

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE BORROWING OF NOT TO EXCEED \$12,000,000 FROM THE MISSOURI DEVELOPMENT FINANCE BOARD TO REFINANCE THE COSTS OF PROJECTS RELATED TO THE CITY'S ELECTRIC UTILITY; AUTHORIZING THE CONTINUED LEASE OF CERTAIN EQUIPMENT BY THE CITY; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF A FIRST SUPPLEMENTAL BASE LEASE AND A FIRST SUPPLEMENTAL LEASE PURCHASE AGREEMENT WITH THE MISSOURI DEVELOPMENT FINANCE BOARD; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Independence, Missouri (the "City"), is a constitutional charter city and political subdivision of the State of Missouri duly created, organized and existing under the constitution and laws of the State of Missouri; and,

WHEREAS, the City has determined that it is necessary and desirable to adopt this Ordinance in order to provide for refinancing the costs of projects related to the City's Electric System (defined herein) by obtaining a loan from the Missouri Development Finance Board (the "Board") in the principal amount of not to exceed \$12,000,000 (the "Loan") pursuant to the terms of a First Supplemental Lease Purchase Agreement, amending and supplementing the Lease Purchase Agreement dated as of December 1, 2012 (collectively, the "Lease Purchase Agreement") between the City and the Board; and,

WHEREAS, the City will apply the proceeds of the Loan to (1) refinance a portion of the Board's outstanding Infrastructure Facilities Leasehold Revenue Bonds (City of Independence, Missouri – Electric System Projects) Series 2010B, which were issued in the original principal amount of \$33,645,000 which are currently outstanding in the principal amount of \$10,615,000 (the "Refunded Bonds"), (2) fund a debt service reserve (if required) and (3) pay the costs of incurring the Loan and issuing the bonds which will be issued by the Board to fund such Loan (the "Bonds," as further described herein); and,

WHEREAS, as security for the Loan and the Bonds, the City has determined that it is necessary and desirable to authorize a First Supplemental Base Lease between the Board and the City under which the City will lease to the Board equipment acquired with the proceeds of the Refunded Bonds as more fully described in the First Supplemental Base Lease (the "Leased Property"); and,

WHEREAS, under the terms of the Lease Purchase Agreement the City will lease the Leased Property back from the Board; and,

WHEREAS, it is hereby found and determined that it is necessary and advisable and in the best interest of the City and of its inhabitants that the City obtain the Loan from the Board in the form and manner as hereinafter provided to provide funds for the above-described purpose and to provide for the repayment of said Loan all as more fully described herein;

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

ARTICLE I - DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to words and terms defined elsewhere in this Ordinance, the following capitalized words and terms as used in this Ordinance shall have the following meanings:

“Additional Payments” shall have the meaning set forth in the Lease Purchase Agreement.

“Available Electric Revenues” means all revenues of the Electric System, less amounts necessary (a) to pay the costs of operating, maintaining and repairing the Electric System, (b) paying the principal and interest on any System Revenue Bonds, and (c) if necessary, replenishing any debt service reserve funds established for any System Revenue Bonds.

“Base Lease” means the Base Lease dated as of December 1, 2012, as amended and supplemented by the First Supplemental Base Lease, between the City and the Board under which the City will lease the Leased Property to the Board.

“Board” means the Missouri Development Finance Board, a body corporate and politic of the State of Missouri.

“Bonds” means the not to exceed \$12,000,000 Infrastructure Facilities Leasehold Refunding Revenue Bonds (City of Independence, Missouri – Electric System Projects), Series 2020A, issued by the Board.

“City” means the City of Independence, Missouri, and any successors or assigns.

“Electric System” means the electric generating plants and all appurtenances thereto, the electric distribution system, and the electric street lighting system, now serving the City and its inhabitants and others, together with all extensions and improvements thereto hereafter made or acquired by the City.

“Event of Nonappropriation” means failure of the City to budget and appropriate on or before the last day of any Fiscal Year, moneys sufficient to pay the Lease Payments and reasonably expected Additional Payments due and payable during the next Fiscal Year.

“Fiscal Year” means the City’s fiscal year, which is currently July 1 to June 30, or as it may be hereinafter defined by the City.

“Lease Payments” shall have the meaning set forth in the Lease Purchase Agreement.

“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, by and between the Board and the City pursuant to which the Board will loan the proceeds of the Bonds to the City and the City will lease the Leased Property from the Board.

“Leased Property” means equipment acquired with the proceeds of the Loan that is leased under the Base Lease and Lease Purchase Agreement.

“Loan” means the loan from the Board to the City made pursuant to the Lease Purchase Agreement.

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

“Refunded Bonds” means the Board’s outstanding Infrastructure Facilities Leasehold Revenue Bonds (City of Independence, Missouri – Electric System Projects) Series 2010B, which were issued in the original principal amount of \$33,645,000 and which are currently outstanding in the principal amount of \$10,615,000.

“Refunded Bonds Indenture” means the Bond Trust Indenture for the Refunded Bonds dated as of December 15, 2010 between the Board and UMB Bank, N.A., as trustee (successor to Commerce Bank, as trustee).

“Revenues” means all income and revenues derived from the operation of the Electric System, including investment and rental income, net proceeds from business interruption insurance, and any amounts deposited in escrow in connection with the acquisition, construction, remodeling, renovation and equipping of facilities to be applied during the period of determination to pay interest on System Revenue Bonds, but excluding any profits or losses on the early extinguishment of debt or on the sale or other disposition, not in the ordinary course of business, of investments or fixed or capital assets.

“State” means the State of Missouri.

“System Revenue Bonds” means bonds or other revenue obligations payable from a pledge of the revenues of the Electric System, and excludes any outstanding bonds payable from a pledge of Revenues that is subject to annual appropriation by the City.

ARTICLE II - AUTHORIZATION FOR LOAN AND REFUNDING OF THE REFUNDED BONDS

Section 201. Authorization for Loan. The City is hereby authorized to borrow not to exceed \$12,000,000 from the Board in order to permit the City to (1) refinance the Refunded Bonds, (2) fund a debt service reserved (if necessary) and (3) pay the costs of incurring the Loan and issuing the Bonds. The authorization for the Loan is conditional on the terms of the Bonds being reflected in the Indenture related to the Bonds and the below-described Bond Purchase Agreement consistent with the following:

- (a) The maximum principal amount of the Bonds shall not exceed \$12,000,000.
- (b) The true interest cost of the Bonds shall not exceed 3.5% per annum.
- (d) The final maturity date of the Bonds shall be not later than June 1, 2035.
- (e) The refunding of the Refunded Bonds shall result in present value debt savings of at least 3.0% of the principal amount of the Refunded Bonds.

Section 202. Authorization of Documents. In connection with the Loan the City is hereby authorized to execute and deliver the following documents:

- (a) First Supplemental Lease Purchase Agreement,
- (b) First Supplemental Base Lease,
- (c) Tax Compliance Agreement among the Board, the City and UMB Bank, N.A., as trustee (the “Trustee”) related to the Bonds, and

- (d) Bond Purchase Agreement among the Board, the City and the original purchaser of the Bonds as identified therein

(collectively, the “City Documents”) in substantially the form presented to and reviewed by the City Council (copies of which documents shall be filed in the records of the City), with such changes therein as shall be approved by the officers executing such documents, such officers’ signatures thereon being conclusive evidence of their approval thereof.

Section 203. Limited Obligations. Except as provided herein in **Article III hereof**, the City’s obligation to make Lease Payments and Additional Payments under the Lease Purchase Agreement shall be subject to annual appropriation and shall not constitute a debt, liability or indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction, all as more fully provided in the Lease Purchase Agreement.

Section 204. Execution of Documents; Electronic Transaction. The City Manager, the Director of Finance and Administration and the City Clerk are hereby authorized and directed to execute and deliver the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance. The transactions described herein may be conducted and documents may be stored by electronic means. All closing documents, certificates, and related instruments may be executed by electronic transmission. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents (or documents executed by electronic transmission) shall be deemed to be authentic and valid counterparts of such documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 205. Redemption of Refunded Bonds. The outstanding Refunded Bonds are hereby called for redemption and payment prior to maturity as soon as practical. The officers of the City and any paying agent for said Refunded Bonds are hereby authorized and directed to take such other action as may be necessary in order to effect the redemption and payment of said Refunded Bonds as herein provided.

ARTICLE III - SECURITY FOR THE LOAN

Section 301. Security for the Loan.

(a) The City’s obligation to make Lease Payments and Additional Payments pursuant to the Lease Purchase Agreement is secured by, subject to annual appropriation by the City Council, Available Electric Revenues.

(b) The City currently intends to appropriate in each year Available Electric Revenues to the payment of the Lease Payments and Additional Payments. In preparing the City’s annual budget the City Manager shall include or cause to be included in each budget submitted to the City Council such appropriation. Notwithstanding the foregoing, the decision of whether or not to appropriate is solely within the discretion of the City Council. In the event the City Council votes to not appropriate such moneys, the City shall immediately notify in writing the following persons of such Event of Nonappropriation: (i) the Board, (ii) UMB Bank, N.A., as trustee for the Bonds, (iii) each nationally recognized municipal securities repository, and (iv) each nationally recognized rating agency which currently maintains a rating on any of the City’s bonds or the Board’s bonds issued for the benefit of the City.

(c) The City's obligations to pay Lease Payments and Additional Payments under the Lease Purchase Agreement 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 the 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.

ARTICLE IV - MISCELLANEOUS PROVISIONS

Section 401. Further Authority. The officers of the City, including the City Manager, the Director of Finance and Administration and the City Clerk, are hereby authorized and directed to execute all documents, and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and to make any changes or additions in this Ordinance and the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they determine to be in the City's best interest, and the execution or taking of such action shall be conclusive evidence of such determination.

Section 402. Severability. If any section or other part of this Ordinance, whether large or small, is for any reason held invalid, the invalidity thereof shall not effect the validity of the other provisions of this Ordinance.

Section 403. Governing Law. This Ordinance shall be governed exclusively by and constructed in accordance with the applicable laws of the State.

Section 404. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the City Council.

Section 405. Emergency. This Ordinance, in the judgment of the Council, is deemed to be of an urgent nature and its immediate passage is necessary for the preservation of the public peace, property, health, safety and welfare of the residents of the City and should become effective immediately upon the date of its passage for the reason that immediate action is necessary to enable the Board to accept the best offer to purchase the Bonds while the offer is still valid.

PASSED AS AN EMERGENCY THIS _____ DAY OF _____, 2020, BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI.

Presiding Officer of the City Council
of the City of Independence, Missouri

ATTEST:

City Clerk

APPROVED AS TO FORM AND LEGALITY:

MDFB Lease/Purchase
Electric System
10/9/20 - JF

City Counselor

REVIEWED BY:

City Manager