

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE BORROWING OF NOT TO EXCEED \$85,000,000 FROM THE MISSOURI DEVELOPMENT FINANCE BOARD TO REFINANCE THE COSTS OF CERTAIN PROJECTS RELATED TO THE CITY'S ELECTRIC SYSTEM; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF A FINANCING AGREEMENT WITH THE MISSOURI DEVELOPMENT FINANCE BOARD; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

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 Electric System (defined herein) by obtaining a loan from the Missouri Development Finance Board (the "Board") in a principal amount not to exceed \$85,000,000 (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) if desirable for the marketing of the Bonds (as defined herein), as determined by City Staff upon the advice of the City's municipal advisor, fund a reserve fund deposit or the premium for a reserve fund policy for the Bonds, 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 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.

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

**“Bonds”** means the Infrastructure Facilities Refunding Revenue Bonds (City of Independence, Missouri, Annual Appropriation Electric System Revenue Bonds), Series 2022 (with such additional series identifiers as may be assigned by the Board), issued by the Board.

**“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.

**“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.

**“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 in consideration of loan payments to be made by the City to the Board.

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

**“Loan Payments”** shall have the meaning set forth in the Financing 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 Revenue Bonds (City of Independence, Missouri, Annual Appropriation Electric System Revenue Bonds - Dogwood Project), Series 2012A and Infrastructure Facilities Leasehold Improvement and Refunding Revenue Bonds (City of Independence, Missouri - Electric System Projects), Series 2012F.

**“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 an amount not to exceed \$85,000,000 from the Board in order to permit the City to (1) refund the Refunded Bonds

(as defined herein), (2) if desirable for the marketing of the Bonds, as determined by City Staff upon the advice of the City's municipal advisor, fund a reserve fund deposit or the premium for a reserve fund policy for 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:

- (a) The maximum principal amount of the Bonds shall not exceed \$85,000,000.
- (b) The true interest cost of the Bonds shall not exceed 4.0%.
- (c) The weighted average maturity of the Bonds shall be between 8.0 years and 11.0 years.
- (d) The final maturity date of the Bonds shall be not later than the year 2037.
- (e) The Underwriter's discount for the Bonds shall not exceed 1.0% of the principal amount of the Bonds.
- (f) The Bonds shall be subject to optional redemption prior to maturity beginning not later than June 1, 2032.

**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 Bonds,
- (c) Continuing Disclosure Undertaking executed by the City related to the Bonds, and
- (d) Bond Purchase Agreement among the Board, the City and Morgan Stanley & Co. LLC (the "Underwriter"),

(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.

**Section 205. 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 Electric 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 Electric System Revenue Bonds - Dogwood Project), Series 2012A, in the aggregate principal amount of \$52,610,000, to be refunded on a current basis, and
- (b) The entire outstanding principal amount of the Infrastructure Facilities Leasehold Improvement and Refunding Revenue Bonds (City of Independence, Missouri - Electric System Projects), Series 2012F, in the aggregate principal amount of \$36,700,000, to be refunded on a current basis.

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 for redemption.

### **ARTICLE III - SECURITY FOR THE LOAN**

#### **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 Electric Revenues.

(b) The City currently intends to appropriate in each year Available Electric 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 the income and revenue provided for such year, plus any unencumbered balances from previous years.

## **ARTICLE IV - MISCELLANEOUS PROVISIONS**

**Section 401. Appropriation of Funds.** The City hereby appropriates sufficient Available Electric 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.

**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 as set forth in the City Charter.

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PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022, 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