenues on a parity basis with the Bonds.

“Parity Ordinance” means this Ordinance, the Outstanding Parity Bond Ordinance and the ordinances under which any other Parity Bonds are issued.

“Paying Agent” means UMB Bank, N.A., the paying agent and escrow agent, and its successors and assigns acting at any time as Paying Agent and Escrow Agent under this Ordinance and the Escrow Agreement.

“Principal Payment Date” means each January 1, commencing January 1, 2009, and any date on which the Bonds are optionally redeemed in accordance with Section 301.

“Program Bondowner” means DNR or any successor or transferee of DNR under the Direct Loan Program.

“Purchase Agreement” means the Purchase Agreement dated as of April 1, 2008, between the City and DNR, as supplemented, modified or amended in accordance with its terms, related to the Bonds.

“Rating Agency” means Moody’s Investors Service or Standard & Poor’s Ratings Service.

“Record Date” for the interest payable on any Interest Payment Date means the 15th day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date.

“Repayment Fund” means the fund designated as such and established by Section 4 of the Escrow Agreement. The Repayment Fund does not constitute part of the Direct Loan Program.

“Revenue Fund” means the fund or account created or ratified by Section 401.

“Revenues” means all income and revenues derived by the City from the System, including investment and rental income, net proceeds from business interruption insurance, sales tax revenues which have been annually appropriated by the City or which are limited solely to the payment of improvements to or expenses of the System and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on System Revenue Bonds, but excluding any profits or losses on the early extinguishment of

debt or on the sale or other disposition of investments or fixed or capital assets not in the ordinary course of business.

“Sewer Net Revenues” means Net Revenues derived from the operation of the Sewerage Subsystem.

“Sewer Revenues” means Revenues derived from the operation of the Sewerage Subsystem.

“SRF Leveraged Program” means the Missouri Leveraged State Drinking Water Revolving Fund Program and the Missouri Leveraged State Water Pollution Control Revolving Fund Program.

“SRF Leveraged Program Bonds” means any bonds of the City issued in connection with the City’s participation in the SRF Leveraged Program.

“SRF Subsidy” means the amount of investment earnings which will accrue on the Reserve Account during each Fiscal Year (taking into account scheduled transfers from the Reserve Account which will occur upon the payment of principal on Authority Program Bonds and assuming that the construction for the applicable project has been completed), if the Reserve Security is equal to the Reserve Percentage of the principal amount of the SRF Leveraged Program Bonds outstanding, the Reserve Account is invested in an investment agreement at a fixed rate during the calculation period and earnings are reduced by the Administrative Fee payable to DNR. Administrative Fee, Reserve Account and Reserve Percentage as used in this definition have the respective meanings set forth in the bond indentures for the applicable Authority Program Bonds.

“State” means the State of Missouri.

“Surplus Account” means the fund or account created or ratified and confirmed in Section 401.

“System Revenue Bonds” means, collectively, the Bonds, the Outstanding Senior Sewer Bonds, the Outstanding Senior Water Bonds, the Outstanding Parity Bonds, any Parity Bonds and all other revenue bonds which are payable from the Net Revenues.

“User Charge Ordinance” means (a) with respect to the Sewerage Subsystem, Ordinance No. 11310 adopted on October 6, 1997, as amended by Ordinance No. 11814 passed November 20, 2007, and (b) with respect to the Waterworks Subsystem, Ordinance No. 11609 adopted on March 17, 2003, each as amended, supplemented, consolidated or replaced and approved by DNR.

“Water Net Revenues” means Net Revenues derived from the operation of the Waterworks Subsystem.

“Water Revenues” means Revenues derived from the operation of the Waterworks Subsystem.

## ARTICLE II

### AUTHORIZATION OF BONDS

Section 201. Authorization of Bonds. The Bonds are authorized and directed to be issued in the principal amount of \$1,500,000 for the purposes of this Ordinance.

Section 202. Security for Bonds.

(a) The Bonds are special, limited obligations of the City payable solely from, and secured by a pledge of, the Net Revenues. The taxing power of the City is not pledged to the payment of the Bonds. The Bonds do not constitute a general obligation of the City or an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction.

(b) The Bonds are junior and subordinate to the Outstanding Senior Sewer Bonds with respect to payment of principal and interest from the Sewer Net Revenues. In the event of any default in the payment of the Outstanding Senior Sewer Bonds, the Sewer Net Revenues will be applied solely to the payment of the principal of and interest on the Outstanding Senior Sewer Bonds until the default is cured.

(c) The Bonds are junior and subordinate to the Outstanding Senior Water Bonds with respect to payment of principal and interest from the Water Net Revenues. In the event of any default in the payment of the Outstanding Senior Water Bonds, the Water Net Revenues will be applied solely to the payment of the principal of and interest on the Outstanding Senior Water Bonds until the default is cured.

Section 203. Description of Bonds. The Bonds consist of fully registered bonds without coupons, numbered from R-1 consecutively upward, in the denomination of \$100 or any integral multiple of \$100. The Bonds will be issued in substantially the form of Exhibit B and will be registered, transferred and exchanged as provided in Section 206. The Bonds are dated the date of original delivery as set forth on the Bonds. The Bonds shall mature and become due on January 1, 2028 (subject to optional and mandatory redemption and tender prior to maturity as provided in Article III) and shall bear interest at an annual rate equal to 30% of the Twenty-Five Revenue Bond Index as published in The Bond Buyer most recently prior to the issuance and delivery of the Bonds, rounded up to the nearest 0.05% (computed on the basis of a 360-day year of twelve 30-day months) from the Dated Date or from the most recent Interest Payment Date to which interest has been paid or provided for, plus Additional Interest; provided, however, that at no time shall the Bonds bear interest at a rate exceeding the maximum rate of interest permitted by State law. Interest (other than Additional Interest) is payable on each Interest Payment Date. Additional Interest is payable in arrears on each Principal Payment Date prior to the Completion of Disbursements and on the Interest Payment Date immediately following the Completion of Disbursements.

Section 204. Designation of Paying Agent. The City has designated the Paying Agent as the City’s paying agent for the payment of the principal of and interest on the Bonds, bond

registrar with respect to the registration, transfer and exchange of Bonds and escrow agent with respect to the funds established with the Paying Agent under the Escrow Agreement.

Section 205. Method and Place of Payment of Bonds.

(a) Payment of the Bonds will be made with any coin or currency that is legal tender for the payment of debts due the United States of America on the payment date.

(b) The payment of the principal of and redemption premium, if any, payable on each Bond at maturity or upon earlier redemption and the interest payable on each Bond on any Interest Payment Date will be made by check or draft mailed by the Paying Agent to the address of the Owner shown in the Bond Register. The principal of and redemption premium, if any, and interest on the Bonds is payable by electronic transfer in immediately available federal funds to a bank in the continental United States of America pursuant to instructions from any Owner received by the Paying Agent prior to the Record Date.

(c) Payments of principal on the Bonds pursuant to Article III may be made directly to the Owner without surrender of any Bond to the Paying Agent. Accordingly, any transferee of a Bond should verify with the Paying Agent the principal of the Bond outstanding prior to such purchase or transfer, and the records of the Paying Agent shall be conclusive for such purposes.

(d) The Paying Agent will keep a record of payment of principal of, redemption premium, if any, and interest on all Bonds and, at least annually at the request of the City, will forward a copy or summary of the record of payments to the City.

Section 206. Registration, Transfer and Exchange of Bonds.

(a) The City will cause the Paying Agent to keep the Bond Register. Each Bond when issued will be registered in the name of the Owner on the Bond Register. Bonds will be transferred and exchanged only upon the Bond Register.

(b) Upon surrender of any Bond at the payment office of the Paying Agent in St. Louis, Missouri (or other office designated by the Paying Agent), the Paying Agent will transfer or exchange the Bond for a new Bond or Bonds in any authorized denomination of the same maturity and in the same aggregate principal amount as the Bond which was presented for transfer or exchange. All Bonds presented for transfer or exchange must be accompanied by a written instrument of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Paying Agent, duly executed by the Owner or by the Owner's authorized agent. All Bonds presented for transfer or exchange must be surrendered to the Paying Agent for cancellation.

(c) For every exchange or transfer of Bonds the City or the Paying Agent may levy a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid for the exchange or transfer. The charge must be paid by the person requesting the exchange or transfer. Payment of the charge is a condition precedent to the exchange or transfer. If any Owner fails to provide a correct taxpayer identification number to the Paying Agent, the Paying Agent may make a charge against the Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with

Section 3406 of the Code, this amount may be deducted by the Paying Agent from amounts payable to the Owner under the Ordinance and the Bonds.

(d) The City and the Paying Agent will treat the person in whose name any Bond is registered on the Bond Register as the absolute owner of the Bond, whether or not payment of the Bond is overdue, for the purpose of receiving payment of the principal of, redemption premium, if any, and interest on the Bond and for all other purposes. All payments made to any Owner or upon the Owner's order will be valid and effectual to satisfy and discharge the City's liability for payment of the Bond to the extent of the sum or sums paid. Neither the City nor the Paying Agent will be affected by any notice to the contrary.

(e) At reasonable times and under reasonable rules established by the Paying Agent, the Owners of 25% or more in principal amount of the Outstanding Bonds, or their representative designated in a manner satisfactory to the Paying Agent, may inspect and copy the Bond Register.

(f) Notwithstanding anything herein contained to the contrary, without the prior consent of City, Bonds shall be transferable only to any successor to DNR or its assigns.

#### Section 207. Execution, Authentication and Delivery of Bonds.

(a) Each Bond must be signed by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk, and have the official seal of the City affixed or imprinted. If any officer whose manual or facsimile signature appears on any Bond ceases to be an officer before the delivery of any Bond signed by the officer, the manual or facsimile signature on the Bond will be valid and sufficient for all purposes of this Ordinance.

(b) The Mayor and the City Clerk are directed to prepare and execute the Bonds as specified in this Article, and when executed, to deliver the Bonds to the Paying Agent for authentication. Upon authentication, the Paying Agent will deliver the Bonds to the Owner, upon payment of the purchase price for the Bonds.

(c) Each Bond will be authenticated by any authorized signatory of the Paying Agent. No Bond is entitled to any security or benefit under this Ordinance or be valid or obligatory for any purpose until authenticated by the Paying Agent.

#### Section 208. Mutilated, Destroyed, Lost and Stolen Bonds.

(a) If (i) any mutilated Bond is surrendered to the Paying Agent, or the City and the Paying Agent receive evidence to their satisfaction of the mutilation, destruction, loss or theft of any Bond, and (ii) there is delivered to the City and the Paying Agent security or indemnity as required by them, in the absence of notice to the City or the Paying Agent that the Bond has been acquired by a bona fide purchaser, the City will execute and the Paying Agent will register and deliver, in exchange for or in lieu of any mutilated, destroyed, lost or stolen Bond, a new Bond of the same maturity and of like tenor and principal amount. If the Bond has become or is about to become due, the City may pay the Bond instead of issuing a new Bond.

(b) Upon the issuance of any new Bond under this Section, the City or the Paying Agent may require the payment by the Owner of a sum sufficient to cover any tax or other governmental charge imposed and any other expenses (including the fees and expenses of the Paying Agent) connected with the issuance of the Bond.

(c) Every new Bond issued pursuant to this Section in lieu of any mutilated, destroyed, lost or stolen Bond will constitute a replacement of the prior obligation of the City, whether or not the mutilated, destroyed, lost or stolen Bond is enforceable by anyone at any time, and will be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds.

Section 209. Cancellation and Destruction of Bonds Upon Payment. All Bonds which have been paid or redeemed or which have otherwise been surrendered to the Paying Agent, either at or before maturity, will be canceled immediately upon the payment or redemption and the Paying Agent's receipt of the Bonds. The Paying Agent will periodically destroy canceled Bonds. The Paying Agent will execute a certificate in duplicate describing the destroyed Bonds and file an executed counterpart of the certificate with the City.

Section 210. Sale of the Bonds; Authorization and Execution of Documents.

(a) The Bonds will be sold to the Owner at the purchase price of 100% of the principal amount of the Bonds, plus accrued interest thereon, if any.

(b) The City is authorized to enter into the Purchase Agreement and the Escrow Agreement, in substantially the forms presented to the Governing Body. The Mayor is authorized to execute the Purchase Agreement and the Escrow Agreement for and on behalf of and as the act and deed of the City, with changes approved by the Mayor, which approval will be conclusively evidenced by the Mayor's signature. The Mayor is further authorized and directed to execute other documents, certificates and instruments that are necessary or desirable to carry out the intent of this Ordinance. The City Clerk is authorized and directed to attest the execution of the Purchase Agreement and the Escrow Agreement and any other documents, certificates and instruments that are necessary or desirable to carry out the intent of this Ordinance.

Section 211. Administrative Fee and Paying Agent's Fee. Subject to Section 502, the City will pay to the Paying Agent, within 30 days after receipt of a statement from the Paying Agent, (i) the Administrative Fee, and (ii) an amount equal to the Paying Agent's fees and expenses as provided in the Escrow Agreement.

### **ARTICLE III**

#### **REDEMPTION OF BONDS**

Section 301. Optional Redemption. At the option of the City, Bonds may be called for redemption and payment prior to maturity in whole or in part at any time, at the redemption price of 100% of the principal amount thereof plus accrued interest thereon to the date of redemption.

Section 302. Mandatory Redemption and Tender Provisions.

(a) The Bonds are subject to mandatory redemption in part, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date, on the Principal Payment Dates in the years and in the principal amounts as set forth on the following schedule.

<u>Redemption Date</u>	<u>Principal Amount</u>	<u>Redemption Date</u>	<u>Principal Amount</u>
January 1, 2009	\$64,000	January 1, 2019	\$75,000
January 1, 2010	66,000	January 1, 2020	76,000
January 1, 2011	67,000	January 1, 2021	78,000
January 1, 2012	68,000	January 1, 2022	79,000
January 1, 2013	69,000	January 1, 2023	80,000
January 1, 2014	70,000	January 1, 2024	81,000
January 1, 2015	71,000	January 1, 2025	82,000
January 1, 2016	72,000	January 1, 2026	84,000
January 1, 2017	73,000	January 1, 2027	85,000
January 1, 2018	74,000	January 1, 2028	86,000

If Bonds are redeemed in part other than pursuant to the sinking fund requirements of this paragraph (a), the foregoing principal installments will be reduced on a proportionate basis. The City must designate the amount of the reduction of each principal installment by written notice to the Paying Agent and the Owner. The amount of the reduction is subject to verification by the Owner and other verification requirements as may be reasonably established by the Paying Agent.

(b) The Bonds are subject to mandatory redemption in part, in an amount equal to the sum of the amount remaining on deposit in the Construction Fund upon the Completion of Disbursements plus the Excess Debt Service Reserve Amount (rounded to the next lower integral multiple of \$100), on the earliest practicable date for which notice may be given, at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date.

Section 303. Selection of Bonds to Be Redeemed. The redemption of the Bonds in part will be reflected in the records maintained by the Paying Agent.

Section 304. Notice and Effect of Call for Redemption.

(a) If all Outstanding Bonds are held by the Owner, no notice of the mandatory redemption of Bonds is required to be given. If the Bonds are held by any other Owner, or if Bonds are being optionally redeemed, notice of redemption will be given in the manner described below. Unless waived by any Owner of Bonds to be redeemed, the Paying Agent, on behalf of the City, will give notice by mailing a redemption notice by registered or certified mail, at least 15 days, but not more than 30 days, prior to the date fixed for redemption, to the Owner of Bonds to be redeemed at the address shown on the Bond Register.

(b) All redemption notices will be dated and include the following information:

(1) the redemption date,

(2) the redemption price, consisting of the principal amount, redemption premium, if any, and interest to the redemption date,

(3) if less than all Outstanding Bonds are to be redeemed, the identification number, maturity date and, in the case of partial redemption of any Bond, the respective principal amounts of the Bonds to be redeemed,

(4) a statement that on the redemption date the redemption price will become due and payable upon each Bond or portion of a Bond called for redemption, and that interest ceases to accrue on the redeemed amount from and after the redemption date, and

(5) the address of the principal office of the Paying Agent where the Bonds must be surrendered for payment of the redemption price.

(c) If notice of redemption has been given or waived, the Bonds or portions to be redeemed will become due and payable on the redemption date at the redemption price specified in the notice. From and after the redemption date (unless the City defaults in the payment of the redemption price), the called Bonds will cease to bear interest. Upon the surrender of Bonds for payment of the redemption price in accordance with the notice, the Paying Agent will pay the redemption price to the applicable Owners. Upon the Paying Agent's receipt of any Bond being partially redeemed, the Paying Agent will deliver a new Bond or Bonds of the same maturity in the amount of the unpaid principal.

#### **ARTICLE IV**

#### **RATIFICATION OF FUNDS AND ACCOUNTS**

##### Section 401. Ratification of Funds and Accounts.

(a) The separate funds and accounts created in, or ratified and confirmed by, the Outstanding Senior Sewer Bond Ordinance, the Outstanding Senior Water Bond Ordinance, the Outstanding Parity Bond Ordinance, and the Combined System Ordinance known respectively as the:

(1) Combined Waterworks and Sewerage System Revenue Fund (the "Revenue Fund");

(2) Combined Waterworks and Sewerage System Operation and Maintenance Account (the "Operation and Maintenance Account");

(3) Principal Accounts, Interest Accounts and Debt Service Accounts under the Outstanding Senior Sewer Bond Ordinance (collectively the "Outstanding Senior Sewer Bond Debt Service Account");

(3a) Principal Accounts, Interest Accounts and Debt Service Accounts under the Outstanding Senior Water Bond Ordinance (collectively the "Outstanding Senior Water Bond Debt Service Account");

(3b) Principal Accounts, Interest Accounts and Debt Service Accounts under the Outstanding Parity Bond Ordinance (collectively the “Outstanding Parity Bond Debt Service Account”);

(4) Reserve Accounts under the Outstanding Senior Sewer Bond Ordinance (collectively the “Outstanding Senior Sewer Bond Debt Service Reserve Account”);

(4a) Reserve Accounts under the Outstanding Senior Water Bond Ordinance (collectively the “Outstanding Senior Water Bond Debt Service Reserve Account”);

(4b) Reserve Accounts under the Outstanding Parity Bond Ordinance (collectively the “Outstanding Parity Bond Debt Service Reserve Account”);

(5) Combined Waterworks and Sewerage System Depreciation and Replacement Account (the “Depreciation and Replacement Account”); and

(6) Combined Waterworks and Sewerage System Surplus Account (the “Surplus Account”);

are hereby ratified and confirmed.

(b) While any of the Outstanding Senior Sewer Bonds or Outstanding Senior Water Bonds are outstanding:

(1) the Revenue Fund will consist of a Sewerage System Account and a Waterworks Account;

(2) the Operation and Maintenance Account will consist of a Sewerage System Subaccount (formerly the Operation and Maintenance Account under the Outstanding Senior Sewer Bond Ordinance) and a Waterworks System Subaccount (formerly the Operation and Maintenance Account under the Outstanding Senior Water Bond Ordinance); and

(3) the Depreciation and Replacement Account will consist of a Sewerage System Subaccount (formerly the Depreciation and Replacement Account under the Outstanding Senior Sewer Bond Ordinance) and a Waterworks System Subaccount (formerly the Depreciation and Replacement Account under the Outstanding Senior Water Bond Ordinance).

(c) The City hereby establishes the following special funds and accounts with the Paying Agent under the Escrow Agreement:

(1) the Debt Service Fund;

(2) the Debt Service Reserve Fund;

(3) the Construction Fund;

(4) the Repayment Fund consisting of the Principal Account and the Interest Account; and

- (5) the Administrative Expense Fund.

Section 402. Administration of Funds and Accounts. The funds and accounts described in clauses (a)(1), (2), (5) and (6) of Section 401 will be maintained and administered by, or on behalf of, the City under this Ordinance while any of the Bonds and any Parity Bonds are outstanding. The funds or accounts described in clauses (a)(3), (3a), (3b), (4), (4a) and (4b) of Section 401 will be maintained and administered by the City while any of the Outstanding Senior Sewer Bonds, Outstanding Senior Water Bonds, and Outstanding Parity Bonds, as applicable, are outstanding. The accounts and subaccounts described in paragraph (b) of Section 401 will be maintained and administered by the City while any of the Outstanding Senior Sewer Bonds and Outstanding Senior Water Bonds are outstanding.

Section 403. Deposit of Bond Proceeds. The proceeds received from the sale of the Bonds will be deposited upon the delivery of the Bonds into the Construction Fund and the Debt Service Reserve Fund as provided in the Escrow Agreement.

#### ***article v***

### **APPLICATION OF REVENUES**

Section 501. Revenue Fund. The City covenants and agrees that from and after the delivery of the Bonds and so long as any of the Bonds remain outstanding and unpaid, all Revenues derived and collected by the City will be deposited into the Revenue Fund when received. The Revenues will be segregated from all other moneys, revenues, funds and accounts of the City. The Revenue Fund will be administered and applied solely for the purposes and in the manner provided in Outstanding Senior Bond Ordinance, this Ordinance and any Parity Ordinance.

Section 502. Application of Moneys in Funds and Accounts. The provisions of this Section are applicable while any of the Outstanding Senior Sewer Bonds and Outstanding Senior Water Bonds remain outstanding.

(a) The City will apply moneys in the Revenue Fund on the dates, in the amounts and in the order as follows:

- (1) on the first day of each month, (A) from the Sewerage System Account, to the Sewerage System Subaccount of the Operation and Maintenance Account, an amount sufficient to pay the estimated cost of operating and maintaining the Sewerage Subsystem during the month, and (B) from the Waterworks Account, to the Waterworks Subaccount of the Operation and Maintenance Account, an amount sufficient to pay the estimated cost of operating and maintaining the Waterworks Subsystem during the month;

- (2) from the Sewerage System Account, on the dates required under the Outstanding Senior Sewer Bond Ordinance, to the Outstanding Senior Sewer Bond Debt Service Account and the Outstanding Senior Sewer Bond Debt Service Reserve Account, the amounts required under the Outstanding Senior Sewer Bond Ordinance;

(2a) from the Waterworks Account, on the dates required under the Outstanding Senior Water Bond Ordinance, to the Outstanding Water Sewer Bond Debt Service Account and the Outstanding Senior Water Bond Debt Service Reserve Account, the amounts required under the Outstanding Senior Water Bond Ordinance;

(3) on the 25<sup>th</sup> day of each month, on a parity basis, to the Outstanding Parity Bond Debt Service Account the amount required under the Outstanding Parity Bond Ordinance (which, for any Outstanding Parity Bonds which are not SRF Leveraged Program Bonds, will be the amount for the following month), and to the Paying Agent for credit to the Interest Account and the Principal Account:

(A) on May 25, 2008, to and including December 25, 2008, to the Interest Account 1/8 of the amount of interest on the Bonds due on January 1, 2009, and on January 25, 2009 and thereafter 1/6 of the amount of interest due on the Bonds on the next Interest Payment Date, with these monthly payments to be reduced as follows:

(i) the balance in the Debt Service Fund on an Interest Payment Date after the payment of the principal of and interest due on the Bonds on the Interest Payment Date will be credited against the next succeeding monthly payment or payments;

(ii) the investment earnings on the Construction Fund (other than the amount of Additional Interest) and the Debt Service Reserve Fund for the preceding Interest Period, as set forth in the Paying Agent's semiannual notice to the City, will be credited in equal installments against the monthly payments due prior to the next Interest Payment Date; and

(iii) the investment earnings on the Construction Fund equal to Additional Interest will be credited on an Interest Payment Date to the payment of Additional Interest due on the Interest Payment Date.

(B) on May 25, 2008, to and including December 25, 2008, to the Principal Account 1/8 of the amount of principal on the Bonds due on January 1, 2009, and on January 25, 2009 and thereafter 1/12 of the amount of principal due on the Bonds on the next Principal Payment Date, whether at maturity or upon mandatory sinking fund redemption;

(4) on the dates required by Section 211, to the Paying Agent, the amounts required to pay the Administrative Fee and the Paying Agent's fees and expenses;

(5) on the first day of each month, on a parity basis, (A) for deposit to the Outstanding Parity Bond Debt Service Reserve Account, the amount required by the Outstanding Parity Bond Ordinance, and (B) if the Debt Service Reserve Fund balance is less than the Debt Service Reserve Requirement, to the Debt Service Reserve Fund all available moneys until the Debt Service Reserve Fund equals the Debt Service Reserve Requirement;

(6) on the first day of each month, to the Depreciation and Replacement Account, the amount required by the User Charge Ordinance; and

(7) on the first day of each month the remaining balance to the Surplus Account.

(b) If the amount in the Revenue Fund is not sufficient to make the payments at the time required to be made by the City to the Interest Account, the Principal Account and the Outstanding Parity Bond Debt Service Account, the City will apply the remaining balance in the Revenue Fund on a proportionate basis (based upon the outstanding principal amounts of the Bonds and the Outstanding Parity Bonds) to the Principal Account, the Interest Account and the Outstanding Parity Bond Debt Service Account.

(c) Except as provided in Section 503, (1) moneys in the Sewerage System Subaccount of the Depreciation and Replacement Account will be used by the City for the purpose of making replacements and repairs to the Sewerage Subsystem in order to keep the Sewerage Subsystem in good repair and working order and to assure the continued effective and efficient operation of the Sewerage Subsystem, and (2) moneys in the Waterworks Subaccount of the Depreciation and Replacement Account will be used by the City for the purpose of making replacements and repairs to the Waterworks Subsystem in order to keep the Waterworks Subsystem in good repair and working order and to assure the continued effective and efficient operation of the Waterworks Subsystem.

(d) Subject to any more restrictive provision of the Outstanding Senior Bond Ordinance, moneys in the Surplus Account are to be expended for the following purposes as determined by the Governing Body:

(1) paying the cost of the operation, maintenance and repair of the System to the extent necessary after the application of the moneys held in the Operation and Maintenance Account and in the Depreciation and Replacement Account;

(2) paying the cost of extending, enlarging or improving the System;

(3) preventing default in, anticipating payments into or increasing the amounts in the accounts confirmed or established in Section 401, the Principal Account, the Interest Account, the Depreciation and Replacement Account, the Outstanding Parity Bond Debt Service Reserve Account or the Debt Service Reserve Fund, or establishing or increasing the amount of any debt service account or debt service reserve account created by the City for the payment of any System Revenue Bonds subsequently issued; or

(4) redeeming and paying prior to maturity, or, at the option of the City, purchasing in the open market at the best price obtainable not exceeding the call price (if any bonds are callable), the Bonds, the Outstanding Senior Sewer Bonds, the Outstanding Senior Water Bonds, the Outstanding Parity Bonds or any other System Revenue Bonds of the City hereafter issued under the conditions hereinafter specified and standing on parity with the Bonds, including principal, redemption premium, if any, and interest.

(e) All amounts paid and credited to the Sewerage System Subaccount of the Operation and Maintenance Account will be expended solely for the purpose of paying the Current Expenses of the Sewerage Subsystem. All amounts paid and credited to the Waterworks Subaccount of the Operation and Maintenance Account will be expended solely for the purpose of paying the Current Expenses of the Waterworks Subsystem.

(f) No moneys derived by the City from the System will be diverted to the general governmental or municipal functions of the City.

(g) If the deposits to the Operation and Maintenance Account (the "OM Deposits") required under this Section are greater than the OM Deposits required in the User Charge Ordinance, the OM Deposits under the User Charge Ordinance will be deemed a credit toward OM Deposits required under this Section. If the OM Deposits required under this Section are less than those required in the User Charge Ordinance, OM Deposits under this Section will be deemed a credit to OM Deposits required under the User Charge Ordinance.

Section 502A. Alternative Application of Moneys in Funds and Accounts. The provisions of this Section 502A are applicable upon payment in full of the Outstanding Senior Sewer Bonds and Outstanding Senior Water Bonds pursuant to the Outstanding Senior Sewer Bond Ordinance and the Outstanding Senior Water Bond Ordinance, as applicable. References elsewhere in this Ordinance to Section 502 mean this Section 502A when applicable.

(a) The City will apply moneys in the Revenue Fund on the dates, in the amounts and in the order as follows:

(1) on the first day of each month there shall be deposited to the Operation and Maintenance Account an amount sufficient to pay the estimated cost of operating and maintaining the System during the month;

(2) on the 25<sup>th</sup> day of each month, on a parity basis, to the Outstanding Parity Bond Debt Service Account the amount required under the Outstanding Parity Bond Ordinance (which, for any Outstanding Parity Bonds which are not SRF Leveraged Program Bonds, will be the amount for the following month), and to the Paying Agent for credit to the Interest Account and the Principal Account:

(A) on the first payment date following the applicability of this Section 502A, to the Interest Account a proportionate amount of interest on the Bonds on the next Interest Payment Date, with these monthly payments to be reduced as follows:

(i) the balance in the Debt Service Fund on an Interest Payment Date after the payment of the principal of and interest due on the Bonds on the Interest Payment Date will be credited against the next succeeding monthly payment or payments;

(ii) the investment earnings on the Construction Fund (other than the amount of Additional Interest) for the preceding Interest Period, as set forth in the Paying Agent's semiannual notice to the City, will be

credited in equal installments against the monthly payments due prior to the next Interest Payment Date; and

(iii) the investment earnings on the Construction Fund equal to Additional Interest will be credited on an Interest Payment Date to the payment of Additional Interest due on the Interest Payment Date.

(B) on the first payment date following the applicability of this Section 502A, to the Principal Account a proportionate amount of interest on the Bonds on the next Principal Payment Date, whether at maturity or upon mandatory sinking fund redemption;

(3) on the first day of each month, on a parity basis, (A) for deposit to the Outstanding Parity Bond Debt Service Reserve Account, the amount required by the Outstanding Parity Bond Ordinance, and (B) if the Debt Service Reserve Fund balance is less than the Debt Service Reserve Requirement, to the Debt Service Reserve Fund all available moneys until the Debt Service Reserve Fund equals the Debt Service Reserve Requirement;

(4) on the dates required by Section 211, to the Paying Agent, the amounts required to pay the Administrative Fee and the Paying Agent's fees and expenses;

(5) on the first day of each month, to the Depreciation and Replacement Account, the amount required by the User Charge Ordinance; and

(6) on the first day of each month the remaining balance to the Surplus Account.

(b) If the amount in the Revenue Fund is not sufficient to make the payments at the time required to be made by the City to the Interest Account, the Principal Account and the Outstanding Parity Bond Debt Service Account, the City will apply the remaining balance in the Revenue Fund on a proportionate basis (based upon the outstanding principal amounts of the Bonds and the Outstanding Parity Bonds) to the Principal Account, the Interest Account and the Outstanding Parity Bond Debt Service Account.

(c) Except as provided in Section 503, moneys in the Depreciation and Replacement Account will be used by the City for the purpose of making replacements and repairs to the System in order to keep the System in good repair and working order and to assure the continued effective and efficient operation of the System.

(d) Moneys in the Surplus Account are to be expended for the following purposes as determined by the Governing Body:

(1) paying the cost of the operation, maintenance and repair of the System to the extent necessary after the application of the moneys held in the Operation and Maintenance Account and in the Depreciation and Replacement Account;

(2) paying the cost of extending, enlarging or improving the System;

(3) preventing default in, anticipating payments into or increasing the amounts in the accounts confirmed or established in Section 401, the Principal Account, the Interest Account, the Depreciation and Replacement Account, the Outstanding Parity Bond Debt Service Reserve Account or the Debt Service Reserve Fund, or establishing or increasing the amount of any debt service account or debt service reserve account created by the City for the payment of any System Revenue Bonds subsequently issued; or

(4) redeeming and paying prior to maturity, or, at the option of the City, purchasing in the open market at the best price obtainable not exceeding the call price (if any bonds are callable), the Bonds, the Outstanding Parity Bonds or any other System Revenue Bonds hereafter issued under the conditions hereinafter specified and standing on a parity with the Bonds, including principal, redemption premium, if any, and interest.

(e) All amounts paid and credited to the Operation and Maintenance Account will be expended solely for the purpose of paying the Current Expenses of the System.

(f) No moneys derived by the City from the System will be diverted to the general governmental or municipal functions of the City.

(g) If the deposits to the Operation and Maintenance Account (the "OM Deposits") required under this Section are greater than the OM Deposits required in the User Charge Ordinance, the OM Deposits under the User Charge Ordinance will be deemed a credit toward OM Deposits required under this Section. If the OM Deposits required under this Section are less than those required in the User Charge Ordinance, OM Deposits under this Section will be deemed a credit to OM Deposits required under the User Charge Ordinance.

### Section 503. Deficiency of Payments into Funds and Accounts.

(a) If the Revenues are insufficient to make any payment on any date specified in this Article, the City will make good the amount of the deficiency by making additional payments out of the first available Revenues for application in the order specified in Section 502.

(b) If the moneys in the Outstanding Senior Sewer Bond Debt Service Account, the Outstanding Senior Water Bond Debt Service Account, the Outstanding Parity Bond Debt Service Account, the Outstanding Senior Sewer Bond Debt Service Reserve Account, the Outstanding Senior Water Bond Debt Service Reserve Account, the Outstanding Parity Bond Debt Service Reserve Account, the Principal Account, the Interest Account or the Debt Service Reserve Fund are not sufficient to pay the principal of and interest on the Outstanding Senior Sewer Bonds, the Outstanding Senior Water Bonds, or the Outstanding Parity Bonds, as applicable, and the Bonds as and when the same become due, the City will apply moneys in the Surplus Account and the Sewerage System Subaccount or the Waterworks Subaccount of the Depreciation and Replacement Account to the Outstanding Senior Sewer Bond Debt Service Account, the Outstanding Senior Water Bond Debt Service Account or the Outstanding Parity Bond Debt Service Account, the Principal Account and the Interest Account, as applicable, to prevent any default in the payment of the principal of and interest on the Outstanding Senior Sewer Bonds, the Outstanding Senior Water Bonds, or the Outstanding Parity Bonds, as applicable, and the Bonds.

Section 504. Transfer of Funds to Paying Agent. The City Manager is authorized and directed to make the payments to the Principal Account and the Interest Account as provided in Section 502, and, to the extent necessary to prevent a default in the payment of any System Revenue Bonds, from the Debt Service Reserve Fund, from the Surplus Account and from the Depreciation and Replacement Account as provided in Sections 502 and 503, sums sufficient to pay the System Revenue Bonds when due, and to forward amounts to the Paying Agent in a manner which ensures the Paying Agent will have sufficient available funds on or before the second Business Day immediately preceding the dates when payments on the Bonds are due. Upon the payment of all principal and interest on the Bonds, the Paying Agent will return any excess funds to the City. Except as otherwise provided in the Escrow Agreement, all moneys deposited by the City with the Paying Agent are subject to the provisions of this Ordinance.

Section 505. Business Days. If any date for the payment of principal of, or redemption premium, if any, or interest on the Bonds or the taking of any other action hereunder is not a Business Day, then such payment shall be due, or such action shall be taken, on the first Business Day thereafter with the same force and effect as if made on the date fixed for payment or performance.

## **ARTICLE VI**

### **DEPOSIT AND INVESTMENT OF MONEYS**

Section 601. Investment of Moneys.

(a) Moneys held in any fund or account referred to in this Ordinance may be invested in Investment Securities; provided, however, that any fund or account held by the Paying Agent shall be invested as provided in Section 12 of the Escrow Agreement. No such investment shall be made for a period extended longer than the date when the money invested may be needed for the purpose for which such fund or account was created. All earnings on any investments held in any fund or account shall accrue to and become a part of such fund or account. All earnings on investments held in the Debt Service Reserve Fund shall accrue to and become a part of the Debt Service Reserve Fund until the amount on deposit in the Debt Service Reserve Fund equals the Debt Service Reserve Requirement; thereafter, all such earnings shall be credited to the Interest Account. In determining the amount held in any fund or account under any of the provisions of this Ordinance, obligations shall be valued at the lower of the cost or the market value thereof. If and when the amount held in any fund or account held within the Treasury of the City shall be in excess of the amount required by the provisions of this Ordinance, the City shall direct that such excess be paid and credited to the Revenue Fund.

(b) If the Outstanding Senior Sewer Bonds, Outstanding Senior Water Bonds, or Outstanding Parity Bonds are outstanding, any investments made pursuant to this Section are subject to the restrictions in the Outstanding Senior Sewer Bond Ordinance, the Outstanding Senior Water Bond Ordinance, or the Outstanding Parity Bond Ordinance, as applicable.

## **ARTICLE VII**

### **PARTICULAR COVENANTS OF THE City**

Section 701. Efficient and Economical Operation; User Charge Ordinance. The City will continuously own and will operate the System in an efficient and economical manner and will keep and maintain the same in good repair and working order. The City has duly approved the User Charge Ordinance and will enforce the provisions thereof. The City will not amend, modify, supplement or restate the User Charge Ordinance unless the City shall have received the prior written consent of DNR.

Section 702. Rate Covenant. The City will fix, establish, maintain and collect rates and charges for the use and services furnished by or through the System to produce income and revenues sufficient to (a) pay the costs of the operation and maintenance of the System; (b) pay the principal of and interest on the Bonds as and when due; (c) enable the City to have in each Fiscal Year Net Revenues of not less than 110% of the amount required to be paid by the City in the Fiscal Year on account of both principal of and interest on all System Revenue Bonds at the time outstanding, provided that interest on any SRF Leveraged Program Bonds will be reduced by the SRF Subsidy, if any; and (d) provide reasonable and adequate reserves for the payment of the Bonds and the interest thereon and for the protection and benefit of the System as provided in this Ordinance. The City will require the prompt payment of accounts for service rendered by or through the System and will promptly take whatever action is legally permissible to enforce and collect delinquent charges.

Section 703. Reasonable Charges for all Services. None of the facilities or services provided by the System will be furnished to any user (excepting the City itself) without a reasonable charge being made therefor. If the income and revenues derived by the City from the System are insufficient to pay the reasonable expenses of operation and maintenance of the System and the principal of and interest on the Bonds when due, the City will pay into the Revenue Fund a fair and reasonable payment in accordance with effective applicable rates and charges for all services or other facilities furnished to the City or any of its departments by the System.

Section 704. Annual Budget. Prior to the commencement of each Fiscal Year, the City will cause a budget setting forth the estimated receipts and expenditures of the System for the next succeeding Fiscal Year to be prepared and filed with the City Clerk. The City Clerk, within 30 days after the end of the current Fiscal Year, will mail a copy of the budget to DNR and the Trustee. The annual budget will be prepared in accordance with the laws of the State.

Section 705. Annual Audit.

(a) Promptly after the end of each Fiscal Year, the City will cause an audit of the System for the preceding Fiscal Year to be made by a certified public accountant or firm of certified public accountants employed for that purpose and paid from the Revenues. The annual audit will cover in reasonable detail the operation of the System during the Fiscal Year.

(b) As soon as possible after the completion of the annual audit, the Governing Body will review the annual audit, and if the annual audit reveals any breach of this Ordinance, the City agrees to promptly cure the breach.

(c) Within 30 days after the acceptance of the audit by the Governing Body, a copy of the annual audit will be filed in the office of the City Clerk, and a copy of the audit will be mailed to the Owner. The annual audit will be open to examination and inspection during normal business hours by any taxpayer, any user of the services of the System, the Owner, or anyone acting for or on behalf of the taxpayer, user or Owner.

(d) The City acknowledges its undertakings set forth in Section 2.1(t) of the Purchase Agreement.

Section 706. Performance of Duties. The City will faithfully and punctually perform all duties and obligations with respect to the operation of the System, including all extensions and improvements thereto, now or hereafter imposed upon the City by the constitution and laws of the State and by the provisions of this Ordinance.

### ***article viii***

### ***ADDITIONAL BONDS***

Section 801. No Prior Lien Bonds. Except as provided in Section 804, the City will not issue any debt obligations payable out of the Net Revenues which are superior in lien, security or otherwise to the Bonds.

Section 802. Parity Lien Bonds or Obligations.

(a) The City will not issue any additional bonds or other long-term obligations payable out of the Net Revenues of the System that stand on a parity or equality with the Bonds unless the following conditions are met:

(1) the City is not in default in the payment of principal or interest on the Bonds or any Parity Bonds or in making any deposit into the funds and accounts under this Ordinance or any Parity Ordinance; and

(2) the City provides to the Owner a certificate showing either of the following:

(A) the average annual Net Revenues as set forth in the two most recent annual audits for Fiscal Years preceding the issuance of additional bonds, are at least 110% of the average annual debt service on the System Revenue Bonds, including the additional bonds proposed to be issued, to be paid out of the Net Revenues in all succeeding Fiscal Years. Interest to be paid on any SRF Leveraged Program Bonds may be reduced by the SRF Subsidy, if any. If the City has made any increase in rates for the use and services of the System and the increase has not been in effect during all of the two Fiscal Years for which annual audits are available, the City may add the additional Net Revenues which would have resulted if the rate increase had been in effect for the entire period to the audited Net Revenues, as certified by a Consultant; or

(B) the estimated average annual Net Revenues for the two Fiscal Years immediately following the Fiscal Year in which the improvements to the System being financed by the additional bonds are to be in commercial operation, as certified by a Consultant, is at least 110% of the average annual debt service on the System Revenue Bonds, including the additional bonds proposed to be issued, to be paid out of the Net Revenues in succeeding Fiscal Years following the commencement of commercial operation of the improvements. Interest to be paid on any SRF Leveraged Program Bonds may be reduced by the SRF Subsidy, if any. In determining the amount of estimated Net Revenues for the purpose of this subsection, a Consultant may adjust the estimated net income and revenues by adding the estimated increase in Net Revenues resulting from any increase in rates for the use and services of the System approved by the City and to become effective during the two Fiscal Years immediately following the Fiscal Year in which the improvements to the System being financed by the additional bonds are to be in commercial operation.

(b) If the conditions set forth in this Section are satisfied, the City (i) may issue additional revenue bonds or other obligations of the City on a parity with the Bonds and that enjoy complete equality of the lien on the Net Revenues with the Bonds, (ii) may make equal provision for paying the additional revenue bonds or other obligations from the Revenue Fund, and (iii) may secure the additional revenue bonds or other obligations by funding reasonable System debt service accounts and debt service reserve accounts from the Net Revenues.

Section 803. Junior Lien Bonds. Nothing in this Article prohibits or restricts the right of the City to issue additional revenue obligations, including revenue bonds, for the purpose of extending, improving, enlarging, repairing or altering the System, or refunding obligations issued for such purposes, that are subordinate to the Bonds if at the time of the issuance of the additional revenue obligations the City is not in default in the performance of any covenant or agreement in this Ordinance. If the City is in default in paying either interest on or principal of the Bonds, the City will not make any payments on the subordinate revenue obligations until the default is cured. Subject to the limitations in this Section, the City may make provision for paying the principal of and interest on the subordinate revenue bonds or obligations from moneys in the Revenue Fund.

Section 804. Refunding Bonds.

(a) The City may, without complying with the provisions of Section 802, refund any of the Bonds in a manner that provides debt service savings to the City, and the refunding bonds so issued will be on a parity with any of the Bonds that are not refunded and any Outstanding Parity Bonds. If the Bonds are refunded in part and the refunding bonds bear a higher average rate of interest or become due on a date earlier than that of the Bonds that are refunded, the City must obtain the prior written consent of the Owner to the issuance of the refunding bonds.

(b) The City may refund any of the Outstanding Senior Sewer Bonds in a manner that provides debt service savings to the City in each subsequent Fiscal Year, and the refunding bonds so issued may have a priority lien on the Sewer Revenues. The City may

refund any of the Outstanding Senior Water Bonds in a manner that provides debt service savings to the City in each subsequent Fiscal Year, and the refunding bonds so issued may have a priority lien on the Water Revenues.

## **ARTICLE IX**

### **DEFAULT AND REMEDIES**

Section 901. Event of Default. If (i) the City defaults in the payment of the principal of or interest on any of the Bonds, or (ii) the City or its Governing Body or any of its officers, agents or employees fails or refuses to comply with any provision of this Ordinance, the Constitution or statutes of the State, the Purchase Agreement or the Escrow Agreement and default continues for a period of 60 days after written notice specifying the non-payment default has been given to the City by the Owner of any Bond then Outstanding, at any time thereafter and while the default continues, the City shall pay to DNR the penalties assessed by DNR in accordance with the Regulations.

#### Section 902. Remedies.

(a) The provisions of this Ordinance constitute a contract between the City and the Owners of the Bonds. The Owner or Owners of not less than 10% in principal amount of the Bonds at the time Outstanding have the right for the equal benefit and protection of all Owners of Bonds similarly situated:

(1) by any proceeding at law or in equity to enforce the rights of the Owner or Owners against the City and its officers, agents and employees, and to compel the performance by the City of its duties and obligations under this Ordinance, the Constitution and the laws of the State;

(2) by any proceeding at law or in equity to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(3) by any proceeding at law or in equity to enjoin any act or thing which is unlawful or in violation of the rights of the Owners of the Bonds.

(b) Any amounts paid on the Bonds to the Owners will be applied first to interest and second to principal, to the extent due and payable.

Section 903. Limitation on Rights of Owners. No Owner has any right in any manner whatever by the Owner's action to affect, disturb or prejudice the security granted and provided for in, or enforce any right under, this Ordinance, except in the manner provided in this Ordinance. All proceedings at law or in equity will be for the equal benefit of all Owners.

Section 904. Remedies Cumulative. No remedy conferred upon the Owners is intended to be exclusive of any other remedy. Each remedy is in addition to every other remedy and may be exercised without exhausting any other remedy conferred under this Ordinance. No waiver by any Owner of any default or breach of duty or contract of the City under this Ordinance will affect any subsequent default or breach of duty or contract by the City or impair any rights or remedies thereon. No delay or omission of any Owner to exercise any right or power accruing upon any default will impair any right or power or will be

construed to be a waiver of any default. Every substantive right and every remedy conferred upon the Owners of the Bonds by this Ordinance may be enforced and exercised from time to time and as often as may be expedient. If any Owner discontinues any proceeding or the decision in the proceeding is against the Owner, the City and the Owners of the Bonds will be restored to their former positions and rights under this Ordinance.

Section 905. No Obligation to Levy Taxes. Nothing in this Ordinance imposes any duty or obligation on the City to levy any taxes either to meet any obligation incurred under this Ordinance or to pay the principal of or interest on the Bonds.

## **ARTICLE X**

### **DEFEASANCE**

Section 1001. Defeasance. When all of the Bonds shall have been paid and discharged, then the requirements contained in this Ordinance and the pledge of revenues made hereunder and all other rights granted hereby shall terminate. Bonds shall be deemed to have been paid and discharged within the meaning of this Ordinance if there shall have been deposited with the Paying Agent, or other bank or trust company located in the State of Missouri, having full trust powers and meeting the requirements of a successor Paying Agent (as set forth in the Escrow Agreement) impressed with a first lien to the Paying Agent for the benefit of the Owners, at or prior to the maturity or redemption date of said Bonds, in trust for and irrevocably appropriated thereto, moneys and/or non-callable Defeasance Securities (the "Defeasance Escrow") which, together with the interest to be earned on any such obligations, will be sufficient for the payment of the principal of said Bonds and interest to accrue to the date of maturity or redemption, as the case may be, or if default in such payment shall have occurred on such date, then to the date of the tender of such payments, provided, however, that if any such Bonds shall be redeemed prior to the maturity thereof, (i) the City shall have elected to redeem such Bonds, and (ii) either notice of such redemption shall have been given or the City shall have given irrevocable instructions to the Paying Agent to redeem such Bonds; and provided further, however, there shall be filed with the City, the Owner and the Paying Agent an opinion of Bond Counsel to the effect that the conditions for the defeasance of the Bonds pursuant to this Section 1001 have been complied with and, if the payment of the Bonds at maturity or upon redemption will occur more than 90 days after the deposit of the Defeasance Escrow and interest on the Defeasance Escrow is to be used to pay debt service on the Bonds, the written report of an independent certified public accountant evidencing the sufficiency of the Defeasance Escrow. Any moneys and obligations which at any time shall be deposited with the Paying Agent, or other bank by or on behalf of the City, for the purpose of paying and discharging any of the Bonds shall be and are hereby assigned, transferred and set over to the Paying Agent or other bank in trust for the respective Owners of the Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge of this Ordinance. All moneys deposited with the Paying Agent or other bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Ordinance.

## **ARTICLE XI**

## **AMENDMENTS**

### Section 1101. Amendments.

(a) Any provision of the Bonds or of this Ordinance may be amended by an ordinance with the written consent of the Owners. Consent must be evidenced by an instrument executed by the Owners, acknowledged or proved in the manner of a deed to be recorded, and filed with the City Clerk. In addition, the prior written consent of the Owners is required for any amendment which would:

- (1) extend the maturity of any payment of principal or interest on any Bond;
- (2) reduce the amount of principal or interest payable on any Bond; or
- (3) permit the priority of any Bond over any other Bond.

(b) No amendment will be effective until (i) the City has delivered to the Owners and the Paying Agent an opinion of Bond Counsel stating that the amendment is permitted by this Ordinance and the Act, complies with their respective terms and is valid and binding upon the City in accordance with its terms, and (ii) the City Clerk has on file a copy of the amendment and all required consents.

## ***article xii***

## **MISCELLANEOUS PROVISIONS**

Section 1201. Further Authority. The officers of the City, including the Mayor, the City Manager and the City Clerk, are authorized and directed to execute all documents and take the actions as are necessary or advisable in order to carry out and perform the purposes of this Ordinance and to make ministerial changes in the documents approved by this Ordinance which they may approve. The execution of any document or taking of any related action constitutes conclusive evidence of the necessity or advisability of the action or change.

Section 1202. Severability. If any section or other part of this Ordinance is for any reason held invalid, the invalidity will not affect the validity of the other provisions of this Ordinance.

Section 1203. Governing Law. This Ordinance is governed by and will be construed in accordance with the laws of the State.

Section 1204. Effective Date. This Ordinance is in full force and effect from and after its passage by the City Council and approval by the Mayor.

## **EXHIBIT A**

## **FORM OF BOND**

[THIS BOND IS TRANSFERABLE ONLY TO ANY SUCCESSOR TO THE

MISSOURI DEPARTMENT OF NATURAL RESOURCES OR ITS ASSIGNS]

Registered  
No. R- \_\_\_\_\_

Registered  
\$ \_\_\_\_\_

**UNITED STATES OF AMERICA  
STATE OF MISSOURI**

**CITY OF KIRKSVILLE, MISSOURI**

**COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND  
(STATE OF MISSOURI – DIRECT LOAN PROGRAM)  
SERIES 2008**

**Dated Date**

**Interest Rate**

**Maturity Date**

**January 1, 2028**

**REGISTERED OWNER: MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS**

The **CITY OF KIRKSVILLE, MISSOURI**, a city of the third class and political subdivision of the State of Missouri (the “City”), for value received, hereby promises to pay to the Owner shown above, or registered assigns, the Principal Amount shown above on the Maturity Date shown above, and to pay interest thereon at the Interest Rate per annum shown above plus Additional Interest as described in the herein defined Ordinance (computed on the basis of a 360-day year of twelve 30-day months) from the Dated Date shown above or from the most recent interest payment date to which interest has been paid or duly provided for, payable semiannually on January 1 and July 1 in each year, commencing January 1, 2009, plus Additional Interest until the Principal Amount has been paid. Terms not otherwise defined in this Bond have the respective meanings as set forth in the Ordinance.

The principal of this Bond shall be paid at maturity or upon earlier redemption to the person in whose name this Bond is registered on the Bond Register at the maturity or redemption date thereof, upon presentation and surrender of this Bond at the payment office of UMB, BANK, N.A. in the City of St. Louis, Missouri (the “Paying Agent”). The payment of the principal of and redemption premium, if any, payable on this Bond at maturity or upon earlier redemption and the interest payable on this Bond on any Interest Payment Date will be made by check or draft mailed by the Paying Agent to the address of the Owner shown in the Bond Register. The principal of and redemption premium, if any, and interest on the Bonds is payable by electronic transfer in immediately available federal funds to a bank in the continental United States of America pursuant to instructions from any Owner received by the Paying Agent prior to the Record Date. The principal of and interest on this Bond shall be payable in lawful money of the United States of America.

This Bond is one of a duly authorized series of bonds of the City designated “Combined Waterworks and Sewerage System Revenue Bonds (State Revolving Fund – Direct Loan Program) Series 2008” aggregating the principal amount of \$1,500,000 (the “Bonds”), issued by the City for the purpose of extending and improving the combined waterworks and sewerage system owned and operated by the City (said combined waterworks and sewerage system, together with all future improvements and extensions thereto hereafter constructed or acquired by the City, being herein called the “System”), under the authority of and in full compliance with Chapter 250 of the Revised Statutes of Missouri, as amended, and pursuant to an election duly held in the City and an ordinance duly adopted by the governing body of the City (the “Ordinance”).

At the option of the City, the Bonds may be called for redemption and payment prior to maturity in whole or in part as provided in the Ordinance.

The Bonds are subject to mandatory redemption and payment prior to maturity pursuant to the mandatory redemption requirements of the Ordinance, at a redemption price equal to 100% of the principal amount plus accrued interest to the redemption date.

The Bonds are subject to mandatory redemption in part, in an amount equal to the sum of the amount remaining on deposit in the Construction Fund upon the Completion of Disbursements, plus the Excess Debt Service Reserve Amount (rounded to the next lower integral of \$100), on the earliest practicable date for which notice may be given, at the redemption price of 100% of the principal amount thereof plus accrued interest thereon to the date of redemption.

Except as otherwise provided in the Ordinance, notice of redemption, unless waived, is to be given by the Paying Agent by mailing an official redemption notice by registered or certified mail at least 15 days, but not more than 30 days, prior to the date fixed for redemption, to the 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 Owner to the Paying Agent. Notice of redemption having been given or waived 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.

The Bonds are limited obligations of the City payable solely from, and secured as to the payment of principal and interest by a pledge of, the Net Revenues derived by the City from the operation of the System after providing for the costs of operation and maintenance of the System, and the taxing power of the City is not pledged to the payment of the Bonds either as to principal or interest. The Bonds shall not be or constitute a general obligation of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limited or restriction.

The Bonds are junior and subordinate to the Outstanding Senior Sewer Bonds with respect to payment of principal and interest from the Sewer Net Revenues. In the event of any default in the payment of the Outstanding Senior Sewer Bonds, the Sewer Net Revenues will be applied solely to the payment of the principal of and interest on the Outstanding Senior Sewer Bonds until the default is cured.

The Bonds are junior and subordinate to the Outstanding Senior Water Bonds with respect to payment of principal and interest from the Water Net Revenues. In the event of any default in the payment of the Outstanding Senior Water Bonds, the Water Net Revenues will be applied solely to the payment of the principal of and interest on the Outstanding Senior Water Bonds until the default is cured.

The Bonds are issued on parity with the Outstanding Parity Bonds.

Under the conditions set forth in the Ordinance, the City has the right to issue additional bonds payable from the Net Revenues; provided, however, that such additional bonds may be so issued only in accordance with and subject to the covenants, conditions and restrictions relating thereto set forth in the Ordinance.

The City hereby covenants with the Owner of this Bond to keep and perform all covenants and agreements contained in the Ordinance, and the City will fix, establish, maintain and collect such rates, fees and charges for the use and services furnished by or through the System, as will produce revenues sufficient to pay the costs of operation and maintenance of the System, pay the principal of and interest on the Bonds as and when the same become due, and provide reasonable and adequate reserve funds. Reference is made to the Ordinance for a description of the covenants and agreements made by the City with respect to the collection, segregation and application of the revenues of the System, the nature and extent of the security of the Bonds, the rights, duties and obligations of the City with respect thereto, and the rights of the Owners thereof.

The Bonds are issuable in the form of fully registered Bonds without coupons in the denomination of \$100 or any integral multiple thereof.

This Bond may be transferred or exchanged, as provided in the Ordinance, only upon the registration books kept for that purpose at the above-mentioned office of the Paying Agent, upon surrender of this Bond together with a written instrument of transfer or exchange satisfactory to the Paying Agent duly executed by the Owner or the Owner's duly authorized agent, and thereupon a new Bond or Bonds in any authorized denomination of the same maturity and in the same aggregate principal amount shall be issued to the transferee in exchange therefor as provided in the Ordinance, and upon payment of the charges therein prescribed. The City and the Paying Agent may deem and treat the person in whose name this Bond is registered on the Bond Register as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the Certificate of Authentication hereon shall have been executed by the Paying Agent.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Bonds have existed, happened and been performed in due time, form and manner as required by law, and that before the issuance of the Bonds, provision has been duly made for the collection and segregation of the revenues of the System and for the application of the same as hereinbefore provided.

**AN ORDINANCE AMENDING CHAPTER 4 OF THE CODE OF THE CITY OF KIRKSVILLE, MISSOURI REGULATING ALCOHOLIC BEVERAGES.**

WHEREAS, enforcement issues/questions arise, on a regular basis, that result in a review of portions of the current City of Kirksville Code of Ordinances; and

WHEREAS, that review will periodically identify changes that need to be made in the current City of Kirksville Code of Ordinances; and

WHEREAS, the proposed changes are recommended to more efficiently bring the written code into compliance with recommendations to resolve identified problems.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF KIRKSVILLE, MISSOURI AS FOLLOWS:**

Section I. That Section 1 of Chapter 4 of the Code of Ordinances be amended to include a new definition as follows:

***Intoxicated condition:* A person is in an intoxicated condition when he or she is under the influence of alcohol, a controlled substance, or drug, or any combination thereof.**

Section II. That Section 3 of Chapter 4 of the Code of Ordinances be amended as follows:

(a) *Purchase or possession.* Any person under the age of twenty-one (21) years, who purchases or attempts to purchase, or has in his possession, any intoxicating liquor or non-intoxicating beer as defined in section 4-1, **or who is visibly intoxicated as defined in section 4-1, or has a detectable blood alcohol content of more than two-hundredths of one percent or more by weight of alcohol in such person's blood** is guilty of a violation of this Code....

Section III. That Section 5 of Chapter 4 of the Code of Ordinances be amended as follows:

(d) **State law reference** – RsMO 311.295 be deleted (No longer a State law)

Section IV. Effective Date

All of the modifications to this ordinance shall be effective from and after its date of passage.

Section V. Incorporation into the City of Kirksville Code of Ordinances

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Kirksville, Missouri as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

**AN ORDINANCE AMENDING CHAPTER 5 OF THE CODE OF THE CITY OF KIRKSVILLE, MISSOURI REGULATING ANIMALS AND FOWL.**

WHEREAS, enforcement issues/questions arise, on a regular basis, that result in a review of portions of the current City of Kirksville Code of Ordinances; and

WHEREAS, that review will periodically identify changes that need to be made in the current City of Kirksville Code of Ordinances; and

WHEREAS, the proposed changes are recommended to more efficiently bring the written code into compliance with recommendations to resolve identified problems, made by the Police Department.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF KIRKSVILLE, MISSOURI AS FOLLOWS:**

Section I. That Section 1 of Chapter 5 of the Code of Ordinances shall be amended to include a new definition as follows:

***Continuing public safety hazard. The prohibited behavior of any adjudicated vicious animal that is likely to continue.***

Section II. That Section 8 of Chapter 5 of the Code of Ordinances shall be amended as follows:

It shall be unlawful for the owner, **or person in control**, of any animal to let such animal run at large, whether licensed or not, at any time within the city.

Section III. That Section 9 of Chapter 5 of the Code of Ordinances shall be amended as follows:

It shall be unlawful for the owner **or person in control**, of any animal to fail to exercise the proper care and control of his animal so as to prevent such animal from becoming a public nuisance animal.

Section IV. That Section 11 of Chapter 5 of the Code of Ordinances shall be amended as follows:

Change subsection (b) to (c), (c) to (d), and (d) to (e).  
Insert a new subsection (b) as follows:

**(b) If the animal has proof of current rabies vaccination, and the victim of the attack, bite or injury requests, the Animal Control Officer may allow the animal to be securely and safely housed with its owners for the duration of the ten (10) day observation period.**

Add subsections (f) and (g) as follows:

(f) If, based on a public safety concern, the Police Department can show cause that any animal should not be released pursuant to subsection (d), the Municipal Court will authorize that the animal be held until an action or disposition in court authorizes the release.

(g) If the owner, or person in control, of an animal is adjudicated as harboring a vicious animal, and the City can show cause that the release of the animal would create a continuing public safety hazard, the Municipal Court may authorize that the animal be permanently removed from the city limits, or killed humanely.

Section V. That Section 16 of Chapter 5 of the Code of Ordinances be amended as follows:

(a) No owner, **or person in control of any animal**, shall fail to provide his **or her** animals with sufficient wholesome and nutritious food, water in sufficient quantities, proper air, shelter space and protection from the weather, veterinary care when needed to prevent suffering, and humane care and treatment.

(d) No owner, **or person in control of any animal**, of an animal shall abandon such animal.

Section VI. That Section 17 of Chapter 5 of the Code of Ordinances be amended as follows:

The owner, **or person in control**, of every animal shall be responsible for the removal of any excreta deposited by his **or her** animal on public walks, recreation areas, the public right-of-way, or private property.

Section VII. Effective Date

All of the modifications to this ordinance shall be effective from and after its date of passage.

Section VIII. Incorporation into the City of Kirksville Code of Ordinances

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Kirksville, Missouri as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

Councilmember McCord moved to adopt Bill No. 2008-10, Bill No. 2008-11 and Bill No. 2008-12 on second reading; seconded by Councilmember Rodgeron. The motion carried by the following vote: Mayor Rowe, aye; Council members: Mayer – aye; McCord – aye; Rodgeron – aye. Nays, none.

### **Council Comments**

City Manager Macomber explained that the City Council has to meet on or before the following Monday after the April 8 election to re-organize. She recommended that the Council meet on Monday, April 14 at 5:30 p.m., instead of the Tuesday night meeting

There was a consensus of the City Council to make this change.

**Adjournment**

There being no further business to come before the Council, Councilmember McCord moved to adjourn to an executive session regarding a Litigation Matter, RsMO 610.021(1) and a Personnel Matter RsMO 610.021(3); seconded by Councilmember Rodgerson. The motion carried by the following roll call vote: Mayor Rowe, aye; Council members: Mayer – aye; McCord – aye; Rodgerson – aye. Nays, none.

Mayor Rowe adjourned the meeting at 6:10 p.m.

Vickie Brumbaugh, CMC, MRCC  
City Clerk