
FIRST SUPPLEMENTAL LEASE PURCHASE AGREEMENT
(City of Independence, Missouri – Electric System Projects)

Dated: As of [____] 1, 2020

GRANTOR:	CITY OF INDEPENDENCE, MISSOURI City Hall 111 East Maple Avenue Independence, Missouri 64050 Attn: City Manager
GRANTEE:	MISSOURI DEVELOPMENT FINANCE BOARD Governor Office Building 200 Madison Street, Suite 1000 P.O. Box 567 Jefferson City, Missouri 65102 Attn: Executive Director
LEASED PROPERTY:	See the attached Schedule I.

FIRST SUPPLEMENTAL LEASE PURCHASE AGREEMENT

(City of Independence, Missouri – Electric System Projects)

THIS FIRST SUPPLEMENTAL LEASE PURCHASE AGREEMENT dated as of [____] 1, 2020 (this “First Supplemental Lease”), by and between the **Missouri Development Finance Board**, a body corporate and politic organized and existing under the laws of the State of Missouri, as Lessor (the “Board”), as Lessor, and the **City of Independence, Missouri** (the “City”), a constitutional charter city and political subdivision, duly organized and existing under the constitution and laws of the state of Missouri, as Lessee,

RECITALS

1. Pursuant to its Resolution adopted October 16, 2012 (the “Series 2012F Bond Resolution”), the Board issued its Infrastructure Facilities Leasehold Improvement and Refunding Revenue Bonds (City of Independence, Missouri – Electric System Projects), Series 2012F in the principal amount of \$52,525,000 (the “Series 2012F Bonds”) for the purpose of providing funds to refund previously issued bonds and to acquire a leasehold interest in certain equipment for the purpose of providing for the extension and improvement of the City’s electric utility production, transmission and distribution system, as described in the Series 2012F Bond Resolution, and leasing the Leased Property to the City.

2. By a Base Lease, dated as of December 1, 2012 (the “Base Lease”), the City leased the Leased Property to the Board, the entire consideration for which was the leasing of the Leased Property back to the City by the Board upon the terms of a Lease Purchase Agreement, dated as of December 1, 2012 (the “Original Lease Purchase Agreement”).

3. The Series 2012F Bond Resolution and the Bond Trust Indenture, dated as of December 1, 2012 between the Board and Commerce Bank, as trustee (the “Indenture”), authorize the issuance of Additional Bonds on a parity with the Series 2012F Bonds and any other Additional Bonds Outstanding at any time and from time to time, as those terms are defined within the Indenture.

4. The Original Lease Purchase Agreement authorizes the City and the Board to enter into one or more supplemental lease purchase agreements (i) to subject additional property to the Original Lease Purchase Agreement or to more precisely identify any project refinanced out of the proceeds of any series of Bonds, or to substitute or add additional property thereto, and (ii) in connection with the issuance of any Additional Bonds.

5. Pursuant to its Resolution adopted October 20, 2020 (the “Series 2020 Bond Resolution”), the Board is issuing its Infrastructure Facilities Leasehold Improvement and Refunding Revenue Bonds (City of Independence, Missouri – Electric System Projects), Series 2020, in the aggregate principal amount of \$[____] (the “Series 2020 Bonds”) and using the proceeds thereof to refund a portion of its Infrastructure Facilities Leasehold Improvement and Refunding Revenue Bonds (City of Independence, Missouri – Electric System Projects), Series 2010B (the “Series 2010B Bonds”).

6. The Board and the City desire to enter into this First Supplemental Lease (referred to herein collectively with the Original Lease Purchase Agreement as the “Lease Purchase Agreement”) to amend certain provisions of the Original Lease Purchase Agreement in connection with the issuance of the Series 2020 Bonds.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, the Board and the City do hereby covenant and agree as follows:

ARTICLE I

REPRESENTATIONS

Section 1.1 Representations and Covenants by the Board. In addition to the representations and covenants of the Board contained in the Original Lease, the Board further represents and covenants to the City and the Trustee as follows:

(a) *Organization and Authority.* The Board (1) is a public body corporate and politic duly organized and existing under the laws of the State of Missouri, and (2) has lawful power and authority to enter into, execute and deliver this First Supplemental Lease Purchase Agreement and the First Supplemental Indenture and to carry out its obligations hereunder and thereunder, and (3) by all necessary action has been duly authorized to execute and deliver this First Supplemental Lease Purchase Agreement and all Transaction Documents required to be executed and delivered by it in connection with the issuance of the Series 2020 Bonds (collectively, the “Board Documents”), acting by and through its duly authorized officers.

(b) *No Defaults or Violations of Law.* The execution and delivery of the First Supplemental Lease Purchase Agreement and the other Board Documents by the Board will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Board is a party or by which it or any of its property is bound or its bylaws or any of the constitutional or statutory laws, rules or regulations applicable to the Board or its property.

(c) *Leased Property.* The Board has leased the Leased Property from the City and proposes to lease the Leased Property to the City, and shall transfer the Leased Property to the City if the City exercises its option to purchase the Board’s interest in the Leased Property, all for the purpose of furthering the public purposes of the City. The Board shall have no authority to operate the Leased Property as a business or in any other manner except as the lessor thereof.

Section 1.2 Representations and Covenants by the City. In addition to the representations and covenants of the City contained in the Original Lease Purchase Agreement, the City further represents and covenants 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, and (2) has lawful power and authority to enter into, execute and deliver this First Supplemental Lease Purchase Agreement and all other Transaction Documents required to be executed and delivered by it in connection with the issuance of the Series 2020 Bonds (collectively, the “City Documents”) and to carry out its obligations hereunder and thereunder, and (3) by all necessary action has been duly authorized to execute and deliver this Lease Purchase Agreement and the other City Documents, acting by and through its duly authorized officers.

(b) *No Defaults or Violations of Law.* The execution and delivery of this First Supplemental Lease Purchase Agreement and the other City Documents by the City will not conflict with or result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the City is a party or by

which it or any of its property is bound, or any of the laws, rules or regulations applicable to the City or its property.

(c) *Public Purpose.* The City has determined that the appropriation of revenues to pay its obligations under this First Supplemental Lease Purchase Agreement is an essential public purpose.

(d) *No Litigation.* To the knowledge of the City, there is no litigation or proceeding pending or threatened against the City or any other person affecting the right of the City to execute this First Supplemental Lease Purchase Agreement or the other City Documents or the ability of the City to make the Lease Payments or to otherwise comply with the obligations under this Lease Purchase Agreement or the other City Documents. Neither the execution and delivery of this Lease Purchase Agreement by the City, nor compliance by the City with its obligations under this Lease Purchase Agreement require the approval of any regulatory body, or any other entity, which approval has not been obtained.

(e) The issuance of the Series 2020 Bonds and the refunding of the Series 2010B Bonds provides present value debt service savings to the City.

ARTICLE II

THE LOAN; PAYMENT OF THE BONDS; ISSUANCE OF THE BONDS

Section 2.1. Amount and Source of the Loan; Issuance of Bonds. The Board agrees to lend to the City, upon the terms and conditions herein and in the Indenture specified, the net proceeds received by the Board from the sale of the Series 2020 Bonds (the “2020 Loan”). The 2020 Loan is referred to collectively with the Board’s loan of the proceeds of the Series 2012F Bonds as the “Loan”) In order to provide funds to make the 2020 Loan for the purposes described herein and in the Indenture, the Board agrees that it will issue, sell and deliver the Series 2020 Bonds to the Original Purchaser. The proceeds of the sale of the Series 2020 Bonds shall be paid over to the Trustee for the account of the Board and shall be administered, disbursed and applied for refunding the Refunded Bonds and other purposes upon the terms and in the manner as provided in the Indenture and in the Lease Purchase Agreement.

Section 2.2. Amendment to Section 3.2 of the Original Lease Purchase Agreement. Section 3.2 of the Original Lease Purchase Agreement is hereby deleted in its entirety and a new Section 3.2 is inserted in lieu thereof, to read as follows:

Section 3.2. Lease Payments. Subject to the limitations of **Sections 3.5, 3.7 and 4.1** hereof, the City shall pay the following amounts to the Trustee, all as “Lease Payments” under this Lease Purchase Agreement:

(a) *Debt Service Fund–Interest:* On or before **10:00 a.m.** on or before the Business Day preceding each June 1 and December 1, (i) commencing June 1, 2013, an amount which is not less than the interest to become due on the next interest payment date on the Series 2012F Bonds, and (ii) commencing December 1, 2021, an amount which is not less than the interest to become due on the next interest payment date on the Series 2020 Bonds; provided, however that the City may be entitled to certain credits on such payments as permitted under **Section 3.3** of this Lease Purchase Agreement.

(b) *Debt Service Fund–Principal:* On or before **10:00 a.m.** on or before the Business Day preceding each principal payment date on the Bonds, an amount which is not less than the next installment of principal due on the Bonds on the next principal payment date by maturity or mandatory sinking fund redemption; provided, however, that the City may be entitled to certain credits on such payments as permitted under **Section 3.3** of this Lease Purchase Agreement.

(c) *Debt Service Fund–Redemption:* On or before **10:00 a.m.** on the Business Day preceding the date required by this Lease Purchase Agreement or the Indenture, the amount required to redeem Bonds then Outstanding if the City exercises its right to redeem Bonds under any provision of the Indenture or if any Bonds are required to be redeemed under any provision of the Indenture.

Notwithstanding any schedule of payments upon the Loan set forth in this Lease Purchase Agreement or the Indenture, the City shall make payments upon the Loan and shall be liable therefor at the times and in the amounts (including interest, principal and redemption premium, if any) equal to the amounts to be paid as interest, principal and redemption premium, if any, whether at maturity or by optional redemption upon all Bonds from time to time Outstanding under the Indenture.

Any Supplemental Lease Purchase Agreement shall provide for similar deposits into the Debt Service Fund of amounts sufficient to insure the prompt payment of the principal of, premium, if any, and interest on any Additional Bonds as the same become due.

Unpaid Lease Payments shall bear interest at the rates prescribed in the Bonds. Any interest charged and collected on an unpaid Loan Payment shall be deposited to the credit of the Debt Service Fund and applied to pay interest on overdue amounts in accordance with the Indenture.

The City and the Board each acknowledge that, except as otherwise provided in the Indenture, they have no interest in the Debt Service Fund or the Rebate Fund, and any moneys deposited therein shall be in the custody of and held by the Trustee in trust for the benefit of the Bondowners and the United States of America as provided in the Indenture.

Section 2.3. Amendment to Section 3.7 of the Original Lease Purchase Agreement. Section 3.7 of the Original Lease Purchase Agreement is hereby deleted in its entirety and a new Section 3.7 is inserted in lieu thereof, to read as follows:

Section 3.7. Lease Payments to Constitute Current Expenses of the City. The Board and the City acknowledge and agree that the Lease Payments and Additional Payments hereunder shall constitute currently budgeted expenditures of the City, and shall not in any way be construed or interpreted as creating a liability or a general obligation or debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of the City. The City's obligations to pay Lease Payments and Additional Payments hereunder shall be from year to year only, and shall not constitute a mandatory payment obligation of the City in any ensuing Fiscal Year beyond the then current Fiscal Year. Neither this Lease Purchase Agreement nor the issuance of the Bonds shall directly or indirectly obligate the City to levy or pledge any form of taxation or make any appropriation or make any payments beyond those appropriated for the City's then current Fiscal Year, but in each Fiscal Year Lease Payments and Additional Payments shall be payable solely from the amounts budgeted or appropriated therefor out of the income and revenue provided for such year, plus any unencumbered balances from previous years; provided, however, that nothing herein shall be construed to limit the rights of the owners of the Bonds or the Trustee to receive any amounts which

may be realized from the Trust Estate pursuant to the Indenture. Failure of the City to budget and appropriate said moneys on or before the last day of any Fiscal Year shall be deemed an Event of Nonappropriation.

Section 2.4. Amendment to Section 3.8 of the Original Lease Purchase Agreement. Section 3.8 of the Original Lease Purchase Agreement is hereby deleted in its entirety and a new Section 3.8 is inserted in lieu thereof, to read as follows:

Section 3.8. Lease of Leased Property. Simultaneously with the issuance and delivery of the Series 2012F Bonds and the delivery of the Lease Purchase Agreement, the City shall lease the Leased Property, in accordance with the description of the Leased Property set forth in **Schedule I** attached hereto, as amended from time to time as provided in this Section, and pursuant to the terms of the Base Lease, to the Board in consideration of the issuance of the Series 2012F Bonds and the application of the proceeds thereof as provided in the Indenture. As of the date of issuance of the Series 2020 Bonds, the Leased Property shall consist of the property set forth in **Schedule I** attached hereto.

The Leased Property consists of separately identifiable equipment that could be removed from the Electric System if the City failed to make Lease Payments due hereunder. **Schedule I** as attached to the First Supplemental Lease, as amended by any subsequent supplemental lease purchase agreement, will be the definitive description of the Leased Property.

Certain property previously financed with proceeds of the Series 2012F Bonds and the Series 2010B Bonds has been decommissioned by the City due to environmental regulations that make the further operation or improvement of such facilities no longer economically feasible or in the best interest of the City. The City has provided substitute Leased Property of equivalent value and such additional assets are reflected on **Schedule I** attached hereto.

Section 2.5. Amendment to Section 15.3 of the Original Lease Purchase Agreement. Section 15.3 of the Original Lease Purchase Agreement is hereby deleted in its entirety and a new Section 15.3 is inserted in lieu thereof, to read as follows:

Section 15.3. Performance Date Not a Business Day. If any date for the payment of principal of, or redemption premium, if any, or interest on the Bonds or the taking of any other action hereunder is not a Business Day, then such payment shall be due, or such action shall be taken, on the first Business Day thereafter with the same force and effect as if made on the date fixed for payment or performance.

Section 2.6. Amendment to Section 15.7 of the Original Lease Purchase Agreement. Section 15.7 of the Original Lease Purchase Agreement is hereby deleted in its entirety and a new Section 15.7 is inserted in lieu thereof, to read as follows:

Section 15.7. Extent of Covenants of the Board; No Personal or Pecuniary Liability. All covenants, obligations and agreements of the Board contained in this Lease Purchase Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future director, officer, agent or employee of the Board in other than his official capacity, and no official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Board contained in this Lease Purchase Agreement or in the Indenture. No provision, covenant or agreement contained in this Lease

Purchase Agreement, the Indenture or the Bonds, or any obligation herein or therein imposed upon the Board, or the breach thereof, shall constitute or give rise to or impose upon the Board a pecuniary liability or a charge. No provision hereof shall be construed to impose a charge against the general credit of the Board or any personal or pecuniary liability upon any director, officer, agent or employee of the Board.

Section 2.7. Amendment to Section 15.8 of the Original Lease Purchase Agreement.

Section 15.8 of the Original Lease Purchase Agreement is hereby deleted in its entirety and a new Section 15.8 is inserted in lieu thereof, to read as follows:

Section 15.8. Net Loan. Subject to the limitations described in **Sections 3.5, 3.7 and 4.1**, the parties hereto agree (a) that the payments of Lease Payments are designed to provide the Board and the Trustee with moneys adequate in amount to pay all principal of, redemption premium, if any, and interest accruing on the Bonds as the same become due and payable, (b) that to the extent that the payments of Lease Payments are not sufficient to provide the Board and the Trustee with funds sufficient for the purposes aforesaid, the City shall be obligated to pay (subject with respect to the City to the limitations set forth in **Section 3.5** hereof) to, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Payments, such further moneys, in cash, as may from time to time be required for such purposes, and (c) that if, after the principal of, redemption premium, if any, and interest on the Bonds and all costs incident to the payment of the Bonds have been paid in full (including all Additional Payments), the Trustee or the Board holds unexpended funds received in accordance with the terms hereof, such unexpended funds shall, after payment therefrom of all sums then due and owing by the City under the terms of this Lease Purchase Agreement, be distributed in accordance with **Article IV** of the Indenture.

ARTICLE III

MISCELLANEOUS

Section 3.1. Indemnification.

(a) The City releases the Board and the Trustee from, agrees that the Board and the Trustee shall not be liable for, and, to the extent permitted by law, indemnifies the Board and the Trustee against, all liabilities, losses, damages (including attorneys' fees), causes of action, suits, claims, costs and expenses, demands and judgments of any nature imposed upon or asserted against the Board or the Trustee, on account of: (i) any breach or default on the part of the City in the performance of any covenant or agreement of the City under this Lease Purchase Agreement or any related document, or arising from any act or failure to act by the City, or any of its agents, contractors, servants, employees or licensees (including, without limitation, any failure to comply or any violation, actual or alleged, in connection with Environmental Regulations); (ii) matters regarding the authorization, issuance and sale of the Series 2020 Bonds attributable to the City, and the provision of any information furnished by the City in connection therewith concerning the Project or the City or arising from (1) any errors or omissions by the City such that the Series 2020 Bonds, when delivered to the Bondowners, are not validly issued and binding obligations of the Board, or (2) any fraud or misrepresentations or omissions contained in the proceedings of the Board furnished by or attributable to the City relating to the issuance of the Series 2020 Bonds or pertaining to the financial condition of the City which, if known to the original purchaser of the Series 2020 Bonds, might be considered a material factor in its decision to purchase the Series 2020 Bonds, respectively.

(b) The City agrees, to the extent permitted by law, to indemnify the Trustee for and to hold it harmless against all liabilities, claims, costs and expenses incurred except for liabilities, claims, costs and

expenses caused by the negligence or willful misconduct on the part of the Trustee, on account of any action taken or omitted to be taken by the Trustee in accordance with the terms of the Lease Purchase Agreement, the Series 2020 Bonds, the Indenture or any other Transaction Document or any action taken at the request of or with the consent of the City, including the costs and expenses (including, without limitation, reasonable compensation, expenses and disbursements of its agents and counsel) of the Trustee in defending itself against any such claim, action or proceeding brought in connection with the exercise or performance of any of its powers or duties under the Lease Purchase Agreement, the Series 2020 Bonds or the Indenture.

(c) In case any action or proceeding is brought against the Trustee in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the City, and the City upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the City from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the City. At its own expense, an indemnified party may employ separate legal counsel and participate in the defense; provided, however, in the event the City shall fail to employ counsel or such counsel shall fail to actively defend such actions or protect the Board or the Trustee, or both, the Board or the Trustee may employ counsel at the expense of the City to defend such action. The City shall not be liable for any settlement made without its consent.

(d) The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers, attorneys, accountants, financial advisors, staff and employees of the Board and the Trustee, respectively. That indemnification is intended to and shall be enforceable by the Board and the Trustee, respectively, to the full extent permitted by law.

Section 3.2. Lease of Leased Property; Applicability of Original Lease Purchase Agreement. The Board hereby has rented, leased and let and does hereby rent, lease and let the Leased Property to the City, and the City has rented, leased and hired and does hereby rent, lease and hire the Leased Property from the Board, for the Lease Payments and upon the terms and conditions set forth in the Lease Purchase Agreement. Except as specifically or by necessary implication amended by this First Supplemental Lease, the Original Lease Purchase Agreement remains in full force and effect and as so amended is hereby ratified, approved and confirmed.

Section 3.3. No Merger. There shall be no merger of this Lease Purchase Agreement or of the leasehold estate created hereby with the fee title to the Leased Property.

Section 3.4. Execution in Counterparts; Electronic Transactions. This First Supplemental Lease may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument. This First Supplemental Lease and the transactions related thereto and described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

IN WITNESS WHEREOF, the Board and the City have caused this First Supplemental Lease to be executed by their respective authorized officials and officers, all as of the day and year first above written.

**MISSOURI DEVELOPMENT FINANCE
BOARD**

(Seal)

By: _____
Robert V. Miserez, Executive Director

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

This instrument was acknowledged before me on _____, 2020, by **Robert V. Miserez**, Executive Director of the **Missouri Development Finance Board**, a body corporate and politic organized and existing under the laws of the State of Missouri.

(Seal)

Notary Public

My Commission Expires: _____

IN WITNESS WHEREOF, the Board and the City have caused this First Supplemental Lease to be executed by their respective authorized officials and officers, all as of the day and year first above written.

CITY OF INDEPENDENCE, MISSOURI

(SEAL)

Zachary C. Walker, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM ONLY:

Chief Counsel

ACKNOWLEDGMENT

STATE OF MISSOURI)
) SS.
COUNTY OF JACKSON)

This instrument was acknowledged before me on _____, 2020, by **Zachary C. Walker**, City Manager of the **City of Independence, Missouri**, a constitutional charter city and political subdivision, duly organized and existing under the constitution and laws of the state of Missouri.

(Seal)

Notary Public

My Commission Expires: _____

SCHEDULE I

DESCRIPTION OF THE LEASED PROPERTY