

GILMORE & BELL, P.C.
DRAFT 2 – SEPTEMBER 16, 2020
FOR DISCUSSION PURPOSES ONLY

BILL NO. 4804

ORDINANCE NO. _____

Introduced By: Council Present

AN ORDINANCE AUTHORIZING THE CITY OF BERKELEY, MISSOURI, TO ENTER INTO A LEASE PURCHASE TRANSACTION, THE PROCEEDS OF WHICH WILL BE USED TO PREPAY THE OUTSTANDING TAXABLE BUILD AMERICA CERTIFICATES OF PARTICIPATION (CITY OF BERKELEY, MISSOURI, LESSEE), SERIES 2010B; AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Berkeley, Missouri (the “City”), authorized the delivery of \$6,385,000 original principal amount of Taxable Build America Certificates of Participation (City of Berkeley, Missouri, Lessee), Series 2010B (the “Series 2010B Certificates”), which were delivered for the purpose of providing funds to (1) finance the acquisition of land for and the construction, improvement and equipping of a city hall and fire station and other municipal improvements, (2) fund a debt service reserve fund for the Series 2010B Certificates, and (3) pay the costs of delivering the Series 2010B Certificates; and

WHEREAS, the City finds and determines that it is advantageous and in the best interests of the City to enter into certain transactions with UMB Bank, N.A., as trustee (the “Trustee”), relating to the delivery of Refunding and Improvement Certificates of Participation (City of Berkeley, Missouri, Lessee), Series 2020 (the “Series 2020 Certificates”), to provide funds, together with other legally available funds of the City, to (1) currently refund all of the Series 2010B Certificates on the prepayment date of November 20, 2020 (the “Refunded Certificates”), (2) purchase a new ambulance, [* (3) fund a debt service reserve fund, and (4) [* and (3) *] pay certain costs in connection with the execution and delivery of the Series 2020 Certificates; and

WHEREAS, to facilitate the foregoing and to pay the cost thereof, it is necessary and desirable for the City to take the following actions:

1. enter into a Base Lease (the “Base Lease”) with the Trustee, as lessee, pursuant to which the City will lease the property on which City Hall and a fire station are located (the “Leased Property”) to the Trustee on the terms and conditions set forth therein, the form of which is attached hereto as **Exhibit A**;
2. enter into an annually-renewable Lease Purchase Agreement (the “Lease”) with the Trustee, pursuant to which the City, as lessee, will lease the Leased Property back from the Trustee, as lessor, on a year-to-year basis with an option to purchase the Trustee’s interest in the Leased Property, the form of which is attached hereto as **Exhibit B**;
3. approve a Continuing Disclosure Undertaking (the “Continuing Disclosure Undertaking”), pursuant to which the City will agree to provide financial information, certain operating data and notices of certain enumerated events, the form of which is attached hereto as **Exhibit C**;
4. enter into a Tax Compliance Agreement (the “Tax Compliance Agreement”) with the Trustee, pursuant to which the City will make certain representations and covenants related to the exclusion of the Interest Portion of Basic Rent (as defined in

the Lease) under the Lease from gross income for purposes of federal income taxation, the form of which is attached hereto as **Exhibit D**;

5. approve a Declaration of Trust (the “Declaration of Trust”) by the Trustee, pursuant to which the Series 2020 Certificates will be executed and delivered, the form of which is attached hereto as **Exhibit E**;

6. approve an Official Statement with respect to the Series 2020 Certificates, to be in substantially the same form as the Preliminary Official Statement with respect to the Series 2020 Certificates, the form of which is attached hereto as **Exhibit F** (the “Preliminary Official Statement,” and collectively, the “Official Statement”);

7. enter into a Certificate Purchase Agreement (the “Certificate Purchase Agreement”) with the Trustee and Stifel, Nicolaus & Company, Incorporated, St. Louis, Missouri (the “Underwriter”), as the original purchaser of the Series 2020 Certificates, the form of which is attached hereto as **Exhibit G**; and

8. deliver a Letter of Escrow Instructions (the “Escrow Instructions”) to UMB Bank, N.A., as trustee for the Refunded Certificates, the form of which is attached hereto as **Exhibit H**; and

9. enter into certain documents and agreements to terminate documents executed in connection with the delivery of the Series 2010B Certificates (collectively, the “Termination Documents”), the forms of which are attached hereto as **Exhibit I**.

The Base Lease, the Lease, the Continuing Disclosure Undertaking, the Tax Compliance Agreement, the Certificate Purchase Agreement, the Escrow Instructions, and the Termination Documents are referred to together herein as the “City Documents.”

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

Section 1. Approval of Delivery of the Series 2020 Certificates. The City hereby approves the delivery of the Series 2020 Certificates in the aggregate principal amount of \$[*Principal Amount*] for the purposes set forth in the recitals to this Ordinance. The Series 2020 Certificates shall be delivered and secured pursuant to the Declaration of Trust. The Series 2020 Certificates shall be in such denominations, shall be in such forms, shall have such other terms and provisions, and shall be executed and delivered in such manner subject to such provisions, covenants and agreements as are set forth in the Declaration of Trust. The Series 2020 Certificates shall be sold to the Underwriter.

Section 2. Limited Obligations. The Series 2020 Certificates and the interest thereon shall be limited obligations, payable solely out of the rents, revenues and receipts received by the Trustee from the City pursuant to the Lease. Neither the Lease nor the Series 2020 Certificates shall constitute a debt or liability of the City or of the State of Missouri or of any political subdivision thereof, and neither the Lease nor the Series 2020 Certificates shall constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

Section 3. Authorization and Approval of the City Documents and the Declaration of Trust. The City Documents and the Declaration of Trust are hereby approved in substantially the forms submitted to and reviewed by the City Council on the date hereof, with such changes therein as are approved by the Mayor. The Mayor’s execution of the City Documents will be conclusive evidence of such approval.

The obligation of the City to pay Basic Rent Payments (as defined in the Lease) under the Lease is subject to annual appropriation and will constitute a current expense of the City and will not in any way be construed to be an indebtedness or liability of the City in contravention of any applicable constitutional, statutory or charter limitation or requirement concerning the creation of indebtedness or liability by the City, nor will anything contained in the Lease constitute a pledge of the general tax revenues, funds or moneys of the City, and all provisions of the Lease will be construed so as to give effect to such intent.

The Mayor is hereby authorized and directed to execute and deliver the City Documents and to approve changes to the Declaration of Trust on behalf of and as the act and deed of the City. The City Clerk is hereby authorized to affix the City's seal to the City Documents and attest said seal.

Section 4. Prepayment of the Refunded Certificates. The Refunded Certificates are hereby called for prepayment prior to maturity on November 20, 2020. Such Refunded Certificates shall be prepaid at the principal corporate trust office of the Trustee, by the payment on the prepayment date of the principal thereof, together with prepayment premium, if any, and accrued interest thereon to the prepayment date. The officers of the City are hereby authorized and directed to take such other action as may be necessary in order to effect the prepayment of such Refunded Certificates.

Section 5. Approval of Preliminary Official Statement and Official Statement. The Preliminary Official Statement, in the form presented to the City Council, and filed in the records of the City, is hereby ratified and approved, and the final Official Statement is hereby authorized and approved, supplementing, amending and completing the Preliminary Official Statement, with such changes therein and additions thereto as are necessary to conform to and describe the transaction related to the Series 2020 Certificates and approved by the Mayor, who is authorized to execute and deliver the final Official Statement on behalf of and as the act and deed of the City. The Mayor's execution of the Official Statement will be conclusive evidence of his approval thereof. The City hereby approves the public distribution of the final Official Statement by the Underwriter in connection with the sale of the Series 2020 Certificates.

For the purpose of enabling the Underwriter to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission (the "Rule"), the City hereby deems the Preliminary Official Statement to be "final" as of its date, except for the omission of such information as is permitted by the Rule, and the appropriate officers of the City are hereby authorized, if requested, to provide the Underwriter a letter or certification to such effect and to take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Underwriter to comply with the requirement of such Rule.

Section 6. Approval of Professional Services [*and Insurance Policy*]. The City hereby ratifies and confirms the engagement of the Underwriter and Gilmore & Bell, P.C., as special tax counsel. The Underwriter is authorized to engage the services of a verification agent on behalf of the City in connection with the delivery of the Series 2020 Certificates and the refunding of the Refunded Certificates. [*The scheduled payment of principal of and interest on the Series 2020 Certificates when due will be guaranteed under a Municipal Bond Insurance Policy to be issued concurrently with the delivery of the Series 2020 Certificates by [*Bond Insurer*]. The City hereby authorizes the Mayor to execute the commitment for the policy and to enter into such other documents and take such actions as he may deem necessary or advisable in connection with the policy.*]

Section 7. Appropriation of Basic Rent Payments. The City hereby appropriates up to \$_____ to pay the Basic Rent Payment coming due during the current fiscal year, which is also the Original Term of the Lease.

Section 8. Further Authority. The City will, and the officials and agents of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the City Documents and the other documents authorized or approved hereby, including execution of an agreement for continuing disclosure compliance services.

Section 9. Severability. The sections of this Ordinance shall be severable. If any section of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining sections shall remain valid, unless the court finds that: (1) the valid sections are so essential to and inseparably connected and dependent upon the void section that it cannot be presumed that the City Council has or would have enacted the valid sections without the void ones, and (2) the valid sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent. The invalid provision shall be omitted, and this Ordinance shall be amended to the extent possible to conform to the original intent of the City.

Section 10. Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

Section 11. Effective Date. This Ordinance shall become effective immediately from and after its passage and adoption into law.

1st Reading this 21st day of September 2020.

2nd Reading this 19th day of October 2020.

3rd Reading, PASSED AND APPROVED, this **19th day of October 2020.**

Babatunde Deinbo, Mayor

(Seal)

ATTEST:

Deanna Jones, City Clerk

Approved as to form:

City Attorney

EXHIBIT A

BASE LEASE

[On file in the office of the City Clerk]

EXHIBIT B

LEASE PURCHASE AGREEMENT

[On file in the office of the City Clerk]

EXHIBIT C

CONTINUING DISCLOSURE UNDERTAKING

[On file in the office of the City Clerk]

EXHIBIT D

TAX COMPLIANCE AGREEMENT

[On file in the office of the City Clerk]

EXHIBIT E

DECLARATION OF TRUST

[On file in the office of the City Clerk]

EXHIBIT F

PRELIMINARY OFFICIAL STATEMENT

[On file in the office of the City Clerk]

EXHIBIT G

CERTIFICATE PURCHASE AGREEMENT

[On file in the office of the City Clerk]

EXHIBIT H

LETTER OF ESCROW INSTRUCTIONS

[On file in the office of the City Clerk]

EXHIBIT I

TERMINATION DOCUMENTS

[On file in the office of the City Clerk]