

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE BORROWING OF NOT TO EXCEED \$76,000,000 FROM THE MISSOURI DEVELOPMENT FINANCE BOARD TO REFINANCE THE COSTS OF PROJECTS RELATED TO THE CITY'S SANITARY SEWER SYSTEM; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF A FINANCING 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 the refinancing of certain costs of projects related to the City's Sewer System (defined herein) by obtaining a loan from the Missouri Development Finance Board (the "Board") in a principal amount not to exceed \$76,000,000 (the "Loan") pursuant to the terms of a Financing Agreement (the "Financing Agreement") between the City and the Board; and,

WHEREAS, the City will apply the proceeds of the Loan, together with other funds available to the City, to (1) refund the Refunded Bonds (as defined herein), (2) fund a reserve fund deposit or the premium for a reserve fund policy for each series of the Bonds (as defined herein), and (3) pay the costs of incurring the Loan and issuing the Bonds and the incidental costs of refunding the Refunded Bonds; 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 purposes 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 Financing Agreement.

"Available Sewer Revenues" means all revenues of the Sewer System, less amounts necessary (a) to pay the costs of operating, maintaining and repairing the Sewer 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.

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

“**Bonds**” means the Series 2021A Bonds and the Series 2021B Bonds.

“**Business Day**” means a day other than a Saturday, Sunday or holiday on which the Trustee is scheduled in the normal course of its operations to be open to the public for conduct of its banking operations.

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

“**Financing Agreement**” means the Financing Agreement, by and between the Board and the City pursuant to which the Board will loan the proceeds of the Bonds to the City.

“**Loan Payments**” shall have the meaning set forth in the Financing Agreement.

“**Loan**” means the loan from the Board to the City made pursuant to the Financing Agreement.

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

“**Revenues**” means all income and revenues derived from the operation of the Sewer 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.

“**Series 2021A Bonds**” means the Infrastructure Facilities Refunding Revenue Bonds (City of Independence, Missouri – Annual Appropriation Sewer System Revenue Bonds), Series 2021A (with such additional series identifiers as may be assigned by the Board) issued by the Board.

“**Series 2021B Bonds**” means the Taxable Infrastructure Facilities Refunding Revenue Bonds (City of Independence, Missouri – Annual Appropriation Sewer System Revenue Bonds), Series 2021B (with such additional series identifiers as may be assigned by the Board) issued by the Board.

“**Sewer System**” the entire sewerage plant and system owned and operated by the City for the collection, treatment and disposal of sewage, to serve the needs of the City and its inhabitants and others, including all appurtenances and facilities connected therewith or relating thereto, together with all extensions, improvements, additions and enlargements thereto hereafter made or acquired by the City.

“**State**” means the State of Missouri.

“**System Revenue Bonds**” means bonds or other revenue obligations payable from a pledge of the revenues of the Sewer 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

Section 201. Authorization for Loan. The City is hereby authorized to borrow an amount not to exceed \$76,000,000 from the Board in order to permit the City to (1) refund the Refunded Bonds (as defined herein), (2) fund a reserve fund deposit or the premium for a reserve fund policy for each series of the Bonds, and (3) pay the costs of incurring the Loan and issuing the Bonds and the incidental

costs of refunding the Refunded Bonds. The repayment terms of the Loan will be as set forth in the Financing Agreement and will correspond to the repayment of the Bonds issued by the Board as described therein. 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:

With respect to the Series 2021A Bonds:

- (a) The maximum principal amount of the Series 2021A Bonds shall not exceed \$31,000,000.
- (b) The true interest cost of the Series 2021A Bonds shall not exceed 2.75%.
- (c) The weighted average maturity of the Series 2021A Bonds shall be between 7 years and 13 years.
- (d) The final maturity date of the Series 2021A Bonds shall be not later than the year 2041.
- (e) The Underwriter's discount for the Series 2021A shall not exceed 1.0% of the principal amount of the Series 2021A Bonds.
- (f) The Series 2021A Bonds shall be subject to optional redemption prior to maturity beginning not later than November 1, 2031.

With respect to the Series 2021B Bonds:

- (a) The maximum principal amount of the Series 2021B Bonds shall not exceed \$45,000,000.
- (b) The true interest cost of the Series 2021B Bonds shall not exceed 3.50%.
- (c) The weighted average maturity of the Series 2021B Bonds shall be between 8 years and 15 years.
- (d) The final maturity date of the Series 2021B Bonds shall be not later than the year 2042.
- (e) The Underwriter's discount for the Series 2021B shall not exceed 1.0% of the principal amount of the Series 2021B Bonds.
- (f) The Series 2021B Bonds shall be subject to optional redemption prior to maturity beginning not later than November 1, 2031.

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

- (a) Financing Agreement,
- (b) Tax Compliance Agreement among the Board, the City and UMB Bank, N.A., as trustee (the "Trustee") related to the Series 2021A Bonds,
- (c) Continuing Disclosure Undertaking executed by the City related to the Bonds,
- (d) Bond Purchase Agreement among the Board, the City and Morgan Stanley & Co. LLC (the "Underwriter"), and
- (e) Escrow Trust Agreement (the "Escrow Agreement") among the Board, the City and the Trustee, as escrow agent, relating to the refunding of the Refunded Bonds

(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. The City's obligation to make Loan Payments and Additional Payments under the Financing 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 Financing Agreement.

Section 204. Execution of Documents. The City Manager, Finance Director 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.

ARTICLE III - SECURITY FOR THE LOAN; APPROPRIATION

Section 301. Security for the Loan.

(a) The City's obligation to make Loan Payments and Additional Payments pursuant to the Financing Agreement is secured by, subject to annual appropriation by the City Council, Available Sewer Revenues.

(b) The City currently intends to appropriate in each year Available Sewer Revenues to the payment of the Loan 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) the Trustee, (iii) the Municipal Securities Rulemaking Board, 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 Loan Payments and Additional Payments under the Financing 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 Financing 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 Loan Payments and Additional Payments shall be payable solely from the amounts budgeted or appropriated therefor out of Available Sewer Revenues.

Section 302. Appropriation.

The City hereby appropriates sufficient Available Sewer Revenues for the fiscal year ending June 30, 2022, for application to the payment of all Loan Payments and Additional Payments that become due during the fiscal year ending June 30, 2022.

ARTICLE IV - MISCELLANEOUS PROVISIONS

Section 401. Refunding of Prior Bonds. The Loan is being made for the purpose of prepaying in whole certain prior loans from the Board to the City related to the Sewer System project. Such loans were funded by the following bond issues of the Board (the “Refunded Bonds”):

- (a) The entire outstanding principal amount of the Infrastructure Facilities Revenue Bonds (City of Independence, Missouri - Annual Appropriation Sewer System Revenue Bonds), Series 2012B, with stated maturities of November 1, 2021, 2027, 2032 and 2041, in the aggregate principal amount of \$30,430,000, to be refunded on a current basis using proceeds of the Loan generated by the Series 2021A Bonds, and
- (b) The entire outstanding principal amount of the Infrastructure Facilities Revenue Bonds (City of Independence, Missouri – Annual Appropriation Sewer System Revenue Bonds) Series 2013C, with stated maturities of November 1, 2021, 2022, 2023, 2028, 2033 and 2042, in the aggregate principal amount of \$38,665,000, to be advance refunded using proceeds of the Loan generated by the Series 2021B Bonds.

The officers of the City are hereby authorized and directed to take such actions as are necessary to use proceeds of the Loan to effect the refunding of the outstanding amounts of the Refunded Bonds and to prepay the corresponding loan payments under the prior financing agreements between the Board and the City associated with the Refunded Bonds, including the execution of a letter of instructions to redeem bonds instructing the prior trustee to call the Refunded Bonds set out in (a), above, for redemption.

Section 402. Further Authority. The officers of the City, including the City Manager, Finance Director 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 403. 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 affect the validity of the other provisions of this Ordinance.

Section 404. Governing Law. This Ordinance shall be governed exclusively by and constructed in accordance with the applicable laws of the State.

Section 405. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the City Council.

Section 406. 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 of Independence due the timing involved in the marketing and sale of the Bonds 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 _____, 2021, 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:

City Counselor

REVIEWED BY:

City Manager