



Legislation Text

File #: 211037, **Version:** 1

ORDINANCE NO. 211037

Approving the issuance by the City of Kansas City Missouri of its special obligation bonds (the "Series 2021E Bonds"), to finance and refinance certain obligations of the City on a taxable basis with an estimated cost of \$50,500,000.00, such Series 2021E Bonds to be issued in an aggregate principal amount not to exceed \$51,000,000.00; approving and authorizing certain documents and actions relating to the issuance of the Series 2021E Bonds; estimating and appropriating revenue in Fund No. 3340, the Taxable Special Obligation Refunding Bond Fund Series 2021E; designating requisitioning authority; and authorizing the Director of Finance to modify and close project accounts.

WHEREAS, the City of Kansas City, Missouri (the "City") is authorized under its charter to issue its bonds or other obligations in evidence thereof; and

WHEREAS, the City and KC Hotel Property Owner, LLC, a Delaware limited liability company ("Hotel Property Owner") (as successor by assignment from KC Hotel Developers, LLC) are parties to that certain Second Amended and Restated Master Financing Agreement dated as of January 18, 2018 (as may be amended, modified, supplemented, replaced or restated from time to time, including by the hereinafter-defined First Amendment to Master Financing Agreement, the "Master Financing Agreement"), for the purpose of setting forth a master plan of finance for the construction of the Project defined and described therein (that being the acquisition and site preparation of the Project Site and the construction and equipping of the Hotel and the Parking/Meeting Space on the Project Site, as such terms are defined in the Master Financing Agreement); and

WHEREAS, Hotel Property Owner financed a portion of the Project through a term loan with NBH Bank, a Colorado state-chartered bank ("NBH") (the "Loan") that is secured by an assignment of the Contract Payments (as defined in the Master Financing Agreement), which Loan was made pursuant to that certain Loan Agreement dated as of January 18, 2018 (the "Loan Agreement"), by and between NBH and Hotel Property Owner; and

WHEREAS, the City, Hotel Property Owner, and NBH entered into that certain Absolute Assignment of Contract Payments dated as of January 18, 2018 (as may be amended, modified, supplemented, replaced or restated from time to time, the "Assignment"), for the purpose of absolutely and irrevocably assigning the Contract Payments to NBH to secure the Loan and thus requiring the City to make the Contract Payments directly to NBH; and

WHEREAS, pursuant to the Assignment, the City has made all scheduled payments on the Loan, and the Loan is outstanding in the amount of \$35,013,495; and

WHEREAS, the City, Hotel Property Owner and NBH wish to refinance, retire and pay the Loan in full, including payment of the outstanding principal amount of the Loan and interest thereon and payment of the Prepayment Premium (as defined the Loan Agreement), through the issuance of special obligation bonds of the City to be purchased by NBH, which refinancing will, among other things, effect a termination of the Loan Agreement and the Assignment, and result in the replacement of annual appropriation Contract Payments made by the City with annual appropriation debt service payments made by the City on such special obligation bonds; and

WHEREAS, the City and Hotel Property Owner (as successor by assignment from KC Hotel Developers, LLC) are parties to that certain Second Amended and Restated Exclusive Catering Agreement dated as of January 18, 2018 (as may be amended, modified, supplemented, replaced or restated from time to time, including by the hereinafter-defined Third Amended and Restated Exclusive Catering Agreement, the “Exclusive Catering Agreement”), pursuant to which the City has engaged Hotel Property Owner to provide exclusive Catering Services at the Convention Meeting Space (as such terms are defined in the Exclusive Catering Agreement); and

WHEREAS, the City and Hotel Property Owner wish to enter into that certain Third Amended and Restated Exclusive Catering Agreement (the “Third Amended and Restated Exclusive Catering Agreement”), pursuant to which, among other things, the City will agree to make a lump sum up-front payment to the Contractor in an amount not to exceed \$5,893,312.00 (the “Fixed Fee Payment” as defined in the Third Amended and Restated Exclusive Catering Agreement) as consideration for the services that Contractor will perform under the Exclusive Catering Agreement from and after the effective date thereof, through the remaining term thereof; and

WHEREAS, the City wishes to finance the Fixed Fee Payment through the issuance of special obligation bonds of the City to be purchased by NBH; and

WHEREAS, the City proposes to issue its Taxable Special Obligation Refunding Bonds (Kansas City, Missouri Refinancing and Prepayment Projects), which shall be designated the Series 2021E Bonds or such other series designation as the Director of Finance shall determine (the “Series 2021E Bonds”), on a private placement basis, to provide funds: (a) to refinance, retire and pay the Loan in full (which will be treated as a refunding for City accounting purposes), (b) to finance the Fixed Fee Payment and (c) to pay certain costs related to the issuance of the Series 2021E Bonds; and

WHEREAS, the Series 2021E Bonds will be issued pursuant to that certain Bond Issuance and Purchase Agreement (the “Bond Issuance Agreement”) between the City and NBH or its affiliate as purchaser, or other purchaser selected by the Director of Finance, under which Security Bank of Kansas City will serve as Paying Agent for the City; and

WHEREAS, the City and Hotel Property Owner (as successor by assignment from KC Hotel Developers, LLC) are parties to that certain First Amended and Restated Super-TIF Financing Agreement dated as of August 22, 2016 (as may be amended, modified, supplemented, replaced or restated from time to time, including by the hereinafter-defined First

Amendment to Super-TIF Agreement, the “Super-TIF Agreement”), pursuant to which the City and the Hotel Property Owner have agreed, among other things, to the disposition of Additional EATs (as defined therein) for the purposes and under the circumstances set forth therein; and

WHEREAS, the City and Hotel Property Owner wish to enter into that certain First Amendment to Second Amended and Restated Master Financing Agreement (the “First Amendment to Master Financing Agreement”) and that certain First Amendment to First Amended and Restated Super-TIF Financing Agreement (the “First Amendment to Super-TIF Agreement”), to modify certain provisions of the Master Financing Agreement and the Super-TIF Agreement relating to the Contract Payments and payments made under the Exclusive Catering Agreement in connection with the issuance of the Series 2021E Bonds, the retirement and payment in full of the Loan and the making of the Fixed Fee Payment; and

WHEREAS, in order to accomplish the foregoing, it is necessary and desirable that the City approve the transactions described in this Ordinance and the execution and delivery of the financing documents and certain other matters in connection with the transaction, as herein provided; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. Authorization of Bonds; Authorization and Execution of Bond Purchase Agreement and Certificates of Final Terms. The City hereby authorizes the issuance of its Series 2021E Bonds in the aggregate principal amount not to exceed \$51,000,000.00 for the purpose of providing funds for the following: (a) to refinance, retire and pay the Loan in full, (b) to finance the Fixed Fee Payment and (c) to pay certain costs related to the issuance of the Series 2021E Bonds. The Series 2021E Bonds shall be dated the date set forth in the Bond Issuance Agreement and form of Bond. The Series 2021E Bonds shall bear interest at rates initially not to exceed a true interest cost of 5.00%. The Series 2021E Bonds shall have such other terms and provisions as shall be provided in the Bond Issuance Agreement approved by the Director of Finance.

The Director of Finance is hereby authorized and directed to approve the purchaser of the Series 2021E Bonds, the purchase price for the Series 2021E Bonds, the principal amounts by maturity, the interest rates, the terms of credit enhancement, if any, and the other final terms of the Series 2021E Bonds, including applicable redemption provisions, subject to the limitations set forth in this Section, and in that connection, to execute and deliver, for the Series 2021E Bonds, the Certificate of Final Terms for and on behalf of and as the act and deed of the City, which approval will be conclusively evidenced by the Director of Finance’s execution of the Certificate of Final Terms. Upon execution, the Certificate of Final Terms for the Series 2021E Bonds will be attached to this Ordinance as **Exhibit A** and the City Clerk is hereby authorized to file such Certificate of Final Terms with this Ordinance. The City is authorized to enter into the Bond Issuance Agreement for the Series 2021E Bonds in accordance with the Certificate of Final Terms. The Director of Finance is authorized to execute the Bond Issuance Agreement for and on behalf of and as the act and deed of the City.

Section 2. Limited Obligations. The Series 2021E Bonds and the interest thereon shall be special, limited obligations of the City payable solely out of Appropriated Moneys (as defined in the Bond Issuance Agreement) and

moneys in the funds and accounts established under such Bond Issuance Agreement. The Series 2021E Bonds and interest thereon shall not be deemed to constitute a debt or liability of the City within the meaning of any constitutional, statutory or charter limitation or provision, and shall not constitute a pledge of the full faith and credit of the City, but shall be payable solely from the funds provided for in the Bond Issuance Agreement. The issuance of the Series 2021E Bonds shall not, directly, indirectly or contingently, obligate the City to levy any form of taxation therefor or to make any appropriation for their payment.

The Bond Issuance Agreement provides that the City Manager or other officer of the City at any time charged with the responsibility of formulating budget proposals is required to include in the budget proposals submitted to the City Council, in each Fiscal Year in which the Series 2021E Bonds are Outstanding, an appropriation for all payments of principal of and interest on the Series 2021E Bonds and any other amounts reasonably expected to become due during the ensuing Fiscal Year (and any payments due in a prior Fiscal Year which remain due and payable thereunder); it being the intention of the City that the decision to appropriate or not to appropriate under such Agreement shall be made solely by the City Council and not by any other official of the City. The Bond Issuance Agreement further provides that (i) the City intends, subject to the provisions set forth therein respecting the failure of the City to budget or appropriate funds to make payments on the Series 2021E Bonds, to pay the debt service on the Series 2021E Bonds and to pay any other amounts reasonably expected to become due thereunder, (ii) the City reasonably believes that legally available funds in an amount sufficient to make all payments of principal of and interest on the Series 2021E Bonds and any other amounts reasonably expected to become due thereunder during each Fiscal Year can be obtained, and that (iii) the City further intends to do all things lawfully within its power to obtain and maintain funds from which payments of principal of and interest on the Series 2021E Bonds and any other amounts reasonably expected to become due thereunder may be made, including making provision for such debt service.

Section 3. Authorization and Approval of Financing Documents. The proposed documents relating to the financing (the "Financing Documents") are hereby approved in substantially the forms submitted to the City Council, and the Director of Finance is authorized to execute and deliver the Financing Documents with such changes therein and additions thereto as the Director of Finance deems necessary or appropriate.

- (a) Bond Issuance Agreement.
- (b) First Amendment to Second Amended and Restated Master Financing Agreement.
- (c) Third Amended and Restated Exclusive Catering Agreement.
- (d) First Amendment to First Amended and Restated Super-TIF Financing Agreement.

The City Council further approves the execution and delivery by the City of any documents which may be required in connection with the execution and delivery by the City of the Bond Issuance Agreement and issuance of the Series 2021E Bonds and of such other documents as the Director of Finance deems necessary or appropriate in

connection with the transactions authorized by this Ordinance.

Section 4. Credit Enhancement. The City hereby authorizes the Director of Finance to obtain a bond insurance policy, letter of credit or other credit enhancement ("Credit Enhancement") for some or all of the Series 2021E Bonds and the purchase or a surety bond or debt service reserve fund policy for any debt service reserve fund, if necessary or desired, from a credit provider with such credit rating that, in the opinion of the Financial Advisors and the Director of Finance, there will be achieved an economic benefit for the City if the Series 2021E Bonds are secured by such Credit Enhancement. The purchase of such Credit Enhancement and the entering into of such agreements with respect thereto as may be necessary or appropriate are hereby approved. Such credit enhancement may be such type, in such amount and provided by such entity or entities as the Director of Finance shall determine to be in the best interest of the City. The officials of the City are authorized and directed to execute all documents, agreements, instruments and certificates in connection with such credit enhancement.

Section 5. Approval of Selection of Professionals.

(a) The City approves the selection of Hilltop Securities Inc., and Moody Reid Financial Advisors to act as Co-Financial Advisors in connection with the issuance of the Series 2021E Bonds. The City approves the selection of Kutak Rock LLP and the Hardwick Law Firm LLC to act as Co-Bond Counsel in connection with the issuance of the Series 2021E Bonds.

Section 6. Further Authority. The officials of the City are further authorized and directed to execute such documents, instruments and certificates and to take such further actions on behalf of the City as shall be necessary or desirable to effect the terms and provisions of this Ordinance.

Section 7. Establishment of Fund. That Fund No. 3340, the Taxable Special Obligation Refunding Bond Fund Series 2021E, is hereby established in the records of the City of Kansas City, Missouri.

Section 8. Estimation of Revenues. That revenue of \$50,977,000.00 is hereby estimated in Fund No. 3340, the Taxable Special Obligation Refunding Bond Fund Series 2021E, in the following accounts:

AL-3340-120000-590000	Bond Proceeds	\$ 5,950,000.00
AL-3340-120000-590040	Refunding Bond Proceeds	45,025,000.00
AL-3340-120000-485100	Premium on Sale of Bonds	1,000.00
AL-3340-120000-485190	Premium on Sale of Refunding Bonds	<u>1,000.00</u>
	TOTAL	\$50,977,000.00

Section 9. Appropriation of Revenues. That the sum of \$50,977,000.00 is hereby appropriated from the Unappropriated Fund Balance of Fund No. 3340, the Taxable Special Obligation Refunding Bond Fund Series 2021E, to the following accounts:

AL-3340 -129620-G	Cost of Issuance	\$ 500,202.00
AL-3340 -129631-G	Purchaser's Discount	1,000.00
AL-3340 -129630-G	Discount on Sale of Refunding Bonds	1,000.00
AL-3340 -129632-G	Discount on Sale of Bonds	1,000.00
AL-3340 -129671-G	Loan Payoff	44,580,486.00
AL-3340 - 632130-B	Fixed Fee Payment	<u>5,893,312.00</u>
	TOTAL	\$50,977,000.00

Section 10. Requisitioning Authority. That the Director of Finance is designated as the requisitioning authority for Accounts No. AL-3340 -129620, AL-3340 -129631, AL-3340 -129630, AL-3340 -129632 and AL-3340 -129671 and that the Director of Conventions and Entertainment is designated as the requisitioning authority for Account Nos. AL-3340-632130.

Section 11. Modification of Accounts. That the Director of Finance is hereby authorized to modify the previously approved estimated revenues and appropriations in **Section 8** and **Section 9** previously as required to correctly record the budgetary amounts finalized through the sale of the Bonds into the marketplace.

Section 12. Closing of Accounts. That the Director of Finance is hereby authorized to close accounts, open encumbrances and retainage related to the accounts in **Section 9**, and return the unspent portion to the Fund balance from which it came upon the earliest of: (i) the provisions of this ordinance; (ii) final maturity of financing or (iii) five years after issuance.

Section 13. Further Authority. The officials of the City are further authorized and directed to execute such documents, instruments and certificates and to take such further actions on behalf of the City as shall be necessary or desirable to effect the terms and provisions of this Ordinance.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Tammy L. Queen
Director of Finance

Approved as to form and legality:

Katherine Chandler
Assistant City Attorney

EXHIBIT A-1
CERTIFICATE OF FINAL TERMS
SERIES 2021E BONDS

The undersigned Director of Finance of the City of Kansas City, Missouri (the "City"), in connection with the issuance of the City's \$_____ Taxable Special Obligation Bonds (Kansas City, Missouri Projects) Series 2021E (the "Series 2021E Bonds"), certifies pursuant to Section 1 of Ordinance No. _____ of the City (the "Ordinance"), as follows:

1. Original Principal Amount. The Series 2021E Bonds are issued in the original principal amount of \$_____.
2. Maturity Schedule. The Series 2021E Bonds will mature on the dates and in the amounts and bear interest at the rates as set forth in the Bond Issuance and Purchase Agreement (the "Bond Issuance Agreement") by and between the City and NBH Bank, as Purchaser, and as summarized on Schedule ____ to this Certificate.
3. True Interest Cost: The true interest cost of the Series 2021E Bonds is _____%, as shown on Schedule ____ to this Certificate.
4. Purchase Price. The purchase price of the Series 2021E Bonds is \$_____, representing

\$_____ principal amount [, less _____].

5. Optional Redemption. The Series 2021E Bonds are subject to optional and mandatory sinking fund redemption pursuant to the Bond Issuance Agreement on the dates and in the amounts as set forth therein.

The terms set forth in this Certificate of Final Terms are within the limitations of Section 1 of the Ordinance.

Delivered this ____ day of _____, 2021.

CITY OF KANSAS CITY, MISSOURI

By: _____

Tammy L. Queen

Director of Finance