



RE: TAX COMPLIANCE PROCEDURE FOR FINANCIAL OBLIGATIONS

Background:

Since the last time the City issued bonds, the IRS has increased its requirements for compliance with federal tax laws relating to tax-advantaged governmental obligations, shifting the burden of proof for compliance and regulations to the issuers of governmental obligations.

Analysis:

With the issuance of the Special Obligation bonds for the purchase of the RDE water system, it was brought to our attention that we did not have a tax compliance policy in place. Our bond counsel has advised us to adopt such a policy and procedure to address the storage, handling and compliance of tax-exempt issuances.

Recommendation:

In order to comply with IRS regulations, and since the City will issue tax-exempt bonds now and, in the future, staff recommends adoption of this policy.

MEMO SUBMITTED BY:

Jennifer Evans | Director of Finance

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RESOLUTION NO. #2022-104

A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA ADOPTING A TAX COMPLIANCE PROCEDURE FOR FINANCIAL OBLIGATIONS.

WHEREAS the City from time-to-time issues obligations to finance improvements for the City; and

WHEREAS the Internal Revenue Service (“IRS”) has increased its requirements for compliance with federal tax laws and regulations for tax-advantaged governmental obligations, has expanded its enforcement of such federal tax laws, and regulations and has shifted the burden of proof for compliance with such laws and regulations to the issuers of governmental obligations; and

WHEREAS the City Council deems it to be necessary and in the best interests of the City to adopt policies and procedures for its financial obligations to evidence compliance with IRS laws and regulations.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:

SECTION 1: It is hereby found to be necessary and in the best interests of the City to adopt the “Tax Compliance Procedure,” attached hereto as “Resolution Exhibit A”, to be dated as of the date of this Resolution, for financial obligations issued by the City. Said Procedure shall be maintained in the Office of the City Clerk for public inspection.

SECTION 2: The Tax Compliance Procedure shall be amended and revised as may be necessary to comply with IRS laws and regulations relating to financial obligations of the City.

SECTION 3: This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

ADOPTED BY THE COUNCIL THIS 11th DAY OF October 2022.

ATTEST:

PRESIDING OFFICER

CITY CLERK

RESOLUTION NO. #2022-104

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APPROVED BY THE MAYOR THIS _____ DAY OF _____ 2022.

ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

RESOLUTION EXHIBIT A

**CITY OF NIXA, MISSOURI
TAX COMPLIANCE PROCEDURE
DATED AS OF OCTOBER __, 2022**

TAX COMPLIANCE PROCEDURE

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TAX COMPLIANCE PROCEDURE

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. Capitalized words and terms used in this Compliance Procedure have the following meanings:

“Annual Compliance Checklist” means a questionnaire and/or checklist described in **Section 6.1** hereof that is completed each year for the Tax-Advantaged Bonds.

“Bond Compliance Officer” means the Issuer’s Finance Director or, if the position of Finance Director is vacant, the person filling the responsibilities of the Finance Director for the Issuer.

“Bonds” means Tax-Advantaged Bonds.

“Bond Counsel” means a law firm selected by the Issuer to provide a legal opinion regarding the tax status of interest on the Tax-Advantaged Bonds as of the issue date or the law firm selected to advise the Issuer on matters referenced in this Compliance Procedure.

“Bond Restricted Funds” means the funds, accounts, and investments that are subject to arbitrage rebate and/or yield restriction rules that have been identified in the Tax Compliance Agreement for the Tax-Advantaged Bonds.

“Bond Transcript” means the “transcript of proceedings” or other similarly titled set of transaction documents assembled by Bond Counsel following the issuance of the Tax-Advantaged Bonds.

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

“Compliance Procedure” means this Tax Compliance Procedure.

“Cost” or **“Costs”** means all costs and expenses paid for the acquisition, design, construction, equipping or improvement of a Project Facility or costs of issuing Tax-Advantaged Bonds for a Project Facility.

“Final Written Allocation” means the Final Written Allocation of Tax-Advantaged Bond proceeds prepared pursuant to **Section 5.4** of this Compliance Procedure.

“Financed Assets” means that part of a Project Facility treated as financed with Tax-Advantaged Bond proceeds as reflected in a Final Written Allocation or, if no Final Written Allocation was prepared, the accounting records of the Issuer and the Tax Compliance Agreement for the Tax-Advantaged Bonds.

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

“Intent Resolution” means a resolution of the Issuer stating (1) the intent of the Issuer to finance all or a portion of the Project Facility, (2) the expected maximum size of the financing

and (3) the intent of the Issuer to reimburse Costs of the Project Facility paid by the Issuer from proceeds of the Tax-Advantaged Bonds.

“**IRS**” means the Internal Revenue Service.

“**Issuer**” means the City of Nixa, Missouri.

“**Placed In Service**” means that date (as determined by the Bond Compliance Officer) when the Project Facility is substantially complete and in operation at substantially its design level.

“**Project Facility**” means all tangible or intangible property financed in whole or in part with Tax-Advantaged Bonds that are (1) functionally related or integrated in use, (2) located on the same physical site or proximate sites, and (3) expected to be Placed In Service within a one-year period of each other.

“**Rebate Analyst**” means the rebate analyst for the Tax-Advantaged Bonds selected pursuant to the Tax Compliance Agreement.

“**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 tax-exempt or tax-advantaged obligations.

“**Tax Compliance Agreement**” means the Federal Tax Certificate, Tax Compliance Agreement, Arbitrage Agreement, or other written certification or agreement of the Issuer setting out representations and covenants for satisfying the post-issuance tax compliance requirements for the Tax-Advantaged Bonds.

“**Tax-Advantaged Bonds**” means any bond, note, installment sale agreement, lease or certificate intended to be a debt obligation of the Issuer or another political subdivision or government instrumentality, the proceeds of which are to be loaned or otherwise made available to the Issuer, and the interest on which is excludable from gross income for federal income tax purposes or is subject to other advantages, requirements or limitations of the Code and Regulations or any other United States laws and regulations relating to taxation thereof.

“**Tax-Advantaged Bond File**” means documents and records which may consist of paper and electronic medium, maintained for the Tax-Advantaged Bonds. Each Tax-Advantaged Bond File will include the following information if applicable:

- (a) Intent Resolution.
- (b) Bond Transcript.
- (c) Final Written Allocation and/or all available accounting records related to the Project Facility showing expenditures allocated to the proceeds of the Tax-Advantaged Bonds and expenditures (if any) allocated to other sources of funds.
- (d) All rebate and yield reduction payment calculations performed by the Rebate Analyst and all investment records provided to the Rebate Analyst for purposes of preparing the calculations.
- (e) Forms 8038-T together with proof of filing and payment of rebate.
- (f) Investment agreement bid documents (unless included in the Bond Transcript) including:

- (1) bid solicitation, bid responses, certificate of broker;
 - (2) written summary of reasons for deviations from the terms of the solicitation that are incorporated into the investment agreement; and
 - (3) copies of the investment agreement and any amendments.
- (g) Any item required to be maintained by the terms of the Tax Compliance Agreement involving the use of the Project Facility or expenditures related to tax compliance for the Tax-Advantaged Bonds.
 - (h) Any opinion of Bond Counsel regarding the Tax-Advantaged Bonds not included in the Bond Transcript.
 - (i) Amendments, modifications or substitute agreements to any agreement contained in the Bond Transcript.
 - (j) Any correspondence with the IRS relating to the Tax-Advantaged Bonds including all correspondence relating to an audit by the IRS of the Tax-Advantaged Bonds or any proceedings under the Tax-Advantaged Bonds Voluntary Closing Agreement Program (VCAP).
 - (k) Any available questionnaires or correspondence substantiating the use of the Project Facility in accordance with the terms of the Tax Compliance Agreement for the Tax-Advantaged Bonds.
 - (l) For refunding bond issues, the Tax-Advantaged Bond File for the refunded Tax-Advantaged Bonds.

ARTICLE II

PURPOSE AND SCOPE

Section 2.1. Purpose of Compliance Procedure.

(a) Issuer's Use of Tax-Advantaged Bonds. The Issuer uses Tax-Advantaged Bonds to fund Costs of a Project Facility. The Issuer understands that in exchange for the right to issue Tax-Advantaged Bonds at favorable interest rates and terms, the Code and Regulations impose ongoing requirements related to the proceeds of the Tax-Advantaged Bonds and the Project Facility financed by the Tax-Advantaged Bonds. These requirements focus on the investment, use and expenditure of proceeds of the Tax-Advantaged Bonds and related funds as well as restrictions on the use of the Project Facility.

(b) IRS Recommends Separate Written Procedures. The Issuer recognizes that the IRS has stated that all issuers of Tax-Advantaged Bonds should have separate written procedures regarding ongoing compliance with the federal tax requirements for Tax-Advantaged Bonds.

(c) Issuer Commitment. The Issuer is committed to full compliance with the tax law requirements applicable to its outstanding and future tax-exempt and taxable financings. This Compliance Procedure is adopted by the Governing Body to improve and promote tax law compliance and documentation.

Section 2.2. Scope of Compliance Procedure; Conflicts. This Compliance Procedure applies to all Tax-Advantaged Bonds currently outstanding and all Tax-Advantaged Bonds issued in the future. If the provisions of this Compliance Procedure conflict with a Tax Compliance Agreement or any other specific written instructions of Bond Counsel, the terms of the Tax Compliance Agreement or specific written instructions of Bond Counsel will supersede

and govern in lieu of this Compliance Procedure. Any exception to this Compliance Procedure required by Bond Counsel as part of a future issue of Tax-Advantaged Bonds will be incorporated in the Tax Compliance Agreement for the future issue. Any requirements imposed on the Issuer in the Tax Compliance Agreement, will be noted by the Bond Compliance Officer and incorporated into the Annual Compliance Checklist.

Section 2.3. Amendments and Publication of Compliance Procedure. This Compliance Procedure may be amended from time-to-time by the Governing Body. Copies of this Compliance Procedure and any amendments will be included in the permanent records of the Issuer.

ARTICLE III

BOND COMPLIANCE OFFICER; TRAINING

Section 3.1. Bond Compliance Officer Duties. The Bond Compliance Officer is responsible for implementing this Compliance Procedure. The Bond Compliance Officer will work with other employees that use the Project Facility to assist in implementing this Compliance Procedure. The Bond Compliance Officer will consult with Bond Counsel, legal counsel to the Issuer, accountants, tax return preparers and other outside consultants to the extent necessary to carry out the purposes of this Compliance Procedure.

Section 3.2. Training.

(a) Training Programs. When appropriate, the Bond Compliance Officer and/or other employees of the Issuer under the direction of the Bond Compliance Officer will attend training programs offered by the IRS or other industry professionals regarding Tax-Advantaged Bonds that are relevant to the Issuer.

(b) Change in Bond Compliance Officer. At the time the individual acting as the Bond Compliance Officer passes the responsibilities for carrying out the provisions of this Compliance Procedure to another individual, the outgoing Bond Compliance Officer is responsible for training the incoming individual acting as Bond Compliance Officer to ensure the Issuer's continued compliance with the provisions of this Compliance Procedure and all Tax Compliance Agreements for any outstanding Tax-Advantaged Bonds.

ARTICLE IV

TAX-ADVANTAGED BONDS CURRENTLY AUTHORIZED AND OUTSTANDING

Section 4.1. Tax-Advantaged Bonds Covered by Article IV Procedures. This Article IV applies to all Tax-Advantaged Bonds authorized or issued on or prior to the date of this Compliance Procedure that are currently authorized or outstanding.

Section 4.2. Tax-Advantaged Bond File. As soon as practical, the Bond Compliance Officer will attempt to assemble as much of the Tax-Advantaged Bond File as is available for the Tax-Advantaged Bonds.

Section 4.3. Annual Compliance Checklists. As soon as practical following the adoption of this Compliance Procedure, the Bond Compliance Officer will work with Bond Counsel and/or legal counsel to the Issuer and cause Annual Compliance Checklists to be completed for all outstanding Tax-Advantaged Bonds and will follow the procedures specified in Article VI to complete the Annual Compliance Checklists and thereafter include each completed Annual Compliance Checklist in the Tax-Advantaged Bond File.

Section 4.4. Correcting Prior Deficiencies in Compliance. In the event the Bond Compliance Officer determines any deficiency in compliance with a Tax Compliance Agreement for an outstanding Tax-Advantaged Bond, the Bond Compliance Officer will consult with Bond Counsel and, as necessary, follow the procedures described in the Regulations or the Tax-Advantaged Bonds Voluntary Closing Agreement Program (VCAP) to remediate the noncompliance. If remediation of the noncompliance requires the Issuer to submit a request under VCAP, the Bond Compliance Officer will undertake this step only after reporting the violation to the Governing Body and obtaining its approval.

ARTICLE V

COMPLIANCE PROCEDURE FOR NEW TAX-ADVANTAGED BOND ISSUES

Section 5.1. Application. This Article V applies to Tax-Advantaged Bonds issued on or after the date of this Compliance Procedure.

Section 5.2. Prior to Issuance of Tax-Advantaged Bonds.

(a) Intent Resolution. The Governing Body will authorize and approve the issuance of Tax-Advantaged Bonds. Prior to or as a part of the authorizing resolution or ordinance, the Governing Body may adopt an Intent Resolution.

(b) Directions to Bond Counsel. The Bond Compliance Officer will provide a copy of this Compliance Procedure to Bond Counsel with directions for Bond Counsel to structure the documentation and procedural steps taken prior to issuing the Tax-Advantaged Bonds so that they conform to the requirements of this Compliance Procedure, except to the extent Bond Counsel determines that different procedures are required. The Bond Compliance Officer will consult with Bond Counsel so that appropriate provisions are made to fund or reimburse the Issuer's costs and expenses incurred to implement this Compliance Procedure.

(c) Tax Compliance Agreement. For each issuance of Tax-Advantaged Bonds, a Tax Compliance Agreement will be signed by the Bond Compliance Officer. The Tax Compliance Agreement will (1) describe the Project Facility and the anticipated Financed Assets, (2) identify all Bond Restricted Funds and provide for arbitrage and rebate compliance, (3) for new money financings, require a Final Written Allocation, and (4) contain a form of the Annual Compliance Checklist for the Tax-Advantaged Bonds. The Bond Compliance Officer will confer with Bond Counsel and the Issuer's counsel regarding the meaning and scope of each representation and covenant contained in the Tax Compliance Agreement.

(d) Preliminary Cost Allocations. For each issuance of Tax-Advantaged Bonds, the Bond Compliance Officer in consultation with Bond Counsel, will prepare a preliminary cost allocation plan for the Project Facility. The preliminary cost allocation plan will identify the assets and expected costs for the Project Facility, and when necessary, will break-out the

portions of Costs that are expected to be financed with proceeds of the Tax-Advantaged Bonds (the “Financed Assets”) and the portions, if any, expected to be financed from other sources.

(e) Tax Review with Bond Counsel. Prior to the sale of Tax-Advantaged Bonds, the Bond Compliance Officer and Bond Counsel will review this Compliance Procedure together with the draft Tax Compliance Agreement to ensure that any tax compliance issues in the new financing are adequately addressed by this Compliance Procedure and/or the Tax Compliance Agreement. If Bond Counsel determines that this Compliance Procedure conflicts with the Tax Compliance Agreement, or must be supplemented to account for special issues or requirements for the Tax-Advantaged Bonds, the Bond Compliance Officer will ask Bond Counsel to include the written modifications or additions in the final Tax Compliance Agreement. The Bond Compliance Officer will request Bond Counsel to prepare a form of Annual Compliance Checklist for use in monitoring the ongoing compliance requirements for the Tax-Advantaged Bonds.

Section 5.3. Accounting and Recordkeeping.

(a) Accounting for New Money Projects. The Bond Compliance Officer will be responsible for accounting for the investment and allocation of proceeds of the Tax-Advantaged Bonds. The Bond Compliance Officer will establish separate accounts or subaccounts to record expenditures for Costs of the Project Facility. Where appropriate, the Bond Compliance Officer may use accounts established as part of the Issuer’s financial records for this purpose. In recording Costs for the Project Facility, the Bond Compliance Officer will ensure that the accounting system will include the following information: (1) identity of person or business paid, along with any other available narrative description of the purpose for the payment, (2) date of payment, (3) amount paid, and (4) invoice number or other identifying reference.

(b) Accounting for Refunded Bonds and Related Refunded Bond Accounts. For Tax-Advantaged Bonds that are issued to refund prior Tax-Advantaged Bonds, the Tax Compliance Agreement will set out special accounting and allocation procedures for the proceeds of the financing, and if necessary proceeds of the refinanced Tax-Advantaged Bonds.

(c) Tax-Advantaged Bond File. The Bond Compliance Officer will be responsible for assembling and maintaining the Tax-Advantaged Bond File.

Section 5.4. Final Allocation of Tax-Advantaged Bond Proceeds.

(a) Preparation of Final Written Allocation; Timing. The Bond Compliance Officer is responsible for making a written allocation of proceeds of Tax-Advantaged Bonds to expenditures and identifying the Financed Assets. This process will be memorialized in the Final Written Allocation. For a new money financing, the Bond Compliance Officer will commence this process as of the earliest of (1) the requisition of all Tax-Advantaged Bond proceeds from any segregated Tax-Advantaged Bond funded account, (2) the date the Project Facility has been substantially completed or (3) four and one-half years following the issue date of the Tax-Advantaged Bonds. For Tax-Advantaged Bonds issued only to refund a prior issue of Tax-Advantaged Bonds, the Bond Compliance Officer will work with Bond Counsel to prepare and/or document the Final Written Allocation for the Project Facility financed by the refunded Tax-Advantaged Bonds and include it in the Tax Compliance Agreement.

(b) Contents and Procedure. The Bond Compliance Officer will consult the Tax Compliance Agreement and, if necessary, contact Bond Counsel to seek advice regarding any

special allocation of Tax-Advantaged Bond proceeds and other money of the Issuer to the Costs of the Project Facility. If no special allocation is required or recommended, the Bond Compliance Officer will allocate Costs of the Project Facility to the proceeds of the Tax-Advantaged Bonds in accordance with the Issuer's accounting records. Each Final Written Allocation will contain the following: (1) a reconciliation of the actual sources and uses to Costs of the Project Facility, (2) the percentage of the cost of the Project Facility financed with proceeds of the Tax-Advantaged Bonds (sale proceeds plus any investment earnings on those sale proceeds), (3) the Project Facility's Placed in Service date, (4) the estimated economic useful life of the Project Facility, and (5) any special procedures to be followed in completing the Annual Compliance Checklist (e.g., limiting the Annual Compliance Checklist to specific areas of the Project Facility that the Final Written Allocation or the Tax Compliance Agreement treats as having been financed by Tax-Advantaged Bonds).

(c) Finalize Annual Compliance Checklist. As part of the preparation of the Final Written Allocation, the Bond Compliance Officer will update the draft Annual Compliance Checklist contained in the relevant Tax Compliance Agreement. The Bond Compliance Officer will include reminders for all subsequent arbitrage rebate computations required for the Tax-Advantaged Bonds in the Annual Compliance Checklist.

(d) Review of Final Written Allocation and Annual Compliance Checklist. Each Final Written Allocation and Annual Compliance Checklist will be reviewed by legal counsel to the Issuer or Bond Counsel for sufficiency and compliance with the Tax Compliance Agreement and this Compliance Procedure. Following the completion of the review, the Bond Compliance Officer will execute the Final Written Allocation.

ARTICLE VI

ONGOING MONITORING PROCEDURES

Section 6.1. Annual Compliance Checklist. An Annual Compliance Checklist will be completed by the Bond Compliance Officer each year following completion of the Final Written Allocation. Each Annual Compliance Checklist will be designed and completed for the purpose of identifying potential noncompliance with the terms of the Tax Compliance Agreement or this Compliance Procedure and obtaining documents (such as investment records, arbitrage calculations, or other documentation for the Project Facility) that are required to be incorporated in the Tax-Advantaged Bond File. The Bond Compliance Officer will refer any responses indicating a violation of the terms of the Tax Compliance Agreement to legal counsel to the Issuer or Bond Counsel and, if recommended by counsel, will follow the procedure set out in **Section 4.4** hereof to remediate the non-compliance.

Section 6.2. Arbitrage and Rebate Compliance. The Bond Compliance Officer will monitor the investment of Bond Restricted Funds and provide investment records to the Rebate Analyst on a timely basis. The Bond Compliance Officer will follow the directions of the Rebate Analyst with respect to the preparation of and the timing of rebate or yield reduction computations.

**Adopted by the City Council of the
City of Nixa, Missouri
October __, 2022**

