
TAX COMPLIANCE AGREEMENT

Dated as of [_____] 1, 2020

Among

MISSOURI DEVELOPMENT FINANCE BOARD,

CITY OF INDEPENDENCE, MISSOURI,

And

**UMB BANK, N.A.,
as Trustee**

**[\$[PRINCIPAL AMOUNT]
Missouri Development Finance Board
Infrastructure Facilities Leasehold Refunding Revenue Bonds
(City of Independence, Missouri – Electric System Projects)
Series 2020A**

TAX COMPLIANCE AGREEMENT

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Exhibit A: Debt Service Schedule and Proof of Bond Yield

Exhibit B: IRS Form 8038-G

Attachment to Form-8038 G

Proof of Filing

Exhibit C: Final Written Allocation of Series 2010B Bonds; Project Description

Exhibit D: Sample Form of Annual Compliance Checklist

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TAX COMPLIANCE AGREEMENT

THIS TAX COMPLIANCE AGREEMENT (the “Tax Agreement”), entered into as of [_____] 1, 2020, among the **MISSOURI DEVELOPMENT FINANCE BOARD**, a body corporate and politic duly organized and existing under the laws of the State of Missouri (the “Board”), the **CITY OF INDEPENDENCE, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri (the “City”), and **UMB BANK, N.A.**, a Missouri banking corporation, as trustee (the “Trustee”).

RECITALS

1. This Tax Agreement is being executed and delivered in connection with the issuance by the Board of \$[PRINCIPAL AMOUNT] original principal amount of Infrastructure Facilities Leasehold Refunding Revenue Bonds (City of Independence, Missouri – Electric System Projects), Series 2020A (the “Bonds”), under a Bond Trust Indenture dated as of December 1, 2012, as amended and supplemented by a First Supplemental Trust Indenture dated as of [_____] 1, 2020 (as so amended and supplemented, the “Indenture”), between the Board and the Trustee, for the purpose of making a loan of the proceeds of such Bonds to the City under a Lease Purchase Agreement dated as of December 1, 2012, as amended and supplemented by a First Supplemental Lease Purchase Agreement dated as of [_____] 1, 2020 (as so amended and supplemented, the “Lease Purchase Agreement”), between the Board and the City, to provide funds for certain purposes as described in this Tax Agreement and in the Indenture and Lease Purchase Agreement.

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

3. The Board, the City and the Trustee are entering into this Tax Agreement in order to set forth certain representations, facts, expectations, terms and conditions relating to the use and investment of the Bond proceeds and of certain other related money, in order to establish and maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes, and to provide guidance for complying with the arbitrage rebate provisions of Code § 148(f).

4. The Board has adopted a Board Tax-Exempt Financing Compliance Policy and Procedure and the City has adopted a Tax-Exempt Financing Compliance Procedure, all for the purpose of setting out general procedures to monitor and comply with the federal income tax requirements set out in the Code and the Regulations. Pursuant to the Board’s Tax-Exempt Financing Compliance Policy and Procedure and the City’s Tax-Exempt Financing Compliance Procedure, the parties agree and understand that the City will have primary responsibility for most Post-Issuance Tax Requirements with respect to the Bonds, as described in this Tax Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Agreement, the Board and the Trustee represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

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

“Adjusted Gross Proceeds” means the Gross Proceeds of the Bonds reduced by amounts (1) in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund, (2) that as of the Issue Date are not expected to be Gross Proceeds, but which arise after the end of the applicable spending period, and (3) representing grant repayments or sale or Investment proceeds of any purpose Investment.

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

“Board Tax Compliance Procedure” means the Board’s Tax-Exempt Financing Compliance Policy and Procedure, dated March 20, 2012.

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

“Bond” or **“Bonds”** means any bond or bonds of the Series 2020A Bonds described in the recitals, authenticated and delivered under the Indenture.

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

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

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

“City” means the City of Independence, Missouri, a constitutional charter city and political subdivision of the State of Missouri, and its successors and assigns.

“City Tax Compliance Procedure” means City’s Tax-Exempt Financing Compliance Procedure dated as of March 26, 2012.

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

“Computation Date” means each date on which arbitrage rebate for the Bonds is computed. The City may treat any date as a Computation Date, subject to the following limits:

- (a) the first rebate installment payment must be made for a Computation Date not later than five years after the Issue Date;
- (b) each subsequent rebate installment payment must be made for a Computation Date not later than five years after the previous Computation Date for which an installment payment was made; and
- (c) the date the last Bond is discharged is the final Computation Date.

The City selects October 1, 2025, as the first Computation Date, but reserves the right to select a different date consistent with the Regulations.

“Debt Service Fund” means the Series 2020A Debt Service Account of the Debt Service Fund.

[****“Debt Service Reserve Fund”** means the Series 2020A Debt Service Reserve Account of the Debt Service Reserve Fund.**]

[****“Debt Service Reserve Requirement”** means, with respect to the Bonds, \$[_____].**]

“Final Written Allocation” means the expenditures of proceeds of the Series 2010B Bonds, as summarized on **Exhibit C**.

“Financed Facility” means any of the property financed or refinanced with the proceeds of the Bonds and the Series 2010B Bonds, as described on **Exhibit C**.

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

- (1) Debt service fund for Refunded Bonds.
- [**](2) Debt Service Reserve Fund.**]
- (3) Costs of Issuance Fund.
- (4) Debt Service Fund.
- (5) Rebate Fund (to the extent funded with sale proceeds or investment proceeds of the Bonds).

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

“Indenture” means the Bond Trust Indenture dated as of December 1, 2012, between the Board and Commerce Bank, as previous trustee, as amended and supplemented by the First Supplemental Trust Indenture dated as of [_____], as amended and supplemented by a First Supplemental Trust Indenture dated as of [_____] 1, 2020, as further amended and supplemented in accordance with the provisions thereof.

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

“IRS” means the United States Internal Revenue Service.

“Issue Date” means [_____, 2020].

“Lease Purchase Agreement” means the Lease Purchase Agreement dated as of December 1, 2012, as amended and supplemented by the First Supplemental Lease Purchase Agreement dated as of [_____] 1, 2020, as further amended and supplemented in accordance with the provisions thereof.

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

“Measurement Period” means, with respect to the property originally financed by the Series 2010B Bonds, the period beginning on the later of (a) the issue date of the Series 2010B Bonds or (b) the date the property was placed in service, and ending on the earlier of (1) the final maturity date of the Bonds or (2) the expected economic useful life of the property.

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

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

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

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

“Opinion of Bond Counsel” means the written opinion of Gilmore & Bell, P.C. or other nationally recognized firm of bond counsel to the effect that the action or proposed action or the failure to act or proposed failure to act for which the opinion is required will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

“Output Contract” has the meaning ascribed in Regulations § 1.141-7, which generally involves a contract with a Non-Qualified User that provides for the purchase of the output of the Financed Facility.

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

“Purchaser” means [____], the purchaser of the Bonds.

“Project” means all of the property being acquired, developed, constructed, renovated, and equipped by the City using Bond proceeds and other money contributed by the City, as described on Exhibit C.

“Qualified Use Agreement” means any of the following:

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

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

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

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

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

“Rebate Analyst” means Gilmore & Bell, P.C. or any successor Rebate Analyst selected pursuant to this Tax Agreement.

“Rebate Fund” means the Series 2020A Rebate Fund.

“Refunded Bonds” means all \$10,615,000 outstanding principal amount of the Series 2010B Bonds.

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

“Series 2010B Bonds” means the Board’s Infrastructure Facilities Leasehold Revenue Bonds (City of Independence, Missouri - Electric System Projects), Series 2010B.

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

“Tax-Exempt Bond File” means documents and records for the Bonds and the Series 2010B Bonds maintained by the Bond Compliance Officer pursuant to the Tax Compliance Procedure.

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

“Trustee” means UMB Bank, N.A., and its successor or successors and any other corporation or association which at any time may be substituted in its place at the time serving as Trustee under the Indenture.

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

ARTICLE II

GENERAL REPRESENTATIONS AND COVENANTS

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

- (a) *Organization and Authority.* The Board (1) is a body corporate and politic organized and existing under the laws of the State of Missouri, and (2) has lawful power and authority to issue the Bonds for the purposes set forth in the Indenture, to enter into, execute and deliver the Indenture, the Lease Purchase Agreement, the Bonds, and this Tax Agreement and to carry out its obligations under this Tax Agreement and under such documents, and (3) by all necessary action has been duly authorized to execute and deliver the Indenture, the Lease Purchase Agreement, the Bonds, and this Tax Agreement, acting by and through its duly authorized officials.
- (b) *Tax-Exempt Status of Bonds—General Representation and Covenants.* In order to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the Board (1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code; (2) will not use or invest, or permit the use or investment of, any Bond proceeds, other money held under the Indenture, or other funds of the Board, in a manner that would violate applicable provisions of the Code; and (3) will not use, or permit the use of, any portion of the Financed Facility in a manner that would violate applicable provisions of the Code.
- (c) *IRS Form 8038-G.* Attached to this Tax Agreement as **Exhibit B** is a copy of IRS Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) prepared by Bond Counsel based on information provided by the Board and the City that is to be filed

with the IRS in connection with the issuance of the Bonds as required by Code § 149(e). The Board does not know of any inaccuracies in the Form 8038 included as **Exhibit B**. The Board will execute IRS Form 8038-G in the form prepared by Bond Counsel for filing with the IRS. The Board will execute any other IRS Forms (such as IRS Form 8038T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate) in the future, based on the instructions of Bond Counsel.

- (d) *Registered Bonds.* The Indenture requires that all of the Bonds will be issued and held in registered form within the meaning of Code § 149(a).
- (e) *Single Issue.* The Bonds constitute a single “issue” under Regulations § 1.150-1(c). No other debt obligations of the Board (1) are being sold within 15 days of the sale of the Bonds, (2) are being sold under the same plan of financing as the Bonds, and (3) are expected to be paid from substantially the same source of funds as the Bonds (disregarding guarantees from unrelated parties, such as bond insurance).
- (f) *No Hedge Bonds.* Based on the representations of the City, the Board understands that at least 85% of the net sale proceeds (the sale proceeds less any sale proceeds invested in a reserve fund) of the Series 2010B Bonds were used to carry out the purpose of the Series 2010B Bonds within 3 years after the issue date thereof, and not more than 50% of the proceeds of the Series 2010B Bonds were invested in investments having a substantially guaranteed yield for 4 years or more.
- (g) *Bank Qualified Tax-Exempt Obligation.* The Bonds are **not** “qualified tax-exempt obligations” under Code § 265(b)(3).
- (h) *Board Reliance on Other Parties.* The expectations, representations and covenants of the Board concerning uses of Bond proceeds and certain other moneys described in this Tax Agreement and other matters are based in whole or in part upon covenants, representations and certifications of the City and other parties set forth in this Tax Agreement or exhibits to this Tax Agreement. Although the Board has made no independent investigation of the representation of other parties, the Board is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in this Tax Agreement or exhibits to this Tax Agreement.
- (i) *Compliance with Future Tax Requirements.* The Board understands that the Code and the Regulations may impose new or different restrictions and requirements on the Board in the future. The Board will comply with such future restrictions that are necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

Section 2.2. Representations and Covenants of the City. The City represents and covenants to the Board and the Trustee as follows:

- (a) *Organization and Authority.* The City (1) is a constitutional charter city and political subdivision duly organized and validly existing under the laws of the State of Missouri, (2) has lawful power and authority to enter into, execute and deliver the Lease Purchase Agreement and this Tax Agreement and to carry out its obligations under such agreements, and (3) by all necessary action has been duly authorized to execute and deliver the Lease Purchase Agreement and this Tax Agreement, acting by and through its duly authorized officials.

- (b) *Tax-Exempt Status of Bonds—General Representation and Covenants.* In order to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the City (1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code; (2) will not use or invest, or permit the use or investment of, any Bond proceeds, other money held under the Indenture, or other funds of the City, in a manner that would violate applicable provisions of the Code; and (3) will not use, or permit the use of, any portion of the Financed Facility in a manner that would violate applicable provisions of the Code.
- (c) *Governmental Obligations—Use of Proceeds.* Throughout the Measurement Period, (1) all of the Financed Facility has been and is expected to be owned by the City or another Qualified User, (2) no portion of the Financed Facility has been or is expected to be used in a Non-Qualified Use, and (3) the City will not permit any Non-Qualified Use of the Financed Facility without first obtaining an Opinion of Bond Counsel.
- (d) *Governmental Obligations—Private Security or Payment.* As of the Issue Date, the City expects that none of the principal and interest on the Bonds will be, and none of the principal of and interest on the Series 2010B Bonds has been, (under the terms of the Bonds or any underlying arrangement) directly or indirectly:
- (1) secured by (i) any interest in property used or to be used for a Non-Qualified Use, or (ii) any interest in payments in respect of such property; or
 - (2) derived from payments (whether or not such payments are made to the City) in respect of property, or borrowed money, used or to be used for a Non-Qualified Use.
- For purposes of the foregoing, taxes of general application, including payments in lieu of taxes, are not treated as private payments or as private security. The City will not permit any private security or payment with respect to the Bonds without first obtaining an Opinion of Bond Counsel.
- (e) *No Private Loan.* Not more than 5% of the Net Proceeds of the Bonds will be loaned directly or indirectly to any Non-Qualified User.
- (f) *Management Agreements.* As of the Issue Date, the City has not entered into any Management Agreements with Non-Qualified Users. During the Measurement Period, the City will not enter into or renew any Management Agreement with a Non-Qualified User without first obtaining an Opinion of Bond Counsel.
- (g) *Leases.* As of the Issue Date, the City has not entered into any leases with a Non-Qualified User relating to any portion of the Financed Facility. During the Measurement Period, the City will not enter into or renew any lease or similar agreement or arrangement with a Non-Qualified User relating to any portion of the Financed Facility, other than a Qualified Use Agreement, without first obtaining an Opinion of Bond Counsel.
- (h) *Output Contracts.* Except as otherwise described in this subsection (h), as of the Issue Date, the City has not entered into any Output Contracts with a Non-Qualified User. For purposes of this subsection (h), the City **[**had**]** **[**has**]** entered into the Western

Systems Power Pool Agreement and the Southwest Power Pool Agreement, neither of which ~~gave~~ ~~gives~~ rise to Non-Qualified Use by reason of § 1.141-7(f)(2), which generally permits agreements that provide for pooling of output.

During the Measurement Period, the City will not enter into any other Output Contract with a Non-Qualified User without first obtaining an Opinion of Bond Counsel.

- (i) *Limit on Maturity of Bonds.* A list of the assets included in the Financed Facility and a computation of the “average reasonably expected economic life” is attached to this Tax Agreement as **Exhibit C**. Based on this computation, the “average maturity” of the Bonds of [] years, as computed by Bond Counsel, does not exceed 120% of the average reasonably expected economic life of the Financed Facility.
- (j) *Compliance with Future Tax Requirements.* The City understands that the Code and the Regulations may impose new or different restrictions and requirements on the City in the future. The City will comply with such future restrictions that are necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.
- (k) *Single Issue; No Other Obligations of the City.* The Bonds constitute a single “issue” under Regulations § 1.150-1(c). No other debt obligations of the City (1) are being sold within 15 days of the sale of the Bonds, (2) are being sold under the same plan of financing as the Bonds, and (3) are expected to be paid from substantially the same source of funds as the Bonds (disregarding guarantees from unrelated parties, such as bond insurance).
- (l) *Registered Bonds.* All of the Bonds will be issued and held in registered form within the meaning of Code § 149(a).
- (m) *Bonds Not Federally Guaranteed.* The City will not take any action or permit any action to be taken which would cause any Bond to be “federally guaranteed” within the meaning of Code § 149(b).
- (n) *No Hedge Bonds.* At least 85% of the net sale proceeds of the Series 2010B Bonds were used to carry out the governmental purpose of the Series 2010B Bonds within three years after the issue date thereof, and not more than 50% of the proceeds of the Series 2010B Bonds were invested in Investments having a substantially guaranteed Yield for four years or more.
- (o) *Interest Rate Swap.* As of the Issue Date, the City has not entered into an interest rate swap agreement or any other similar arrangement designed to modify its interest rate risk with respect to the Bonds. The City will not enter into any such arrangement in the future without obtaining an Opinion of Bond Counsel.
- (p) *Guaranteed Investment Contract.* As of the Issue Date of the Bonds, the City does not expect to enter into a Guaranteed Investment Contract for any Gross Proceeds of the Bonds. The City will be responsible for complying with **Section 4.2(d)** hereof if it decides to enter into a Guaranteed Investment Contract at a later date.
- (q) *Reports to IRS; Form 8038-G.* The City will assist the Board in filing all appropriate returns, reports and attachments to income tax returns required by the Code, including without limitation Form 8038-G (Information Return for Tax-Exempt Governmental

Obligations). The information contained in Parts II through VII of IRS Form 8038-G attached as **Exhibit B** was provided to the Board and Bond Counsel by the City, and such information is true, complete and correct as of the Issue Date.

- (r) *Arbitrage Certifications.* The facts, estimates and expectations recited in **Article III** of this Tax Agreement, regarding the purpose of the Bonds, the investment and expenditure of Bond proceeds, the Financed Facility, the funds and accounts created in the Indenture, the yield on investments and the computation and payment of arbitrage rebate, are true and accurate as of the Issue Date; and the City believes that the estimates and expectations recited in such **Article III** are reasonable as of the Issue Date. The Board, the Trustee, Gilmore & Bell, P.C., Bond Counsel, and the Purchaser may rely on such statements and expectations. The City does not expect that the Bond proceeds will be used in a manner that would cause any Bond to be an “arbitrage bond” within the meaning of Code § 148; and to the best of the City’s knowledge and belief, there are no other facts, estimates or circumstances that would materially change such expectations.
- (s) *Bank Qualified Tax-Exempt Obligations.* The Bonds are **not** “qualified tax-exempt obligations” under Code § 265(b)(3).
- (t) *Expenditure of Bond Proceeds; Reimbursement.* The governing body of the City adopted a resolution on September 30, 2008, declaring the intent of the City to finance the Financed Facility with tax-exempt bonds and to reimburse the City for expenditures made for the Financed Facility prior to the issuance of those bonds, a copy of which is included in the transcript of proceedings for the Series 2010B Bonds. No proceeds of the Series 2010B Bonds were used to reimburse the City for an expenditure paid prior to the issue date thereof, unless except as otherwise permitted by Regulations § 1.150-2(f) (relating to *de minimis* amounts and preliminary expenditures), (1) the expenditure was paid not more than 60 days prior to the date the resolution referenced in this subsection (t) was adopted, (2) the reimbursement allocation was made not later than three years after the date the expenditure was paid, and (3) the reimbursement allocation was made not more than 18 months after the later of the date the expenditure was paid or the date Financed Facility was placed in service.

Section 2.3. Representations and Covenants of the Trustee. The Trustee represents and covenants to the Board and the City as follows:

- (a) The Trustee will comply with the provisions of this Tax Agreement that apply to it as Trustee and any written letter or opinion of Bond Counsel, specifically referencing the Bonds and received by the Trustee, that sets forth any action necessary to comply with any statute, regulation or ruling that may apply to it as Trustee and relating to reporting requirements or other requirements necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.
- (b) The Trustee, acting on behalf of the Board and the City, may from time to time cause a firm of attorneys, consultants or independent accountants or an Investment banking firm to provide the Trustee with such information as it may request in order to determine all matters relating to (a) the Yield on the Bonds as it relates to any data or conclusions necessary to verify that the Bonds are not “arbitrage bonds” within the meaning of Code § 148, and (b) compliance with arbitrage rebate requirements of Code § 148(f). The City will pay all costs and expenses incurred in connection with supplying the foregoing information.

- (c) The Trustee, acting on behalf of the Board and the City, will retain records related to the investment and expenditure of Gross Proceeds held in funds and accounts maintained by the Trustee and any records provided to the Trustee by the Board or the City related to the Post-Issuance Tax Requirements in accordance with **Section 4.2** of this Tax Agreement. The Trustee will retain these records until three years following the final maturity of (1) the Bonds or (2) any obligations issued to refund the Bonds; provided, however, if the Trustee is not retained to serve as trustee for any obligations issued to refund the Bonds, then the Trustee may satisfy its record retention duties under this subsection (c) by providing copies of all records in its possession related to the Bonds to the trustee for any such refunding obligations or another party designated by the Issuer.

Section 2.4. Survival of Representations and Covenants. All representations, covenants and certifications of the Board, the City and the Trustee contained in this Tax Agreement or in any certificate or other instrument delivered by the Board, the City or the Trustee under this Tax Agreement, will survive the execution and delivery of such documents and the issuance of the Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations. The foregoing covenants of this Section will remain in full force and effect notwithstanding the defeasance of the Bonds.

ARTICLE III

ARBITRAGE CERTIFICATIONS AND COVENANTS

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

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

Section 3.3. Purpose of Financing. The Bonds are being issued for the purpose of providing funds to refinance the Refunded Bonds to achieve interest cost savings and to provide for an orderly plan of finance.

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

- (1) Costs of Issuance Fund.
- (2) Debt Service Fund.
- [(3) Debt Service Reserve Fund. **]

- (4) Rebate Fund (to the extent funded with sale proceeds or investment proceeds of the Bonds).

Section 3.5. Amount and Use of Bond Proceeds .

- (a) *Amount of Bond Proceeds.* The total proceeds to be received by the Board from the sale of the Bonds will be \$[PRINCIPAL AMOUNT].00.
- (b) *Use of Bond Proceeds and Other Moneys.* The Bond proceeds and other moneys are expected to be allocated to expenditures as follows:

[**(1) \$[] of Bond proceeds will be deposited in the Debt Service Reserve Fund to satisfy the Debt Service Reserve Requirement for the Bonds.**]

- (2) \$[] of Bond proceeds will be deposited in the Costs of Issuance Fund and used to pay costs of issuance of the Bonds.

- (3) \$[] (consisting of \$[] of Bond proceeds, together with \$[2,524,312.36] from the debt service reserve fund for the Refunded Bonds) will be deposited with the trustee and paying agent for the Refunded Bonds and used to pay the principal of and interest on the Refunded Bonds.

Section 3.6. Multipurpose Issue. The Board is applying the arbitrage rules to separate financing purposes of the issue that have the same initial temporary period as if they constitute a single issue for purposes pursuant to Regulations § 1.148-9(h)(3)(i).

Section 3.7. No Advance Refunding. No proceeds of the Bonds will be used more than 90 days after the Issue Date to pay principal of or interest on any other debt obligation.

Section 3.8. Current Refunding.

(a) *Current Refunding.* Bond proceeds will be used to pay principal of and interest on the Refunded Bonds, with all proceeds used for such purpose not later than 90 days after the Issue Date.

(b) *No Transferred Proceeds.* As of the Issue Date, approximately \$[2,524,312.36] of unspent proceeds remains in the debt service reserve fund for the Refunded Bonds, which amount will be used, along with Bond proceeds, to pay the principal of and interest on the Refunded Bonds. Therefore, upon discharge and retirement of the Refunded Bonds, there will be no remaining unspent proceeds of the Refunded Bonds, and thus no “transferred proceeds” (within the meaning of Regulations § 1.148-9(b)) of the Bonds.

(c) *Prior Refundings.* The Bonds are being issued to refund the outstanding Series 2010B Bonds (that is, the Refunded Bonds), which were issued to (1) refinance the City’s then-outstanding Electric Utility Refunding Revenue Bonds, Series 1998, and (2) to finance new-money projects. Using the debt-service-savings allocation method in Regulations § 1.148-9(h)(4)(v)(B), the Board and the City allocated the Series 2010B Bonds between these two purposes, so that, as of the Issue Date, the Refunded Bonds are attributable to new-money projects, and none of the Refunded Bonds is attributable to refinancing the Series 1998 Bonds.

Section 3.9. Completion of the Financed Facility. The Financed Facility has previously been completed.

Section 3.10. Lease Purchase Agreement/Sinking Funds. The Board is loaning the Bond proceeds to the City under the Lease Purchase Agreement. The City is required under the Lease Purchase Agreement to make periodic payments to the Trustee in amounts sufficient to pay the principal of and interest on the Bonds. The Trustee will deposit such payments into the Debt Service Fund. Except for the Debt Service Fund [****and the Debt Service Reserve Fund****], neither the Board nor the City has established or expects to establish any sinking fund or other similar fund that is expected to be used to pay principal of or interest on the Bonds. The Debt Service Fund is used primarily to achieve a proper matching of revenues with principal and interest payments on the Bonds within each Bond Year, and the Board and the City expect that the Debt Service Fund will qualify as a Bona Fide Debt Service Fund.

Section 3.11. Reserve, Replacement and Pledged Funds.

(a) [****No****] *Debt Service Reserve Fund.* [****No reasonably required reserve or replacement fund has been or is expected to be established for the Bonds.****] [****The Indenture establishes a debt service reserve fund to be funded at the time of issuance of the Bonds in an amount equal to the Debt Service Reserve Requirement (\$[_____]). The amount to be held in the Debt Service Reserve Fund will not exceed the least of (1) 10% of the stated principal amount of the Bonds, (2) the maximum annual principal and interest requirements on the Bonds, or (3) 125% of the average annual principal and interest requirements on the Bonds, each determined as of the Issue Date. Any amounts in the Debt Service Reserve Fund in excess of the Debt Service Reserve Requirement will be transferred to the Debt Service Fund.****]

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

Section 3.12. Purpose Investment Yield. The Yield on the purpose investment loan from the Board to the City does not exceed the Yield on the Bonds by more than 1/8%, as required by Regulations §1.148-2(d)(2)(i).

Section 3.13. Issue Price and Yield on Bonds.

- (a) *Issue Price.* Based on the Purchaser's Receipt for Bonds and Closing Certificate, the Board and the City hereby elect to establish the issue prices of the Bonds pursuant to Regulations § 1.148-1(f)(2)(i) (relating to the so-called "private placement rule"). Therefore, the aggregate issue price of the Bonds for such purpose is \$[_____].
- (b) *Bond Yield.* Based on the aggregate issue price of the Bonds, the Yield on the Bonds is [_____]%, as computed by Bond Counsel and shown on **Exhibit A**. Neither the Board nor the City has entered into an interest rate swap agreement with respect to any portion of the proceeds of the Bonds.

Section 3.14. Miscellaneous Arbitrage Matters.

- (a) *No Abusive Arbitrage Device.* The Bonds are not and will not be part of a transaction or series of transactions that has the effect of (1) enabling the Board or the City to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (2) overburdening the tax-exempt bond market.
- (b) *No Over-Issuance.* The sale proceeds of the Bonds, together with expected Investment earnings thereon and other money contributed by the Board or the City, do not exceed the cost of the governmental purpose of the Bonds as described above.

Section 3.15. Conclusion. On the basis of the facts, estimates and circumstances set forth in this Tax Agreement, the Board does not expect that the Bond proceeds will be used in a manner that would cause any Bond to be an "arbitrage bond" within the meaning of Code § 148 and the Regulations.

ARTICLE IV

TAX COMPLIANCE POLICIES AND PROCEDURES

Section 4.1. General.

- (a) *Purpose.* The purpose of this **Article IV** is to set forth the policies and procedures governing compliance with the federal income tax requirements that apply after the Bonds are issued. The Board and the City recognize that interest on the Bonds will

remain excludable from gross income only if Post-Issuance Tax Requirements are satisfied after the Issue Date. The Board and the City further acknowledge that written evidence substantiating compliance with Post-Issuance Tax Requirements must be retained in order to permit the Bonds to be refinanced with tax-exempt obligations and support the position that interest on the Bonds is excludable from gross income for federal income tax purposes in the event of an audit of the Bonds by the IRS.

- (b) *Written Policies and Procedures of the Board and the City.* The Board intends for the Board Tax Compliance Procedure as supplemented by this Tax Agreement, to be its primary written policies and procedures related to Post-Issuance Tax Requirements for the Bonds and to supplement any other general formal policies and procedures related to tax compliance previously established. The City intends for the City Tax Compliance Procedure as supplemented by this Tax Agreement, to be its primary written policies and procedures related to Post-Issuance Tax Requirements for the Bonds and to supplement any other general formal policies and procedures related to tax compliance previously established. The provisions of this Tax Agreement are intended to be consistent with the City Tax Compliance Procedure. In the event of any inconsistency between the Board Tax Compliance Procedure or the City Tax Compliance Procedure and this Tax Agreement, the terms of this Tax Agreement will govern.
- (c) *City Responsible for Post-Issuance Tax Requirements.* The Board and the City acknowledge that the investment and expenditure of Bond proceeds are primarily within the control of the City, and that substantially all of the Bond proceeds are expected to finance property that will be owned and controlled by the City. For these reasons, the Board is relying on the City to carry out the Post-Issuance Tax Requirements as set forth in this Tax Agreement. The City hereby agrees to undertake these obligations.
- (d) *Bond Compliance Officer.* The Bond Compliance Officer will be responsible for working with the Board and other City officials, departments and administrators and for consulting with Bond Counsel, other legal counsel and outside experts to the extent necessary to comply with the Post-Issuance Tax Requirements. The Bond Compliance Officer is responsible for obtaining and delivering to the Board, the City and the Trustee any Opinion of Bond Counsel required under the provisions of this Tax Certificate.
- (e) *Cooperation of Board.* The Board will cooperate with the City regarding the Post-Issuance Tax Requirements and will take any action that is necessary to cause interest on the Bonds to remain excludable from gross income for federal income tax purposes, including, without limitation, executing IRS Form 8038-T in connection with the payment of arbitrage rebate and participating in any federal income tax audit of the Bonds or similar proceedings under a “voluntary compliance agreement program” (VCAP) procedure or “remedial action” procedure pursuant to Regulations § 1.141-12. Prior to taking any such action, the Board is entitled to receive an Opinion of Bond Counsel, addressed to the Board, the City and the Trustee that the action will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.
- (f) *Payment of Costs of Post-Issuance Tax Requirements.* The parties to this Tax Agreement understand and intend that all costs of the Post-Issuance Tax Requirements will be paid or reimbursed by the City. Neither the Board nor the Trustee is required to incur any cost in connection with any action taken related to the Post-Issuance Tax Requirements, and the Board and the Trustee will be entitled to recover from the City all legal and other fees and

expenses incurred in connection with compliance with this **Article IV** pursuant to the provisions of the Indenture.

Section 4.2. Procedures Regarding Record Keeping.

- (a) *Record Keeping.* The Bond Compliance Officer will maintain the Tax-Exempt Bond File for the Bonds in accordance with the Tax Compliance Procedure. Unless otherwise specifically instructed in an Opinion of Bond Counsel or to the extent otherwise provided in this Tax Agreement, the Bond Compliance Officer shall retain records related to Post-Issuance Tax Requirements until 3 years following the final maturity of the Bonds or any obligation issued to refund the Bonds. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22, which generally provides that an electronic storage system must (1) ensure an accurate and complete transfer of the hardcopy records which indexes, stores, preserves, retrieves and reproduces the electronic records, (2) include reasonable controls to ensure integrity, accuracy and reliability of the electronic storage system and to prevent unauthorized alteration or deterioration of electronic records, (3) exhibit a high degree of legibility and readability both electronically and in hardcopy, (4) provide support for other books and records of the City and (5) not be subject to any agreement that would limit the ability of the IRS to access and use the electronic storage system on the City's premises. If requested, the Bond Compliance Officer will provide the Board with a complete copy of the Tax-Exempt Bond File. The Tax-Exempt Bond File will include records relating to the Bonds, including with respect to the following matters:
 - (i) Documentation evidencing expenditure of Bond proceeds in sufficient detail to determine the date of the expenditure, the asset acquired or the purpose of the expenditure.
 - (ii) Documentation evidencing use of the Financed Facility by public and private persons (*e.g.*, copies of leases, Management Agreements, Output Contracts, etc.).
 - (iii) Documentation evidencing all sources of payment or security for the Bonds.
 - (iv) Documentation pertaining to any investment of Bond proceeds (including the purchase and sale of securities, SLGs subscriptions, actual Investment income received from the investment of proceeds, guaranteed Investment contracts, and (if required) rebate calculations).
- (b) *Accounting and Allocation of Bond Proceeds to Expenditures.* The Bond Compliance Officer will account for the investment and expenditure of Bond proceeds as part of the Tax-Exempt Bond File. The proceeds of the Series 2010B Bonds have been allocated to expenditures for the Project as shown on **Exhibit C**, which is expected to constitute the Final Written Allocation of the Series 2010B Bonds.
- (c) *Annual Compliance Checklist.* Attached as **Exhibit D** is a form of annual compliance checklist for the Bonds. The Bond Compliance Officer will prepare and complete an annual compliance checklist for the Bonds at least annually in accordance with the Board Tax Compliance Procedure. In the event the annual compliance checklist identifies a deficiency in compliance with the requirements of this Tax Agreement, the Bond Compliance Officer will consult with the Board and, in conjunction with the City, will take the actions identified in an Opinion of Bond Counsel or the Tax Compliance Procedure to correct any deficiency.

- (d) *Opinions of Bond Counsel.* The Bond Compliance Officer is responsible for obtaining and delivering to the Board and the Trustee any Opinion of Bond Counsel required under the provisions of this Tax Agreement, including any Opinion of Bond Counsel required by this Tax Agreement or the annual compliance checklist.

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

- (a) *Current Refunding.* Bond proceeds allocable to a current refunding of the Refunded Bonds may be invested at a Yield less than the Yield on the Bonds.
- (b) *Costs of Issuance Fund.* Bond proceeds deposited in the Costs of Issuance Fund and investment earnings on such proceeds may be invested without Yield restriction for 13 months after the Issue Date.
- (c) *Debt Service Fund.* To the extent that the Debt Service Fund qualifies as a Bona Fide Debt Service Fund, money in such account may be invested without Yield restriction for 13 months after the date of deposit. Earnings on such amounts may be invested without Yield restriction for one year after the date of receipt of such earnings.
- [**(d) *Debt Service Reserve Fund.* Money in the Debt Service Reserve Fund may be invested without Yield restriction up to the least of (1) 10% of the stated principal amount of the Bonds, (2) the maximum annual principal and interest requirements on the Bonds, or (3) 125% of the average annual principal and interest requirements on the Bonds, each determined as of the Issue Date.**]
- (e) *Minor Portion.* In addition to the amounts described above, Gross Proceeds not exceeding the Minor Portion may be invested without Yield restriction.

Section 4.4. Fair Market Value.

- (a) *General.* No Investment may be acquired with Gross Proceeds for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with § 1.148-5 of the Regulations.
- (b) *Established Securities Market.* Except for Investments purchased for a Yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value must be established using one of the paragraphs below. The fair market value of Investments purchased for a Yield-restricted defeasance escrow must be determined in a bona fide solicitation for bids that complies with § 1.148-5 of the Regulations.
- (c) *Certificates of Deposit.* The purchase price of a certificate of deposit (a "CD") is treated as its fair market value on the purchase date if (1) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (2) the Yield on the CD

is not less than the Yield on reasonably comparable direct obligations of the United States, and (3) the Yield is not less than the highest Yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.

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

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

- (A) The bid specifications are in writing and are timely forwarded to potential providers, or are made available on an internet website or other similar electronic media that is regularly used to post bid specifications to potential bidders. A writing includes a hard copy, a fax, or an electronic e-mail copy.
- (B) The bid specifications include all “material” terms of the bid. A term is material if it may directly or indirectly affect the Yield or the cost of the Guaranteed Investment Contract.
- (C) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (i) that the potential provider did not consult with any other potential provider about its bid, (ii) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Board, the City, the Trustee or any other person (whether or not in connection with the bond issue), and (iii) that the bid is not being submitted solely as a courtesy to the Board, the City, the Trustee or any other person, for purposes of satisfying the requirements of the Regulations.
- (D) The terms of the bid specifications are “commercially reasonable.” A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the Yield of the Guaranteed Investment Contract.
- (E) The terms of the solicitation take into account the City’s reasonably expected deposit and draw-down schedule for the amounts to be invested.
- (F) All potential providers have an equal opportunity to bid. If the bidding process affords any opportunity for a potential provider to review other bids before providing a bid, then providers have an equal opportunity to bid only if all potential providers have an equal opportunity to review other bids. Thus, no potential provider may be given an opportunity to review other bids that is not equally given to all potential providers (that is no exclusive “last look”).
- (G) At least three “reasonably competitive providers” are solicited for bids. A reasonably competitive provider is a provider that has an established

industry reputation as a competitive provider of the type of Investments being purchased.

- (2) Bids Received. The bids received must meet all of the following requirements:
 - (A) At least three bids are received from providers that were solicited as described above and that do not have a “material financial interest” in the issue. For this purpose, (i) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the Issue Date of the issue, (ii) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue, and (iii) a provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.
 - (B) At least one of the three bids received is from a reasonably competitive provider, as defined above.
 - (C) If an agent or broker is used to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.
- (3) Winning Bid. The winning bid is the highest Yielding bona fide bid (determined net of any broker’s fees).
- (4) Fees Paid. The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.
- (5) Records. The City and the Trustee retains the following records with the bond documents until three years after the last outstanding Bond is redeemed:
 - (A) A copy of the Guaranteed Investment Contract.
 - (B) The receipt or other record of the amount actually paid for the Guaranteed Investment Contract, including a record of any administrative costs paid by the Board or Trustee, and the certification as to fees paid, described in paragraph (d)(4) above.
 - (C) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.
 - (D) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.
- (e) *Other Investments.* If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

- (1) at least three bids on the Investment must be received from persons with no financial interest in the Bonds (*e.g.*, as underwriters or brokers); and
- (2) the Yield on the Investment must be equal to or greater than the Yield offered under the highest bid.

Section 4.5. Certain Gross Proceeds Exempt from the Rebate Requirement.

- (a) *General.* A portion of the Gross Proceeds of the Bonds may be exempt from rebate pursuant to one or more of the following exceptions. The exceptions typically will not apply with respect to all Gross Proceeds of the Bonds and will not otherwise affect the application of the investment limitations described in **Section 4.3**. Unless specifically noted, the obligation to compute, and if necessary, to pay rebate as set forth in **Section 4.6** applies even if a portion of the Gross Proceeds of the Bonds is exempt from the rebate requirement. To the extent all or a portion of the Bonds is exempt from the rebate requirement, the Rebate Analyst may account for such fact in connection with its preparation of a rebate report described in **Section 4.6**. The Board may defer the final rebate Computation Date and the payment of rebate for the Bonds to the extent permitted by Regulations § 1.148-7(b)(1) and § 1.148-3(e)(2) but only in accordance with specific written instructions provided by the Rebate Analyst.
- (b) *Applicable Spending Exceptions.* The following optional rebate spending exceptions can apply to the Bonds: 6-month Exception (Code § 148(f)(4)(B) and Regulations § 1.148-7(c)).
- (c) *Special Elections Made with Respect to Spending Exception Elections.* No special elections are being made in connection with the application of the spending exceptions.
- (d) *Bona Fide Debt Service Fund.* To the extent that the Debt Service Fund qualifies as a Bona Fide Debt Service Fund, Investment earnings in the account cannot be taken into account in computing arbitrage rebate.
- (e) *Documenting Application of Spending Exception.* At any time prior to the first Computation Date, the City may engage the Rebate Analyst to determine whether one or more spending exceptions has been satisfied, and the extent to which the City must continue to comply with Section 4.6.
- (f) *General Requirements for Spending Exception.* The following general requirements apply in determining whether a spending exception is met.
 - (1) Using Adjusted Gross Proceeds to pay principal of any Bonds is not taken into account as an expenditure for purposes of meeting any of the spending tests.
 - (2) The six-month spending exception generally is met if all Adjusted Gross Proceeds are spent within six months following the Issue Date. The test may still be satisfied even if up to 5% of the sale proceeds remain at the end of the initial six-month period, so long as this amount is spent within one year of the Issue Date.

Section 4.6. Computation and Payment of Arbitrage Rebate.

- (a) *Rebate Fund.* The Trustee will keep the Rebate Fund separate from all other funds and will administer the Rebate Fund under this Tax Agreement. Any Investment earnings derived from the Rebate Fund will be credited to the Rebate Fund, and any Investment loss will be charged to the Rebate Fund.
- (b) *Computation of Rebate Amount.* The Trustee will provide the Rebate Analyst Investment reports relating to each fund held by the Trustee that contains Gross Proceeds of the Bonds at such times as reports are provided to the Board or the City, and not later than ten days following each Computation Date. The City will provide the Rebate Analyst with copies of Investment reports for any funds containing Gross Proceeds that are held by a party other than the Trustee annually as of the end of each Bond Year and not later than ten days following each Computation Date. Each Investment report provided to the Rebate Analyst will contain a record of each Investment, including (1) purchase date, (2) purchase price, (3) information establishing the fair market value on the date such Investment was allocated to the Bonds, (4) any accrued interest paid, (5) face amount, (6) coupon rate, (7) frequency of interest payments, (8) disposition price, (9) any accrued interest received, and (10) disposition date. Such records may be supplied in electronic form. The Rebate Analyst will compute rebate following each Computation Date and deliver a written report to the Trustee, the Board and the City together with an opinion or certificate of the Rebate Analyst stating that arbitrage rebate was determined in accordance with the Regulations. Each report and opinion will be provided not later than 45 days following the Computation Date to which it relates. In performing its duties, the Rebate Analyst may rely, in its discretion, on the correctness of financial analysis reports prepared by other professionals. If the sum of the amount on deposit in the Rebate Fund and the value of prior rebate payments is less than the arbitrage rebate due, the City will, within 55 days after such Computation Date, pay to the Trustee the amount of the deficiency for deposit into the Rebate Fund. If the sum of the amount on deposit in the Rebate Fund and the value of prior rebate payments is greater than the Rebate Amount, the Trustee will transfer such surplus in the Rebate Fund to the Debt Service Fund. After the final Computation Date or at any other time if the Rebate Analyst has advised the Trustee, any money left in the Rebate Fund will be paid to the City and may be used for any purpose not prohibited by law.
- (c) *Rebate Payments.* Within 60 days after each Computation Date, the Trustee must pay (but solely from money in the Rebate Fund or provided by the City) to the United States the rebate amount then due, determined in accordance with the Regulations. Each payment must be (1) accompanied by IRS Form 8038-T and such other forms, documents or certificates as may be required by the Regulations, and (2) mailed or delivered to the IRS at the address shown below, or to such other location as the IRS may direct:

Internal Revenue Service Center
Ogden, UT 84201

Section 4.7. Successor Rebate Analyst. If the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason, or if the City or the Board desires that a different firm act as the Rebate Analyst, then the City by an instrument or concurrent instruments in writing delivered to the firm then serving as the Rebate Analyst and any other party to this Tax Certificate, will engage a successor Rebate Analyst. In each case the successor Rebate Analyst must be a firm of nationally recognized bond counsel or a firm of independent certified public accountants and such firm must

expressly agree to undertake the responsibilities assigned to the Rebate Analyst hereunder. In the event the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason and the City fails to appoint a qualified successor Rebate Analyst within thirty (30) days following notice of such resignation then the Trustee will appoint a firm to act as the successor Rebate Analyst.

Section 4.8. Rebate Report Records. The Trustee and the City will retain copies of each arbitrage rebate report and opinion until three years after the final Computation Date.

Section 4.9. Filing Requirements. The Trustee, the Board and the City will file or cause to be filed with the Internal Revenue Service such reports or other documents as are required by the Code in accordance with an Opinion of Bond Counsel.

Section 4.10. Survival after Defeasance. Notwithstanding anything in the Indenture to the contrary, the obligation to pay arbitrage rebate to the United States will survive the payment or defeasance of the Bonds.

ARTICLE V

MISCELLANEOUS PROVISIONS

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

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

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

Section 5.4. Reliance. In delivering this Tax Agreement, the Board, the City and the Trustee are making only those certifications, representations and agreements as are specifically attributed to each in this Tax Agreement. None of the Board, the City or the Trustee is aware of any facts or circumstances which would cause it to question the accuracy of the facts, circumstances, estimates or expectations of any other party providing certifications as part of this Tax Agreement and, to the best of their knowledge, those facts, circumstances, estimates and expectations are reasonable. The parties to this Tax Agreement understand that their certifications will be relied upon by the law firm of Gilmore & Bell, P.C., in

rendering its opinion as to the validity of the Bonds and the exclusion from federal gross income of the interest on the Bonds.

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

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

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

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

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

[Remainder of page intentionally blank.]

The parties to this Tax Agreement have caused this Tax Compliance Agreement to be duly executed by their duly authorized officers as of the Issue Date of the Bonds.

MISSOURI DEVELOPMENT FINANCE BOARD

By: _____
Title: Executive Director

CITY OF INDEPENDENCE, MISSOURI

By: _____
City Manager

UMB BANK, N.A., as Trustee

By:_____

Name:

Title:

EXHIBIT A

DEBT SERVICE SCHEDULE AND PROOF OF BOND YIELD

EXHIBIT B

IRS FORM 8038-G

ATTACHMENT TO IRS FORM 8038-G:

**\$(PRINCIPAL AMOUNT)
Missouri Development Finance Board
Infrastructure Facilities Leasehold Refunding Revenue Bonds
(City of Independence, Missouri – Electric System Projects)
Series 2020A**

Issuer Name: Missouri Development Finance Board
Issuer EIN: 43-1387649

PART II: Type of Issue

Line 11-18 Users of Bond Proceeds:

Form 8038-G Line Number	User Name	Employer Identification Number	Governmental or Nongovernmental Entity	Summary of Use
17	City of Independence, Missouri	44-6000190	Governmental	Owner and Operator of the Electric System

PROOF OF FILING IRS FORM 8038-G:

EXHIBIT C

FINAL WRITTEN ALLOCATION OF SERIES 2010B BONDS; PROJECT DESCRIPTION

EXHIBIT D

SAMPLE FORM OF ANNUAL COMPLIANCE CHECKLIST

Part I *(Complete Prior to Giving to Reporting Party)*

Project description ("Project"):	_____
Aggregate cost of Project:	_____
Name of tax-exempt obligations ("Bonds") financing Project:	\$(PRINCIPAL AMOUNT) Missouri Development Finance Board Infrastructure Facilities Leasehold Refunding Revenue Bonds (City of Independence, Missouri – Electric System Projects) Series 2020A
Percentage of Project financed by Bonds:	_____
Issue Date of Bonds:	[_____, ____], 2020
Placed in service date of Project:	_____
End of measurement period:	_____
Name of person completing checklist:	_____
Title:	_____
Email address:	_____
Telephone number:	_____
Period covered by request ("Annual Period"):	January 1, 20____ to December 31, 20____

You have been identified as the person who is primarily responsible for the management and day-to-day operation of the Project identified above. We have determined that all or a portion of the Project was financed with tax-exempt bonds. Because the Project was financed with tax-exempt bonds there are a number of rules restricting how the Project can be used. Generally, these rules limit the use of the Project by entities other than another governmental unit.

If you have any questions please contact Gina Riekhof at (816) 221-1000.

Part II (Completed by Reporting Party)

Item	Question	Response
1 Ownership	Was the Project owned by the City during the entire Annual Period?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If No: Was the Project (or any portion of the Project) sold or otherwise disposed of solely because it was determined that the property was inadequate, obsolete or worn out?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If No: What is the legal name of the New Owner?	
	Date New Owner acquired the Project:	
	Is the New Owner a state or local government (a “Qualified User”)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure

2 Leases	During the Annual Period, was any part of the Project leased at any time pursuant to an agreement for more than 50 days by another nonaffiliated corporation, association, firm, or other entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If Yes: What is the legal name of the Tenant?	
	Is the Tenant a Qualified User?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure
	Attach a copy of the lease if not previously provided in a prior report and Opinion of Counsel.	
	List approximate percentage of Project leased by Tenant (<i>e.g.</i> , 30% of total square footage).	

3 Management or Service Agreements	During the Annual Period, has the management of all or any part of the operations of the Project been assumed by or transferred to another entity?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If Yes: Attach a copy of the agreement(s) and Opinion of Counsel.	

4 Output Contracts	During the Annual Period, has the City entered into any “Non-Qualified Output Contracts” (that is, any agreement having a term that is greater than 3 years for the sale of output of the facility, any agreement for the sale of more than 1% of the output of the facility)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If Yes: Attach a copy of the agreement(s) and Opinion of Counsel.	

5 Other	Was any other agreement entered into with an individual or entity (other than a Qualified User) that grants special legal rights to the Project?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If Yes: Attach a copy of the agreement(s).	
6 Arbitrage & Rebate	Have all rebate and yield reduction payment calculations mandated in the Tax Compliance Agreement been prepared for the Annual Period?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If No, contact Rebate Analyst and incorporate report or include description of resolution in the Tax-Exempt Bond File.	

Signature, Name and Title of Person Completing Questionnaire:

Printed Name:

Title:

Date Completed: