

## Memphis City Council Summary Sheet

*transfer*

**1. Description of the Item (Resolution, Ordinance, etc.)**

Resolution to ownership of Memphis Zoo tram from the City of Memphis to the Memphis Zoological Society.

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

Parks and Neighborhoods

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

( Not Applicable )

**4. State whether this requires a new contract, or amends an existing contract, if applicable.**

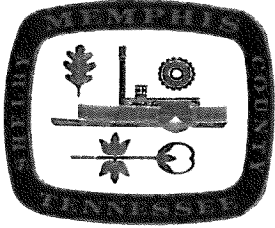
This will not require a contract.

**5. State whether this requires an expenditure of funds/requires a budget amendment.**

This will not require an expenditure of funds.

6. Council District 5, Super District 9

7. MWBE Goals? N/A



***Resolution to Transfer Ownership of Memphis Zoo Tram to  
the Memphis Zoological Society***

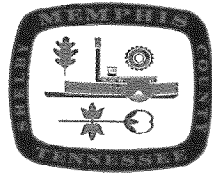
**WHEREAS**, the City of Memphis did purchase a tram for the Memphis Zoological Society for use at the Memphis Zoo as part of the Fiscal Year 2011 Capital Acquisition Budget; and

**WHEREAS**, the value of the tram purchased in 2011 does exceed \$10,000 and ownership is in the name of the City of Memphis; and

**WHEREAS**, the Memphis Zoological Society desires to trade-in the current tram for purchase of a new tram; and

**WHEREAS**, the Administration requests that the Council approve the transfer of ownership from the City of Memphis to the Memphis Zoological Society for the express purpose of selling or trading said tram to acquire a new tram.

**NOW THEREFORE BE IT RESOLVED**, by the Council of the City of Memphis that it hereby approves the transfer of ownership of the tram purchased as part of the 2011 Capital Acquisition Budget from the City of Memphis to Memphis Zoological Society.



## Memphis City Council Summary Sheet

**1. Description of the Item (Resolution, Ordinance, etc.)**

Resolution to amend and extend management agreement (contract #28278) with Goodwill Homes Community Services for an additional five (5) years with one option for an additional five (5) year period.

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

Parks Division

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

N/A

**4. State whether this will impact specific council districts or super districts.**

Goodwill Homes Community Services, Inc. will continue to operate the Goodwill Homes Senior Center located in council district 6, super district 8.

**5. State whether this requires a new contract, or amends an existing contract, if applicable.**

Amends existing contract #28278

**6. State whether this requires an expenditure of funds/requires a budget amendment**

This resolution would require an expenditure of funds and is included in the FY22 Parks Division budget request.

**7. If applicable, please list the MWBE goal and any additional information needed**

MWBE goal is not applicable.



***Resolution approving amendment and extension of Contract No. 28278 between the City of Memphis through its Division of Parks and Neighborhoods and Goodwill Homes Community Services, Inc. to manage and operate the Goodwill Homes Senior Center facility.***

**WHEREAS**, the City of Memphis, through its Division of Parks and Neighborhoods, owns the Senior Center Facility (Goodwill Homes Senior Center) located at 163 West Raines Road, Memphis, Tennessee, 38109, for the purpose of providing positive environments and a variety of activities for senior citizens on a daily basis; and

**WHEREAS**, the City of Memphis has an existing agreement with Goodwill Homes Community Services, Inc., to manage and operate the Goodwill Homes Senior Center facility; and

**WHEREAS**, Goodwill Homes has provided positive and successful senior citizen programming and services at the Goodwill Homes Senior Center facility since its inception in 1991, serving thousands of Memphis seniors; and

**WHEREAS**, the Division of Parks and Neighborhoods desires to amend and to extend the Agreement with Goodwill Homes Community Services, Inc. for an additional five (5) years from the date of execution, with one (1) option for an additional five (5) year period for the purpose of continued management and operation of the Goodwill Homes Senior Center facility; and

**WHEREAS**, City of Memphis Ordinance No. 4763, Article 1, Section 23-1(d) requires (for Management Agreements with terms exceeding two (2) years), the approval of the Council of the City of Memphis.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Memphis that this Amendment between the City of Memphis and Goodwill Homes Community Services, Inc., for management and operations of Goodwill Homes Senior Center facility, as agreed to by the parties, is hereby approved in accordance with the terms set forth therein outlining committed operational, financial and other stipulated criteria as to both parties in the approved Agreement.

**AMENDMENT CONTRACT NO. 28278**

**Between**

**CITY OF MEMPHIS**

**And**

**GOODWILL HOMES COMMUNITY SERVICES, INC.**

THIS AMENDMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Memphis, a Tennessee municipal corporation (hereinafter referred to as "City"), and Goodwill Homes Community Services, Inc., a Tennessee non-profit entity, (hereinafter to as "Goodwill").

**RECITALS:**

1. WHEREAS, City and Goodwill entered into Contract No. 28278 (hereafter Contract") for the operation of Goodwill Senior Center (hereafter "Senior Center"); and,
2. WHEREAS, the parties desire to amend the Contract to relieve Goodwill of the responsibility for the expense of utilities and for the responsibility of routine repairs; and,
3. Whereas, the parties hereby acknowledge that this document constitutes an Amendment to the Contract.

**NOW, THEREFORE**, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The Division of Parks and Neighborhoods desires to extend the Agreement with Goodwill Homes Community Services, Inc. for an additional five (5) years with one option for an additional five (5) year period for the purpose of continued management and operation of the Goodwill Homes Senior Center facility; and
2. The City of Memphis and Goodwill Homes Community Services, Inc. both desire the contract to continue to relieve Goodwill of the responsibility for the expense of utilities and that the City of Memphis General Services be responsible for all the routine repairs and major structural repairs, as typically performed on the other City facilities; and
3. The Contract section III Funding, is hereby amended as follows:
  - a. Item 3.01. Delete referenced Exhibit A and replace with amended Exhibit A attached.

4. Goodwill is obligated to adopt the goals of the City of Memphis Parks & Neighborhoods MWBE program as a provision of this Agreement.

5. All other terms and conditions set forth in the original Agreement, not in conflict with this Amendment, shall remain in full force and effect. Nothing in this Amendment relieves either party of their respective obligations under the Agreement.

6. This Amendment, together with the Contract, constitutes the entire agreement between the parties, and supersedes all other prior or contemporaneous communication between the parties relating to the subject matter of this Extension and Agreement. Each party to this Extension and Amendment hereby agrees to execute any document or instruments reasonably required by the other party to evidence the foregoing.

**IN WITNESS WHEREOF**, the parties, by and through their duly authorized representatives, have executed this **EXTENSION AND AMENDMENT TO CONTRACT NO. 28278 BETWEEN THE CITY OF MEMPHIS AND GOODWILL HOMES COMMUNITY SERVICES, INC.** as of the date above written.

**CITY OF MEMPHIS, TENNESSEE**

**GOODWILL HOMES COMMUNITY SERVICES, INC.**

By: \_\_\_\_\_  
Mayor

DocuSigned by:  
By: Susan Mills 4/19/2021  
C2A120CCDD4F43B  
Susan Mills, Chief Executive Officer

Approved as to Form:

\_\_\_\_\_  
Chief Legal Officer/City Attorney

Attest:

\_\_\_\_\_  
Comptroller

**Amended Exhibit A**

**Projected Annual Budget**

|                                       |                   |
|---------------------------------------|-------------------|
| Maintenance Tech                      | 35,000.00         |
| Program Salaries                      | 69,656.00         |
| Fringes                               | 12,558.00         |
| Telephone Services                    | 5,300.00          |
| Internet Services                     | 2,302.00          |
| Insurances                            | 16,000.00         |
| Fire and Security Monitoring          | 5,584.00          |
| Air and Heating Contract              | 4,500.00          |
| Equipment Rental                      | 3,500.00          |
| Equipment Maintenance and Repair      | 16,500.00         |
| Building Maintenance and minor Repair | 18,500.00         |
| Maintenance Supplies                  | 10,600.00         |
| <b>Total Projected Expenditures</b>   | <b>200,000.00</b> |

**PROGRAM PLAN FOR SERVICES AND ACTIVITIES**

Goodwill Homes Community Services, Inc. operates a Senior Citizens Center and an Adult Day Care Program at 163 West Raines Road, Memphis, Tennessee 38109. The boundary lines for the clients are South Parkway north, Holmes Road south, Elvis Presley east and Swinnea Road west.

Goodwill Homes Senior Center addresses the need, for social and recreational opportunities, educational activities, health promotions, and a variety of outreach services, for targeted low-income adults aged 55 years and older. The Senior Center is an essential link in the aging network, offering service activities and access to many community resources.

The Senior Center targets adults aged 55 or older in Southwest Shelby County. Most of the seniors in the services area are minority, low-income and frail. These seniors are in need of this

program to enhance their dignity and self-worth. Goodwill Homes Senior Center provides a linkage and access to resources to meet these needs. The goal of Goodwill Homes Senior Center is to prevent institutionalization and isolation among low-income elderly.

The clients served by the Senior Center are classified as either semi-retired (ages 55 through 59) or retired (ages 60 and above). The participants are primarily low-income African Americans.

The Adult Day Care Program provides day care for individual's ages 60 years and older and younger adults with physical, mental, or emotional disabilities. The Adult Day Care offers highly structured activities and personal care for seniors, while younger adults with disabilities are provided with structured activities to enhance their self-sufficiency and self-esteem. The Day Care is the only affordable program in Southwest Shelby.

The Senior Center program is operational five days per week, Monday through Friday, 7:00 a.m. to 5:00 p.m. The Senior Center is also open some nights and weekends depending upon the dates and hours for community meetings.


Services and programs to be provided by GOODWILL for the citizens of Memphis and Shelby County shall include, but not limited to

- a) Recreational programs
- b) Health and fitness programs
- c) Educational programs
- d) Information and referral services
- e) Congregate meal services
- f) Volunteer service activities
- g) Outreach activities
- h) Employment referral services
- i) Nutrition Education/Screening
- j) Adult Day Care
- k) Transportation services (Adult Day Care)
- l) Telephone reassurance



## Certification of Signature

“I, Susan Mills, hereby certify that the faxed/electronic/copied signature below is my legally enforceable signature.”

DocuSigned by:  
  
G2A120CGDD4F43B  
\_\_\_\_\_  
Signature

CEO

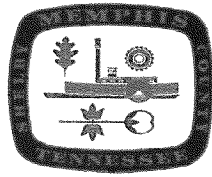
\_\_\_\_\_  
Title

Goodwill Homes Community Services, Inc.

\_\_\_\_\_  
Company

4/19/2021

\_\_\_\_\_  
Date



## Memphis City Council Summary Sheet

**1. Description of the Item (Resolution, Ordinance, etc.)**

Resolution to enter a new lease agreement with Save One Foundation dba Memphis Little League to utilize the entire property complex located at Will Carruthers Baseball Complex for five (5) years with two five (5) year options

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

Parks Division

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

N/A

**4. State whether this will impact specific council districts or super districts.**

Save One Foundation dba Memphis Little League will continue to operate the Will Carruthers Baseball Complex located in council district 6, super district 8.

**5. State whether this requires a new contract, or amends an existing contract, if applicable.**

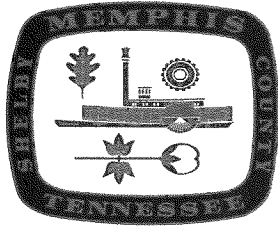
This resolution requires a new contract

**6. State whether this requires an expenditure of funds/requires a budget amendment**

No funding is required

**7. If applicable, please list the MWBE goal and any additional information needed**

MWBE goal is not applicable.



***Resolution approves the agreement between the City of Memphis through its Division of Parks and Neighborhoods and Save One Foundation dba Memphis Little League (MLL) to manage and operate Will Carruthers Baseball Complex.***

**WHEREAS**, the City of Memphis owns and operates, through its Division of Parks and Neighborhoods, the entire property complex located at Will Carruthers Baseball Complex (WCBC), 3880 Neely Rd, Memphis, TN 38109, which includes five (5) baseball field playing surfaces, spectator viewing areas, concessions, restrooms and parking areas; and

**WHEREAS**, the City of Memphis and Save One Foundation dba Memphis Little League (MLL), have established positive collaboration in serving and providing sporting, recreational and athletic opportunities to its youth and others in the Memphis community; and

**WHEREAS**, MLL has utilized the WCBC for youth baseball and other related sporting events and youth activities and desires extensive future operations and management use of the facility at MLL's full operational and capital costs (i.e. no cost to the City); and

**WHEREAS**, The initial period of this agreement shall be for five (5) years from the date of execution, with two (2) consecutive five (5) year options to renew, which shall be exercised separately upon mutual approval of the parties, providing for a total potential term of fifteen (15) years ; and

**WHEREAS**, City of Memphis Ordinance No. 4763, Article 1, Section 23-1(d) requires (for Management Agreements with terms exceeding two (2) years), the approval of the Council of the City of Memphis to enter into this Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Memphis that this Agreement between the City of Memphis and Save One Foundation dba Memphis Little League, for management and operations of the Will Carruthers Baseball Complex, as agreed to by the parties, is hereby approved in accordance with the terms set forth therein outlining committed operational, financial and other stipulated criteria as to both parties in the approved Agreement.



JIM STRICKLAND  
MAYOR

DIVISION OF PARKS & NEIGHBORHOODS  
NICK WALKER

From: Nick Walker, Director, Parks and Neighborhoods Division  
To: Jim Strickland, Mayor  
Via: Doug McGowen, Chief Operation Officer  
DATE: April 6, 2021  
SUBJECT: Memphis Little League Lease Agreement

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**1. Statement of Opportunity**

The Division of Parks and Neighborhoods has established positive collaboration with Memphis Little League (MLL) to provide recreational and athletic opportunities to youth and others through the property complex located at 3380 Neely Road. The Division and MLL desire to formalize this agreement to govern MLL's use of related facilities.

**2. Prior Parks & Neighborhoods Action**

The Division of Parks and Neighborhoods has collaborated with MLL in past years and wish to continue collaboration through a formalized agreement.

**3. EBO Participation**

There is no funding associated this agreement.

**4. COO Action**

The COO is requested to ask the Mayor to approve this contract.

# City of Memphis



## BID AND CONTRACT AGENDA SHEET

### FY 21

Original staples to

1. Division: Parks and Neighborhoods Date 4/6/2021

Division Contact Person Andrew Fisher Phone # 9016364203  
 Print Name

2. Contractor : Save One Foundation dba Memphis Little League Address: 7535 Appling Estate Drive

City/State/ Zip Code Memphis, TN 38133

Contractor's Contact Name Kerry Cobb Contractor's Email Address kerryc@cwapparealeast.com

3. BID REJECTION:

For purchase/construction of \_\_\_\_\_

Explanation of rejection \_\_\_\_\_

Request to Re-advertise \_\_\_\_\_

4. CONTRACT AWARD RECOMMENDATION: RFQ/RFP # \_\_\_\_\_ Vendor # \_\_\_\_\_

Check Box: Low  Best\*  Only  Negotiated

Contract Amount: \$0.00

Purpose : Lease Agreement for MLL use of the property complex located at 3380 Neely Rd

Special Instructions: \_\_\_\_\_

\*Justification for rejection of low bids attached. (Attach a copy of bid tabulation)

5. CHANGE ORDER/AMENDMENT/ENCUMBRANCE/FINAL PAYMENT: Contract# \_\_\_\_\_

For: No payment/encumbrance necessary

Special Instructions: \_\_\_\_\_

6. Submit Invoices to:

Dept. Contact Person \_\_\_\_\_ Address \_\_\_\_\_

City/State/Zip Code \_\_\_\_\_

|                          |                 |                          |       |                    |          |
|--------------------------|-----------------|--------------------------|-------|--------------------|----------|
| <input type="checkbox"/> | Extension       | Original Contract Amount | _____ | Final Payment Due: | \$ _____ |
| <input type="checkbox"/> | Change Order    | Previous C. O. Total     | _____ | Retainage:         | \$ _____ |
| <input type="checkbox"/> | Cancel Contract | Prev. Amend./Encum. Toll | _____ |                    |          |
| <input type="checkbox"/> | Transfer to PO  | C. O. #                  | _____ | Attached           | _____    |
| <input type="checkbox"/> | Amendment       | Encumbrance Amount       | _____ |                    |          |
| <input type="checkbox"/> | Encumber        | Adjusted Contract Amount | _____ |                    |          |
| <input type="checkbox"/> | Unencumber      |                          |       |                    |          |

COST & SOURCE OF FUNDS

| Type | Line #     | Fund | Serv. Ctr | Account # | Project # | Task # | Award # | Amount |
|------|------------|------|-----------|-----------|-----------|--------|---------|--------|
| (1)  | No Funding | 0111 | 151604    | 052528    |           |        |         | \$ -   |
| (2)  |            |      |           |           |           |        |         |        |
| (3)  |            |      |           |           |           |        |         |        |
| (4)  |            |      |           |           |           |        |         |        |
| (5)  |            |      |           |           |           |        |         |        |
| (6)  |            |      |           |           |           |        |         |        |

Appropriating Resolution Attached.  Other Attachments

CHECKED & APPROVED BY : Andrew J Fisher 4/6/2021  
 Service Center Approval Date

Nick Walker 4/6/2021  
 Division Director Date

Director, OBDC Approval \_\_\_\_\_ Date \_\_\_\_\_

Chief Administrative Officer \_\_\_\_\_ Date \_\_\_\_\_

City Engineer \_\_\_\_\_ Date \_\_\_\_\_

Contract Analyst-Print \_\_\_\_\_

Purchasing Agent or CPO \_\_\_\_\_ Date \_\_\_\_\_

FUNDING/PURCHASING APPROVAL:  
 \_\_\_\_\_ Funds are available.  
 \_\_\_\_\_ Funds to be appropriated/transferred.



**City of Memphis – Division of Parks & Neighborhoods**

**Youth and Family Services**

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2020, by and between the City of Memphis, Division of Parks & Neighborhoods, (hereafter “City”) and the **Save One Foundation dba Memphis Little League**, (hereinafter “MLL”) for the use and management of Will Carruthers Baseball Complex (hereafter “WCBC”).

**RECITALS**

**WHEREAS**, The City of Memphis, through its Division of Parks & Neighborhoods, owns and operates the entire property complex located at 3380 Neely Road, which includes five (5) baseball/softball fields, spectator viewing areas, bathroom and concession facilities and parking areas; and,

**WHEREAS**, The City of Memphis and MLL, have established positive collaboration in serving and providing sporting, recreational and athletic opportunities to its youth and others in the Memphis community; and,

**WHEREAS**, The City of Memphis and MLL desire to formalize and enter into this agreement to set forth terms and conditions upon which shall govern MLL’s use of WCBC and related facilities

**NOW, THEREFORE**, in consideration of the premises and mutual promises contained herein, and for the good and valuable consideration, the receipt and legal sufficiency of which hereby agree as follows:

**Section 1. Permitted Uses.**

1.01. Scope of Use. City hereby grants MLL the authority to manage/operate and use WCBC on a non-exclusive primary priority basis (at no cost to MLL and no fees payable to the City) specifically for baseball, softball, related field sports, various assemblies related to sports, cultural or community interest, band, dance, musical events and other directly related MLL activities. MLL’s use is specific to the 5 ball fields, restroom, concession facilities and parking areas. MLL shall not use or permit the use of such designated areas for any other purpose without prior written approval from the Division of Parks & Neighborhoods.

- 1.02. Use by Others. MLL shall allow other nonprofit youth groups within the Memphis community and non-profit neighborhood based groups to use WCBC as a meeting and recreation location. MLL may charge a reasonable fee for rentals and events held at WCBC based on its normal and customary fee structure and scheduling availability. Annual Rate/Charge Schedules must be provided to the City and adhered to in all MLL rental transactions.
  
- 1.03. Shelby County Middle and High School (hereafter SCS) Use. MLL shall allow use of the WCBC for league game play to SCS as the parties may agree. SCS will have primary scheduling priority for league game play during the months of March and April. All games for SCS will be scheduled through MLL. MLL shall have primary scheduling except as explicitly provided to SCS in this paragraph.
  
- 1.04. Non-exclusive Use. The City in no way relinquishes its right to assure that all citizens have equal access to WCBC and hereby retains the right to allow and approve use by others that are not pre-scheduled by MLL, provided that, in such instances, the City shall be responsible for operations, cleanup and maintenance associated with each specific event, WCBC following such uses.
  
- 1.05. Special Events. Individuals and/or organizations not associated with MLL who desire to use WCBC for special events must make application to MLL which shall have the exclusive right to grant or deny such application in accordance with Parks & Neighborhoods will direct any potential applicants desiring use of WCBC to MLL for scheduling purposes and to ensure that such application will not conflict with previously scheduled MLL activities. For informative purposes, MLL will provide Parks & Neighborhoods with a monthly event schedule reflecting all MLL and non MLL events/activities.
  
- 1.06. City of Memphis – Parks & Neighborhoods Use. The City of Memphis may schedule and use WCBC for any event as desired, based on scheduling and coordination availability with MLL. Any City of Memphis event must be scheduled with MLL and coordinated appropriately with due regard to the overall WCBC event programming. MLL agrees to allow the City to host various events per calendar year at WCBC at no cost to the City, barring scheduling conflicts. As such, the City does not have the right to cancel events already scheduled by MLL in order to host a City event.

## **Section 2. Term and Termination.**

- 2.01. This initial period of this agreement shall be for five (5) years from the date of execution, with two five (5) year options to renew, which shall be exercised separately upon mutual written approval of both parties. This agreement has a total potential term of fifteen (15) years.
- 2.02. Either Party may terminate this agreement for any reason with one-hundred and eighty (180) days written notice.
- 2.03. Within one hundred and eighty (180) days of expiration or termination of this agreement and subject to the approval of the City, MLL may remove any permanent structure(s) built solely with MLL funds; provided that, such structures are removed at the sole expense of MLL without damage to City property. Such expense shall include restoring the facility to its original condition. MLL shall be responsible for any and all damage to the facility resulting from the removal of such permanent structures. Notwithstanding the foregoing, MLL may remove all furnishing provided by MLL from such structures within the referenced one hundred and eighty (180) day period.

## **Section 3. Operations and Maintenance.**

3.01. Repairs, Maintenance and Operations by MLL. MLL agrees as follows:

- a) (1) Remove/Replace or Repair all bleachers not ADA compatible.
  - (2) Maintain field lighting system and lights, and where necessary, make corrections or replacement of flawed systems/lights.
  - (3) Ensure spectator area is ADA accessible from parking areas and appropriate signage is in place.
  - (4) Provide water connections, as desired by MLL.
  - (5) Maintain and service existing public restroom facilities on property.
  - (6) Maintain and service existing concessions facility on property.
- b) MLL shall provide ongoing routine maintenance to WCBC properties as described below and maintain WCBC facilities in good condition at its own cost and expense. Representatives from Parks & Neighborhoods shall meet with MLL each year during the term of this Agreement and provide a list of projects, which in the opinion of the City, need or are anticipated to need maintenance. Those projects designated as such will be funded by MLL. Projects designated by the City shall not exceed \$5,000.00 per year. The intent of the parties is for MLL to provide upkeep of the current



conditions and not for MLL to be required to make improvements. Notwithstanding the foregoing, MLL shall provide the following ongoing maintenance:

- (1) Mowing: Playing field areas, where necessary and applicable.
  - (2) Irrigation: Playing field areas, where necessary and applicable.
  - (3) Fertilizing: Playing field areas, where necessary and applicable.
  - (4) Aerating: Playing field areas, where necessary and applicable.
  - (5) Dumpsters: Provide adequate dumpsters and scheduled trash collection at the expense of MLL.
  - (6) Annual pesticide inspections and spraying of pesticides and herbicides:  
Spraying shall be done on an as needed basis.
- c) MLL shall be responsible for providing daily litter control in its permitted use area during practice, league play and the tournament season and keep the area free of litter. If the City determines litter control is not being provided effectively, the City will provide 24 hours' notice to MLL to clean up the litter. If it is not done satisfactorily, the City will provide the service and bill MLL for the cost of such service.
- d) If the City determines there are "maintenance needs" in addition to those identified at the beginning of or during any season or year, Parks & Neighborhoods will inform key MLL, by phone, electronic mail, or mail, of such maintenance needs. Response times to correct these needs shall be as follows:
- (1) Needs that do not present a safety concern must be corrected within 30 days;
  - (2) Needs that present a less than significant liability/safety concern must be signed and public access restricted, as needed from the area of concern within 24 hours. The problem shall be corrected within 7 days;
  - (3) Needs that present a significant liability / safety concern must be properly signed and public access restricted, to minimize potential liability. The problem shall be corrected within 24 hours;
  - (4) Graffiti shall be removed within 48 hours of notification, provided the weather and safety permits same.
- If MLL does not correct any maintenance/vandalism needs within the time allowed, the City may have such needs corrected and bill MLL for the full cost of such repairs.
- e) MLL shall be responsible for and agrees to pay all operating costs in its

management/operations of WCBC, which shall include utilities, general

maintenance, staffing, and all other cost incurred via the operations of WCBC. In some instances, or if applicable, these costs will be payable via reimbursement to the City. Moreover, if MLL shall perform or make available the services for routine maintenance to the infrastructure, such as permanent public restroom, paved walkways, and the field lighting system.

3.02. Repairs by City. Upon written notice to MLL, the City reserves the right to make any repairs or undertake any maintenance it deems necessary to preserve the integrity of WCBC based upon the failure of MLL to comply with this section. In the event the City is required to undertake such action, all resulting costs shall be invoiced to MLL for immediate payment. City also agrees to make following repairs at the City's expense, and

(1) Will assure that water fountains are properly working, that park benches are in suitable appearance and condition, and that any fixed or portable rest rooms are in proper condition, and

(2) Will make repairs to parking lot (i.e., potholes, light replacement, signage, landscaping), include ADA parking spaces, and maintain general upkeep.

#### **Section 4. Parking, Traffic Control & Security**

4.01. During MLL scheduled events at WCBC, MLL will assign members of their organization as necessary to manage and control parking, prevent cars from parking in "No Parking" areas, keep fire lanes and access for emergency vehicles clear, ensure congestion in the parking lot (s) is minimized, and monitor the handicapped parking spaces for appropriate use.

4.02. MLL will ensure that all events at WCBC authorized by MLL will have sufficient and adequate security and insurance coverage for the general safety and protection of the facility and all citizens participating in or attending events as spectators or guests. These provisions should also be required by MLL authorized third-party contractual users of WCBC.

#### **Section 5. Audits and Inspections**

5.01 Site Inspections. City shall have the right, through its authorized employees or agents, to inspect the WCBC premises from time to time to determine if it is being operated and maintained in accordance with this Agreement. MLL shall furnish keys for all locks to the Division of Parks & Neighborhoods for a minimum of two (2) on-site visits per year, or as may be coordinated by the parties.

5.02 Books and Records. City reserves the right to inspect and audit the records of MLL regarding its performance under this Agreement. MLL shall make and keep as the same accurate, full, complete records and books of accounts of revenue and income, costs and expenses that specifically relate to performance under this Agreement. Records and Books of account, together with any and all other memoranda pertaining thereto that may be kept, maintained or possessed by MLL shall be open to examination during regular business by the City or its representatives for the purposes of inspecting, auditing, verifying or copying the same or making extracts there from. MLL shall make and keep said records and books of accounts for a period of three (3) years after completion of the contractual obligations under this Agreement.

### **Section 6. Insurance & Indemnification**

6.01 MLL shall maintain during the term of this Agreement, at its own costs and expenses, the following insurance policies issued by insurance companies licensed in the State of Tennessee and acceptable to the City. All such insurances shall be evidenced by certificates and/or policies, as determined by the City, which shall name the City of Memphis as additional insured and shall be mailed to the City of Memphis, Attn: Risk Management as shown below.

MLL shall not commence any work under this contract until it has obtained and caused its subcontractors to procure and keep in force all insurance required. MLL's failure to maintain the following insurance coverage during the term hereof, shall be cause for immediate termination of this Agreement.

MLL shall provide notice to City within three (3) business days following receipt of any notice of cancellation or material change in MLL's insurance policy from MLL's insurer. Such notice shall be provided to City by registered mail, return receipt requested to the following address:

Division of Parks & Neighborhoods, Recreation Department, 2599 Avery, Memphis, TN 38112.

Each certificate or policy shall state in writing the following clause: **"The City of Memphis, its officials, agents, employees and representatives shall be named as additional insured on all liability policies."** The additional insured endorsements shall be attached to the Certificate of Insurance.

In addition, MLL will provide the City with a required \$2 Million Liability Certificate of Insurance (COI), (for the specific Premises) to include endorsement therein per the City of Memphis Risk Management Insurance Guidelines.

6.02. Workers Compensation To the extent applicable, MLL shall maintain in force Workers' Compensation coverage in accordance with the Statutory Requirements and Limits of the State of Tennessee and shall require all subcontractors to do likewise with Minimums of:

|                     |           |                        |
|---------------------|-----------|------------------------|
| Employers Liability | \$100,000 | Each Accident          |
|                     | \$500,000 | Disease - Policy Limit |

\$100,000 Disease - Each Employee

6.03 Automobile Liability. If applicable, automobile coverage with minimum limit of \$1,000,000.

6.04 Commercial General Liability. Comprehensive General Liability insurance, including premises and operations, contractual liability, independent contractor's liability, and broad form property damage liability coverage with minimum limits of:

|             |   |
|-------------|---|
| \$2,000,000 | General Aggregate                                   |
| \$1,000,000 | Products-Completed Operations                       |
| \$1,000,000 | Personal and Advertising Injury                     |
| \$1,000,000 | Each Occurrence (Bodily Injury and Property Damage) |
| \$ 50,000   | Fire Damage any one fire                            |
| \$ 50,000   | Medical expense any one person                      |

6.05. Property Insurance. MLL shall be responsible for maintaining any and all property insurance on their own equipment and shall require its subcontractors to do likewise. MLL shall require all subcontractors to carry insurance as outlined above, in case they are not protected by policies carried by MLL.

MLL shall be required to provide copies of the requisite insurance contemporaneously with the execution of this Agreement and will provide policies upon request

City reserves the right to reasonably require increases in coverage limits if same becomes necessary.

MLL shall indemnify, defend, save and hold harmless the City, its officers, employees, and agents, from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character arising out of or in connection with the breach of this Agreement by MLL, its employees, subcontractors, or agents, or any negligent act or omission of MLL, its employees, subcontractors, or agents, which occurs pursuant to the performance of this Agreement, and this indemnification shall survive the expiration or earlier termination of this Agreement. The provisions of this paragraph shall not apply to any loss or damage caused by the acts, errors, or omissions of the City, its officers, employees and agents.

MLL shall provide notice to City within three (3) business days following receipt of any notice of cancellation or material change in MLL's insurance policy from MLL's insurer. Such notice shall be provided to City by registered mail, return receipt requested, to the following addresses:

City of Memphis  
Risk Management Department

170 N. Main Street, 5<sup>th</sup> Floor  
Memphis, TN 38103

City of Memphis  
Purchasing Department  
125 N. Main, Room 354  
Memphis, TN 38103

Each certificate or policy shall state in writing the following clause:

**"The City of Memphis, its officials, agents, employees and representatives shall be named as additional insured on all liability policies:**

**The additional insured endorsements shall be attached to the Certificate of Insurance.**

#### **Section 7. Notice**

7.01 All notices or requests to City shall be given in writing to:

Director Nick Walker  
Division of Parks & Neighborhoods  
2599 Avery Avenue  
Memphis, Tennessee 38112  
(901) 636-4200

and copied to:

City Attorney  
125 North Main Street, Room 336  
Memphis, TN 38103

Phone (901) 636-6614

Notices and requests to MLL shall be given to:

Chairman/Vice President  
Memphis Little League  
7535 Appling Estate Dr.  
Memphis, TN 38133  
(901) 830-5538

### **Section 8. Miscellaneous Provisions**

8.01 Surrender of Premises. Upon the expiration of this Agreement or if it terminated sooner, MLL shall deliver WCBC to the City in good condition, reasonable use, wear and tear accepted.

8.02 Ownership of the Property and Improvements. MLL agrees that any and all improvements thereto, paid for in whole or in part by MLL, shall become the property of the City upon the expiration or termination of this Agreement, except as provided in Paragraph 2.03 above. MLL further acknowledges WCBC shall remain the property of the City of Memphis and that MLL shall not encumber such property or make any alterations or improvements to WCBC without the prior written approval of the City's Director of Division of Parks & Neighborhoods.

8.03 Scheduling. MLL shall furnish the City a schedule of all games, practices, tournaments and any and all uses of WCBC two (2) months prior to the beginning of the season or as soon as practicable. MLL may revise the schedule after it is submitted to the City.

8.04 Meetings. MLL officials shall schedule and meet with Parks & Neighborhoods representatives periodically for purposes of reviewing and planning WCBC issues such as the number of MLL participants and events; maintenance needs; planned capital improvements; concerns expressed by citizens and neighborhoods; and policies and practices to be followed.

8.05 Advertising/ Annual Rate/Charge Schedules. All advertising shall be subject to approval by the City prior to placement. Annual Rate/Charge Schedules for public rental and use of WCBC shall be provided to City in January of each year, and as soon as practical as changes occur. Such charges shall be reasonable and customary.

8.06 Entire Agreement. This Agreement contains the entire agreement of the Parties hereto and there are no other promises or conditions in any other agreements whether oral or written.

This Agreement supersedes any prior written or oral agreements between the Parties pertaining to the subject matter hereof.

8.07 Relationship of Parties. This Agreement does not and shall not be construed to create a partnership or joint venture between the Parties hereto.

8.08 Third Party Beneficiaries. This Agreement does not create any relationship with, or any rights in favor of, any third party.

8.09 Assignment. MLL shall not assign or transfer its interest in this Agreement without the prior written consent of the City.

8.10 Amendment. This Agreement may be modified or amended only by a document in writing executed by an authorized representative of the Parties hereto.

8.11 Park Ordinance. MLL agrees to comply with applicable park rules and the city ordinance related to park hours. Park hours shall be from 6:00 am to 10:00 pm from November 1 through March 14 and 6:00 am to 10:00 pm from March 15 through October 31.

8.12 Nondiscrimination. MLL agrees and warrants that no person shall be excluded from participation in or be otherwise subjected to discrimination in Arrow's use of the Premises or performance of this Agreement on the grounds of disability, race, gender, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional or statutory law, or local ordinances and policies of the City of Memphis. Upon a finding of such discrimination, this Agreement shall be immediately terminated.

8.13 Governing Law. Arrow is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state and local laws, ordinances, and regulations applicable to its performance of this Agreement. This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement, Arrow agrees that all actions it might institute against the City, whether sounding in contract or in tort, relating to the validity,

construction, interpretation and enforcement of this Agreement will be instituted and litigated in the Courts of Shelby County, Tennessee, and in no other.

8.14 Force Majeure. The obligations of the parties hereunder are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics, pandemics or any other similar cause.

8.15 Unenforceability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a Court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to have been written, construed and enforced as so limited.

8.16 No Waiver. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

8.17 Captions. The headings and captions contained in this Agreement are for reference purposes only and shall not limit or extend the meaning or terms of any paragraph or section herein contained.

8.18 (a) Americans With Disabilities Act (ADA) Compliance. MLL hereby acknowledges that WCBC is not currently fully ADA compliant and agrees that any upgrades, modifications or improvements to WCBC undertaken by MLL shall be consistent with applicable ADA guidelines. ADA requirements and all other relevant building and construction codes must be addressed during any improvements or modifications to WCBC. Documents reflecting the design and final construction of such upgrades, modifications or improvements must be submitted by MLL to Parks & Neighborhoods (Planning and Development Office) for a review, and final approval and acceptance by the City.

(b) MLL further acknowledges and agrees that any complaint received by City or MLL related to any MLL sponsored program at WCBC during the term of this Agreement shall be the responsibility of MLL with regard to inquiries or directives issued by the United States Department of Justice ("DOJ").



8.19 Capital Upgrades, Expansion or Modification. MLL agrees to provide to the City and coordinate with the City all applicable plans and detailed drawings and required construction documentation that will accompany all capital upgrades, expansions or modifications to WCBC. All such plans and coordination will be initially directed to the Administrator of Parks & Neighborhoods Division Planning and Development Office and shall be subject to City's final approval.

**THIS SPACE INTENTIONALLY LEFT BLANK**



March 27, 2021

**Workers Compensation:**

Save One Foundation dba Memphis Little League is a non-profit organization with (0) paid employees on staff and as such, workers compensation coverage is not required.

**Auto Liability:**

Save one Foundation dba Memphis Little League does not own any vehicles and as such auto liability coverage is not required.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

03/04/2021

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

| <b>PRODUCER</b><br>CLARENCE MOSLEY INSURANCE AGENCY<br>4132 ELVIS PRESLEY BLVD<br><br>MEMPHIS TN 38116                | <b>CONTACT NAME:</b><br><b>PHONE (A/C. No. Ext):</b> _____ <b>FAX (A/C. No):</b> _____<br><b>E-MAIL ADDRESS:</b> _____<br><br><table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> </thead> <tbody> <tr><td>INSURER A :</td><td></td></tr> <tr><td>INSURER B :</td><td></td></tr> <tr><td>INSURER C :</td><td></td></tr> <tr><td>INSURER D :</td><td></td></tr> <tr><td>INSURER E :</td><td></td></tr> <tr><td>INSURER F :</td><td></td></tr> </tbody> </table> | INSURER(S) AFFORDING COVERAGE | NAIC # | INSURER A : |  | INSURER B : |  | INSURER C : |  | INSURER D : |  | INSURER E : |  | INSURER F : |  |
|---|---|-------------------------------|--------|-------------|--|-------------|--|-------------|--|-------------|--|-------------|--|-------------|--|
| INSURER(S) AFFORDING COVERAGE   | NAIC #  |                               |        |             |  |             |  |             |  |             |  |             |  |             |  |
| INSURER A :   |   |                               |        |             |  |             |  |             |  |             |  |             |  |             |  |
| INSURER B :   |   |                               |        |             |  |             |  |             |  |             |  |             |  |             |  |
| INSURER C :   |   |                               |        |             |  |             |  |             |  |             |  |             |  |             |  |
| INSURER D :   |   |                               |        |             |  |             |  |             |  |             |  |             |  |             |  |
| INSURER E :   |   |                               |        |             |  |             |  |             |  |             |  |             |  |             |  |
| INSURER F :   |   |                               |        |             |  |             |  |             |  |             |  |             |  |             |  |
| <b>INSURED</b><br><br>SAVE ONE FOUNDATION dba MEMPHIS LITTLE LEAGUE<br>7535 APPLING ESTATE DR<br><br>MEMPHIS TN 38133 |   |                               |        |             |  |             |  |             |  |             |  |             |  |             |  |

**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE  | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS  |
|----------|--|-----------|----------|---------------|-------------------------|-------------------------|---|
|          | <b>COMMERCIAL GENERAL LIABILITY</b><br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br>OTHER: _____ |           |          | NPP2577099    | 03/020/2021             | 03/02/2022              | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000<br>MED EXP (Any one person) \$ 5,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ INCLUDED<br>\$ _____ |
|          | <b>AUTOMOBILE LIABILITY</b><br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY  |           |          |               |                         |                         | COMBINED SINGLE LIMIT (Ea accident) \$ _____<br>BODILY INJURY (Per person) \$ _____<br>BODILY INJURY (Per accident) \$ _____<br>PROPERTY DAMAGE (Per accident) \$ _____<br>\$ _____   |
|          | <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR<br><b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE<br>DED _____ RETENTION \$ _____   |           |          |               |                         |                         | EACH OCCURRENCE \$ _____<br>AGGREGATE \$ _____<br>\$ _____  |
|          | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input checked="" type="checkbox"/> N<br>If yes, describe under DESCRIPTION OF OPERATIONS below                               |           |          | N/A           |                         |                         | PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/><br>E.I. EACH ACCIDENT \$ _____<br>E.I. DISEASE - EA EMPLOYEE \$ _____<br>E.I. DISEASE - POLICY LIMIT \$ _____  |

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

WILL CARRUTHERS BALL COMPLEX  
 3924 NEELY RD  
 MEMPHIS, TN 38109

**CERTIFICATE HOLDER** **CANCELLATION**

|   |   |
|---|---|
| CITY OF MEMPHIS PARKS and RECREATIONS<br>MEMPHIS TN | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE |
|---|---|

## INSURANCE WAIVER REQUEST FORM

|  |                      |
|--|----------------------|
| <b>Vendor Name:</b> Save One Foundation dba Memphis Little League  | <b>Contract No.:</b> |
| <b>Contract Type:</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Extension/Amendment  |                      |
| <b>Brief Description of Scope of Work</b> (if extension, describe any change in SOW):<br>Non profit organization providing youth baseball for ages 5 to 14. This league serves for youths living in the Memphis Urban communities. |                      |

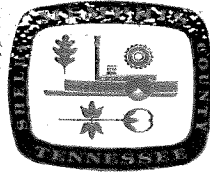
Please select all insurance coverage(s) for which vendor seeks a complete waiver for required coverage or reduction in coverage amount. Provide the reason for the waiver of the coverage(s). Please note requested reduction in coverage amount, if any.

- Worker's Compensation** / Reason: \_\_\_\_\_
- Automobile Liability** / Reason: No cars allowed inside complex; no autos to be utilized in the provision of contract services
- Professional Liability** / Reason: \_\_\_\_\_
- Umbrella Coverage** / Reason: \_\_\_\_\_
- Cyber Liability** / Reason: \_\_\_\_\_
- Other (specify)** \_\_\_\_\_ / Reason: \_\_\_\_\_

**ALL INSURANCE WAIVER REQUESTS MUST INCLUDE A COPY OF THE SCOPE OF WORK, CONTRACT INSURANCE REQUIREMENTS, VENDOR'S CURRENT CERTIFICATE OF INSURANCE, AND THIS WAIVER REQUEST FORM.**

|   |                                   |
|---|-----------------------------------|
| Request Form Submitted by:<br>Kerry Cobb              | Submission Date: <b>3/24/2021</b> |
| Division/Department: <b>Parks &amp; Neighborhoods</b> |                                   |

| LEGAL DEPARTMENT USE ONLY  |                               |
|--|-------------------------------|
| Attorney Review By: <b>Cheryl Hearn</b>  | Review Date: <b>3/24/2021</b> |
| Attorney Comments, if any:   |                               |
| <b>WAIVER REQUEST APPROVED</b> <input checked="" type="checkbox"/> <b>WAIVER REQUEST DENIED</b> <input type="checkbox"/> |                               |
| Signature: <b>Jennifer Sink (cmh)</b><br>Jennifer Sink, City Attorney/Chief Legal Officer                                | Date: <b>3/30/21</b>          |



## **Memphis City Council Summary Sheet**

**1. Description of the Item (Resolution, Ordinance, etc.)**

Resolution authorizing a borrowing by the City from the EDGE, requesting EDGE to issue its Economic Development Bonds of not to exceed \$29,000,000 aggregate principal amount and loan the proceeds to the City.

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

The Finance Division is the initiating party of this resolution.

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

There is no change to an existing ordinance or resolution.

**4. State whether this will impact specific council districts or super districts.**

This does not impact specific council districts or super districts.

**5. State whether this requires a new contract, or amends an existing contract, if applicable.**

This does not require a new contract, or amends an existing contract.

**6. State whether this requires an expenditure of funds/requires a budget amendment**

The resolution does require an expenditure of funds.

**7. If applicable, please list the MWBE goal and any additional information needed**

## RESOLUTION

**RESOLUTION OF THE COUNCIL OF THE CITY OF MEMPHIS, TENNESSEE, AUTHORIZING A BORROWING BY THE CITY OF MEMPHIS, TENNESSEE FROM THE ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE (“EDGE”), REQUESTING EDGE TO ISSUE ITS ECONOMIC DEVELOPMENT BONDS OF NOT TO EXCEED TWENTY-NINE MILLION DOLLARS (\$29,000,000) AGGREGATE PRINCIPAL AMOUNT OF BONDS TO FUND A PORTION OF THE CITY OF MEMPHIS PROJECT; AND AUTHORIZING ALL NECESSARY ACTIONS AND OTHERWISE PROVIDING WITH RESPECT TO THE FOREGOING.**

**WHEREAS**, the City of Memphis, Tennessee (the “City”) proposes to finance the costs of various public infrastructure, public improvements and public facilities projects of the City within its central business improvement district and also to finance the development of, and improvements to certain public tourism facilities throughout the City involving an investment of public funds of approximately two hundred million dollars (\$200,000,000) designed to invest in catalytic community projects intended to accelerate the City’s growth through revitalizing City assets within the central business improvement district of the City and developing and improving certain public tourism facilities throughout the City, to be completed in phases, commonly known as Accelerate Memphis;

**WHEREAS**, EDGE is authorized pursuant to Tennessee Code Annotated Section 7-53-101 *et seq.*, as amended (the “Act”), to issue its bonds and take other actions to finance a portion of the development involving an aggregate investment of public funds that is designed, among other things, to improve City’s infrastructure, public improvements and public facilities within the City’s central business improvement district and to develop and improve certain public tourism facilities throughout the City;

**WHEREAS**, the City proposes to finance the current phase of various public infrastructure, public improvements, and public facilities improvement projects of the City within its central business improvement district and development and improvement of certain public tourism facilities throughout the City involving an investment of public funds not to exceed Twenty-Nine Million dollars (\$29,000,000) intended to accelerate the City’s growth through public improvements (collectively the “Project”);

**WHEREAS**, it is proposed that the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (“EDGE” or “Issuer”) issue its Economic Development Bonds, Series 2021 (the “Series 2021 Bonds”) and loan the proceeds thereof to the City pursuant to a Loan Agreement (as hereinafter defined) and the City will utilize the proceeds of the bonds for the purposes of (i) financing the costs of various public infrastructure, public improvements, and public facilities projects of the City within the central business improvement district and for development of, and improvements to certain public tourism facilities throughout the City, including the interest on Series 2021 Bonds during construction of the Project and for two years after the estimated date of completion of the Project; (ii) funding any debt service reserve funds, (iii) reimbursing eligible expenditures advanced by the City from the proceeds



of the Series 2021 Bonds, if any, and (iv) paying certain costs incurred in connection with the issuance of the Series 2021 Bonds;

**WHEREAS**, under Section 6-54-118, Tennessee Code Annotated, the City may appropriate funds for the purpose of making a contribution to the Issuer for the purpose of economic development;

**WHEREAS**, the Series 2021 Bonds shall be limited obligations of the Issuer payable solely from the (i) amounts payable under the Loan Agreement (except for Unassigned Rights) and (ii) moneys on deposit in funds or accounts held under the Trust Indenture (defined herein) as and to the extent provided in the Trust Indenture, all of which have been assigned and pledged thereunder for the payment of the Series 2021 Bonds and shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the Series 2021 Bonds, except as may be otherwise expressly authorized or provided in the Trust Indenture. The Issuer has no taxing power.

The Series 2021 Bonds and the interest thereon do not now and shall never constitute a charge against the general credit or taxing power of the Issuer, the State of Tennessee (the “**State**”) or any political subdivision thereof including, without limitation, the City and the County of Shelby Tennessee (the “**County**”), and the Series 2021 Bonds and the interest thereon do not now and shall never constitute a debt of the State or any political subdivision thereof, including, without limitation, the City and the County, within the meaning of any constitutional or statutory provision whatsoever. Neither the State nor any political subdivision thereof including, without limitation, the City and the County, shall in any event be liable for the payment of the principal of, premium, if any, or interest on the Series 2021 Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever that may be undertaken by the Issuer. No breach by the Issuer of any such pledge, mortgage, obligation or agreement shall impose any liability, pecuniary or otherwise, upon the State or any political subdivision thereof including, without limitation, the City and the County, or any charge upon their general credit or taxing power;

**WHEREAS**, the City finds that the financing as herein described will further the purposes of the Act; and

**WHEREAS**, the entry of the City into the Loan Agreement for the purposes described herein and therein complies with the provisions of the Debt Management Policy of the City.

**NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis, Tennessee (the “Council”) as follows:**

1. EDGE is hereby requested to issue, sell and deliver, at one time or from time to time, the Series 2021 Bonds in an aggregate principal amount not-to-exceed twenty-nine million dollars (\$29,000,000), and loan the proceeds of the Series 2021 Bonds to the City pursuant to a loan agreement, by and between EDGE and the City (the “**Loan Agreement**”), to (i) finance the costs of various economic development projects of the City, including interest on Series 2021 Bonds during construction of the Project and for two years after the estimated date of completion of the Project; (ii) fund any debt service reserve funds, (iii) reimburse eligible expenditures advanced by the City from the proceeds of the Series 2021 Bonds, if any, and (iv) pay certain costs incurred in connection with the issuance of the Series 2021 Bonds, and (v) otherwise provide with respect to the foregoing; and





2. The Mayor is authorized to execute and deliver the Loan Agreement by and between the City and EDGE in substantially the form of the Loan Agreement thereof heretofore presented to this Council, with such changes as shall be approved by the Mayor upon consultation with counsel, execution to be conclusive evidence of such consultation and approval.

3. The Trust Indenture by and between EDGE and Regions Bank, Nashville, Tennessee, as bond trustee, pursuant to which EDGE will issue the Series 2021 Bonds and pursuant to which EDGE will authorize and provide for all matters with respect to the Series 2021 Bonds (the "**Trust Indenture**"), is hereby approved in substantially the form thereof heretofore presented to this Council, with such changes as shall be approved by the parties thereto.

4. The Issuer and Mayor are hereby authorized to execute, approve, or agree to and deliver the Bond Purchase Agreement by and between EDGE and Loop Capital Markets LLC, as lead managing underwriter and any other underwriters selected by the Chief Financial Officer of the City (individually and collectively, the "**Underwriters**"), pursuant to which EDGE will agree to sell the Series 2021 Bonds to the Underwriters and the Underwriters will agree to purchase the Series 2021 Bonds (individually or collectively, the "**Bond Purchase Agreement**"), in substantially the form thereof heretofore presented to this Council, with such changes as shall be approved by the Mayor upon consultation with counsel, the execution to be conclusive evidence of such consultation and approval.

5. A Preliminary Official Statement is hereby authorized to be distributed in connection with the offering of the Series 2021 Bonds (the "**Preliminary Official Statement**"), in substantially the form thereof heretofore presented to this Council, with such changes as shall be approved by the Issuer, the Mayor, Chief Financial Officer or Comptroller of the City, or any of them or their designees (individually or collectively, "**Authorized Officers**") upon consultation with counsel, its distribution to be conclusive evidence of such approval and consultation, and the Authorized Officers are authorized to deem the Preliminary Official Statement to be "final" (except for permitted omissions) for purposes of Rule 15c2-12 of the Securities and Exchange Commission ("**Rule 15c2-12**").

6. The Issuer and the Mayor are hereby authorized to execute and deliver a final Official Statement (the "**Final Official Statement**") in connection with the sale and issuance of the Series 2021 Bonds, in substantially the form of the Preliminary Official Statement, as the same has been completed by the insertion of the maturities, interest rates, and other details of the Series 2021 Bonds and by making such other insertions, changes or corrections as shall be approved by the Mayor upon consultation with counsel, its execution to be conclusive evidence of such approval and consultation.

7. The Mayor is hereby authorized to execute and deliver a Continuing Disclosure Agreement by and between the City and Digital Assurance Certification LLC, as the City's dissemination agent (the "**Continuing Disclosure Agreement**"), to assist the Underwriters in complying with Rule 15c2-12, in substantially the form described in the Preliminary Official Statement, with such changes as shall be approved by the Mayor upon consultation with counsel, its execution to be conclusive evidence of such approval and consultation.

8. The Chief Financial Officer and Comptroller of the City are authorized to execute and deliver any agreement authorized by this resolution to be executed by the Mayor. The Chief Financial Officer is also authorized to amend the budget of the Debt Service Fund to account for any costs incurred in connection with the delivery, execution and recording of the Loan Agreement.



9. All actions heretofore undertaken by the Authorized Officers and other officials, employees, attorneys and agents of the City in furtherance of the intent of this resolution, and of the documents authorized by this resolution, are hereby ratified, confirmed and approved.

10. The Authorized Officers and other appropriate officials of the City are hereby authorized to enter into such agreements, and they and other appropriate employees of the City are hereby authorized to execute such certificates or other documents and take such other actions, as may be necessary or appropriate to carry out the intent of this resolution.

11. This resolution shall become effective upon its adoption.



**ECONOMIC DEVELOPMENT GROWTH ENGINE  
INDUSTRIAL DEVELOPMENT BOARD  
OF THE  
CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE**

**\$ \_\_\_\_\_ ] ECONOMIC DEVELOPMENT BONDS  
(CITY OF MEMPHIS PROJECT),  
SERIES 2021**

**BOND PURCHASE AGREEMENT**

\_\_\_\_\_, 2021

**Economic Development Growth Engine  
Industrial Development Board of the City of  
Memphis and County of Shelby, Tennessee  
100 Peabody Place; Suite 1100  
Memphis, Tennessee 38103**

**City of Memphis, Tennessee  
125 North Main Street  
Room 368  
Memphis, Tennessee 38103**

Dear Addressees:

The undersigned, Loop Capital Markets LLC (the “Representative”), acting on its own behalf and on behalf of the underwriters listed on Schedule I attached hereto (the Representative and such other underwriters being collectively called the “Underwriters”), and not acting as a fiduciary or agent for Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (the “Issuer”) or the City of Memphis, Tennessee (the “City”), hereby offers to enter into this Bond Purchase Agreement (this “Purchase Agreement”) with the Issuer, which is hereby acknowledged and agreed to by the City, for sale by the Issuer and purchase by the Underwriters of the hereinafter defined Series 2021 Bonds referred to in Section 1 herein. Capitalized, but undefined, terms used herein shall have the same meanings assigned thereto in the hereinafter defined Official Statement, Indenture, Issuer Resolution, City Resolution and Loan Agreement, as applicable.

This offer is made subject to written acceptance by the Issuer and acknowledgment by the City of this Purchase Agreement, which acceptance and acknowledgment shall be evidenced by the execution of this Purchase Agreement by duly authorized officers of the Issuer and the City, respectively, prior to 10:00 p.m., Central Time, on the date hereof, and, if not so accepted, will be subject to withdrawal by the Representative upon written notice delivered to the Issuer and the City, at any time prior to the acceptance hereof by the Issuer and acknowledgment by the City. Upon such acceptance, acknowledgment, execution and delivery, this Purchase Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the Issuer, the City and the Underwriters.

The Representative represents that it has heretofore been designated by the other Underwriters as their representative with respect to all matters pertaining to this Purchase Agreement and the Representative hereby acknowledges that it has been duly authorized by the other Underwriters and has full authority to: (a) execute this Purchase Agreement, (b) act under this Purchase Agreement on behalf of the other Underwriters, and (c) take any such action as it may deem advisable with respect to all matters pertaining to this Purchase Agreement.

**Section 1. Purchase and Sale of the Series 2021 Bonds.**

(a) Subject to the terms and conditions and in reliance upon the representations, warranties, agreements, and covenants contained in this Purchase Agreement, the Underwriters, jointly and severally, hereby agree to purchase from the Issuer, and the Issuer hereby agrees to sell and deliver to the Underwriters, all (but not less than all) of the Issuer's \$[ ] Economic Development Bonds (City of Memphis Project), Series 2021 (the "Series 2021 Bonds") for a purchase price of \$[ ] (the "Purchase Price"), which represents the par amount of \$[ ], less an underwriters' discount of \$[ ]. The Purchase Price shall be payable by the Underwriters to the Issuer on the Closing Date (as defined herein), by wire transfer of federal funds as provided in Section 8 herein.

(b) The Series 2021 Bonds shall be as described in the Official Statement and as authorized by and issued and secured under the Indenture. The Series 2021 Bonds shall be dated the date of delivery and shall mature at the times and in the principal amounts, bear interest at the rates and shall be subject to certain sinking fund (to the extent applicable) and redemption provisions prior to maturity, all as set forth in Schedule II attached hereto. The Series 2021 Bonds will be dated \_\_\_\_\_. Interest on the Series 2021 Bonds will accrue from their date of delivery and will be payable June 1 and December 1 of each year, commencing December 1, 2021, and will be calculated on the basis of a 360-day year of twelve 30-day months.

(c) The Issuer acknowledges and agrees that in connection with the purchase and sale of the Series 2021 Bonds pursuant to this Purchase Agreement and the offering of the Series 2021 Bonds for sale and the discussions and negotiations relating to the terms of the Series 2021 Bonds set forth in this Purchase Agreement:

(1) the purchase and sale of the Series 2021 Bonds pursuant to this Purchase Agreement is an arm's-length, commercial transaction between the Issuer and the Underwriters;

(2) the primary role of each Underwriter is to purchase securities for resale to investors, acting solely as a principal and not acting as an agent, a municipal advisor (within the meaning of Section 15B of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), a financial advisor, or fiduciary of the Issuer or the City;

(3) the Underwriters have not assumed any advisory or fiduciary responsibility in favor of the Issuer or the City with respect to the offering of the Series 2021 Bonds or the process leading thereto (whether or not the Underwriters, or any affiliates of the Underwriters, have advised or are currently advising the Issuer or the City on other matters) nor have the Underwriters assumed any other obligation to the Issuer or the City except the obligations expressly set forth in this Purchase Agreement;

(4) the Underwriters have financial and other interests that differ from those of the Issuer and the City;

(5) the Issuer and the City have consulted with their own legal, accounting, tax, financial and other advisors, as applicable, to the extent they have deemed appropriate in connection with the offering and sale of the Series 2021 Bonds; and

(6) the Underwriters have provided to the Issuer prior disclosures under Rule G-17 of the Municipal Securities Rulemaking Board (the "MSRB"), which have been received by the Issuer. The Representative represents and warrants to the Issuer that it has been duly authorized to act on behalf of itself and the other Underwriters to enter into this Purchase Agreement and to take all actions, on behalf of the Underwriters, required or contemplated to be performed by the Underwriters under this Purchase Agreement.

**Section 2. Description of Financing.** The following is provided for informational purposes only and shall not affect or control the actual terms and conditions of the Series 2021 Bonds:

(a) The Series 2021 Bonds are being issued in accordance with the provisions of Sections 7-53-101, et seq., of the Tennessee Code Annotated (as the same may from time to time be amended, the "Act"), that certain Trust Indenture to be dated as of \_\_\_\_\_, 2021 (the "Indenture, between the Issuer and Regions Bank, as bond trustee (in that capacity, the "Trustee"), resolutions adopted and approved by the Issuer (the "Issuer Resolution") and resolutions adopted and approved by the City (the "City Resolution"), authorizing, among other things, the execution and delivery of the Indenture and the Loan Agreement, and the issuance and sale of the Series 2021 Bonds; and

(b) The proceeds of the Series 2021 Bonds will be loaned to the City, which proceeds, together with other available funds, will be used to: (1) to finance a portion of the Project; and (2) to the extent permitted, to pay certain costs of issuance and to fund a capitalized interest fund, a debt service reserve fund[, surplus fund and an escrow fund], if necessary.

**Section 3. Delivery of the Preliminary Official Statement and the Official Statement; Offering of the Series 2021 Bonds.**

(a) The Issuer hereby authorizes the distribution by the Underwriters of the Official Statement in connection with the public offering and sale of the Series 2021 Bonds. The Issuer consents to and ratifies the use by the Underwriters of the Preliminary Official Statement dated [\_\_\_\_], 2021 (such Preliminary Official Statement, including the cover page and all appendices, exhibits, reports and statements included therein or attached thereto and any amendments and supplements thereto that may be authorized by the Issuer for use with respect to the Series 2021 Bonds, being herein called the "Preliminary Official Statement"), relating to the Series 2021 Bonds for the purposes of marketing the Series 2021 Bonds in connection with the original public offer, sale and distribution of the Series 2021 Bonds by the Underwriters. As of its date, the Preliminary Official Statement was "deemed final" by the Issuer for purposes of Rule 15c2-12 of the Securities and Exchange Commission (the "SEC") promulgated under the Exchange Act (the "Rule"), except for the permitted omissions described in paragraph (b)(1) of the Rule. Prior to the execution of this Purchase Agreement, the Underwriters have scheduled and conducted a due diligence session with officers, officials and representatives of the Issuer, the City and the Underwriters and have reviewed the information in the Preliminary Official Statement and will review the information in the Official Statement in accordance with and as part of



their responsibilities under the federal securities laws as applied to the facts and circumstances of this transaction; provided, however, the Underwriters do not guarantee or make any representations regarding the accuracy or completeness of such information in the Preliminary Official Statement and the Official Statement (other than as expressly set forth therein).

(b) As soon as practicable after the date of the Issuer's acceptance of this Purchase Agreement, the Issuer shall prepare (or cause to be prepared), and provide (or cause to be provided to the Underwriters), a final Official Statement relating to the Series 2021 Bonds which will be: (1) dated the date of this Purchase Agreement; (2) complete within the meaning of the Rule; (3) substantially in the form of the most recent version of the Preliminary Official Statement provided to the Representative before the execution hereof with only such changes permitted by the Rule; and (4) in both (i) a "designated electronic format" consistent with the requirements of Rule G-32, and (ii) printed in such quantities as the Representative shall reasonably request in order for the Underwriters to comply with Section (b)(4) of the Rule and the rules of the MSRB. Such Official Statement, including the cover pages thereto, all exhibits, appendices, maps, charts, pictures, diagrams, reports, and statements included or incorporated therein or attached thereto, and all amendments and supplements thereto that may be authorized for use with respect to the Series 2021 Bonds, is herein referred to as the "Official Statement." The Issuer hereby confirms that it does not object to the distribution of the Preliminary Official Statement or the Official Statement in electronic form. The Issuer shall cause copies of the Official Statement, in sufficient quantity for the Underwriters to comply with applicable rules of the SEC (including the Rule) and the MSRB, to be available to the Underwriters within seven (7) business days of the execution of this Purchase Agreement (but in no event shall an electronic copy be provided later than two (2) business days before the Closing Date) and in sufficient time to accompany any confirmation that requests payment from any customer of the Underwriters.

(c) To the extent required by rules of the SEC or MSRB, the Issuer hereby authorizes the Representative to file on or before the Closing Date (as defined herein), and the Representative hereby agrees to file or cause to be filed, the Official Statement with the MSRB or its designee (including submission to the MSRB's Electronic Municipal Market Access System ("EMMA")) or other repositories approved from time to time by the SEC (either in addition to or in lieu of the filings referred to above) within the timeframe required by Rule G-32 of the MSRB. Failure of the printer to provide copies of the Official Statement within seven (7) business days after the execution of this Purchase Agreement by the Issuer will not constitute a breach of this Purchase Agreement by the Issuer if such failure is caused by the Underwriters or the agent or representative of any Underwriter.

(d) The Issuer represents that officials of the Issuer have reviewed and approved the information in the Official Statement, and the Issuer hereby authorizes the distribution and use of the Official Statement, and the information therein contained, by the Underwriters in connection with the public offering and the sale of the Series 2021 Bonds. The Issuer ratifies and consents to the distribution and use by the Underwriters prior to the date hereof of the Preliminary Official Statement in connection with the public offering and sale of the Series 2021 Bonds.

(e) If, after the date of this Purchase Agreement to and including the date the Underwriters are no longer required to provide an Official Statement to potential customers who request the same pursuant to the Rule (the earlier of (i) 90 days from the "end of the underwriting period" (as defined in Rule) and (ii) the time when the Official Statement is available to any person from the MSRB, but in no case less than 25 days after the "end of the underwriting period" for the Series 2021 Bonds), the Issuer becomes aware of any fact or event which might or would cause the Official Statement, as then

supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or if it is necessary to amend or supplement the Official Statement to comply with law, the Issuer, the City and the Representative will notify each other thereof (and for the purposes of this clause provide the Representative with such information as it may from time to time reasonably request), and if, in the reasonable judgment of the Representative and the Co-Disclosure Counsel (as defined hereof), such fact or event requires preparation and publication of a supplement or amendment to the Official Statement, the Issuer will forthwith prepare and furnish, at the City's own expense (in form and substance jointly approved by the Issuer, the City and the Representative, which approval shall not be unreasonably withheld, conditioned or delayed so the Official Statement), a reasonable number of copies of either amendments or supplements to the Official Statement so that the statements in the Official Statement as so amended and supplemented will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or so that the Official Statement will comply with law; provided, however, that for all purposes of this Purchase Agreement and any representation, warranty, or covenant made herein, or any certificate delivered by the Issuer or the City in accordance herewith, the Issuer makes no representations with respect to the descriptions in the Preliminary Official Statement or the Official Statement of The Depository Trust Company, New York, New York ("DTC"), or its book-entry-only system. If such notification shall be subsequent to the Closing, the Issuer and the City shall furnish such legal opinions, certificates, instruments, and other documents as the Representative may reasonably deem necessary to evidence the truth and accuracy of such supplement or amendment to the Official Statement. The Issuer shall provide any such amendment or supplement, or cause any such amendment or supplement to be provided, (1) in a "designated electronic format" consistent with the requirements of Rule G-32, and (2) in a printed format in such quantity as the Representative shall reasonably request in order for the Underwriters to comply with Section (b)(4) of the Rule and the rules of the MSRB.

(f) The Representative hereby agrees to timely file, or cause to be filed, the Official Statement, along with any amendment or supplement to the Official Statement prepared in accordance with Section 3(e) above, with (1) the MSRB or its designee (including the MSRB's Electronic Municipal Market Access System); or (2) other repositories approved from time to time by the SEC (either in addition to or in lieu of the filing referred to in clause (1) above).

(g) Each of the Preliminary Official Statement and the Official Statement contain information, including financial information or operating data, concerning every entity, enterprise, fund, account, or person that is material to an evaluation of the offering of the Series 2021 Bonds. Except as disclosed in the Preliminary Official Statement and the Official Statement, during the last five years the Issuer has complied in all material respects with all continuing disclosure agreements made by it in accordance with the Rule.

(h) In order to assist the Underwriters in complying with Rule 15c2-12, the City will undertake, pursuant to the Continuing Disclosure Agreement, to be dated as of the Closing Date (the "Disclosure Agreement"), by and between the City and Digital Assurance Certification, L.L.C. ("DAC"), as dissemination agent for the City, to provide annual financial information and notices of the occurrence of specified events. A description of the Disclosure Agreement is set forth in, and a form of such agreement is attached as Appendix [B] to, the Official Statement.

(i) For purposes of this Purchase Agreement, the "End of the Underwriting Period" is used as defined in the Rule and shall occur on the later of (i) the Closing Date, or (ii) when the

Underwriters no longer retain an unsold balance of the Series 2021 Bonds; unless otherwise advised in writing by the Representative on or prior to the Closing Date, or otherwise agreed to by the Issuer and the Representative, the Issuer and the City may assume that the End of the Underwriting Period is the Closing Date.

(j) The Preliminary Official Statement and the Official Statement may be delivered in printed or electronic form to the extent permitted by applicable rules of the MSRB and as may be agreed by the Issuer and the Representative. If the Preliminary Official Statement or the Official Statement is prepared for distribution in electronic form, the Issuer hereby confirms that it does not object to distribution of the Preliminary Official Statement or the Official Statement in electronic form.

(k) The Issuer agrees that it will cooperate with the Underwriters in the qualification of the Series 2021 Bonds for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Underwriters shall designate; provided, however, the Issuer shall not be required to register as a dealer or broker in any such jurisdiction, execute a general or special consent to service of process or qualify to do business in connection with any such qualification of the Series 2021 Bonds in any such jurisdiction, nor incur any costs or fees in connection with such qualification of the Series 2021 Bonds.

**Section 4. Public Offering.** The Underwriters agree to make a bona fide initial public offering of all of the Series 2021 Bonds in conformance with all applicable MSRB rules.

**Section 5. Establishment of Issue Price of Series 2021 Bonds.**

(a) The Representative, on behalf of the Underwriters, agrees to assist the Issuer in establishing the issue price of the Series 2021 Bonds and shall execute and deliver to the Issuer at Closing an “issue price” or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit A, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Representative, the Issuer and Butler Snow LLP and Carpenter Law, PLLC, Co-Bond Counsel (“Co-Bond Counsel”), to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Series 2021 Bonds. All actions to be taken by the Issuer under this section to establish the issue price of the Series 2021 Bonds may be taken on behalf of the Issuer by the Issuer’s municipal advisor identified herein and any notice or report to be provided to the Issuer may be provided to the Issuer’s municipal advisor.

(b) Except as otherwise set forth in Schedule II attached hereto, the Issuer will treat the first price at which at least 10% of each maturity of the Series 2021 Bonds (the “10% test”) is sold to the public as the issue price of that maturity. At or promptly after the execution of this Agreement, the Representative shall report to the Issuer the price or prices at which the Underwriters have sold to the public each maturity of Series 2021 Bonds. If at that time the 10% test has not been satisfied as to any maturity of the Series 2021 Bonds, the Representative agrees to promptly report to the Issuer the prices at which Series 2021 Bonds of that maturity have been sold by the Underwriters to the public. That reporting obligation shall continue, whether or not the Closing Date has occurred, until either (i) all Series 2021 Bonds of that maturity have been sold or (ii) the 10% test has been satisfied as to the Series 2021 Bonds of that maturity, provided that, the Underwriters’ reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Representative, the Issuer, or Co-Bond Counsel. For purposes of this Section, if Series 2021 Bonds mature on the same date but

have different interest rates, each separate CUSIP number within that maturity will be treated as a separate maturity of the Series 2021 Bonds.

(c) The Representative confirms that the Underwriters have offered the Series 2021 Bonds to the public on or before the date of this Agreement at the offering price or prices (the “initial offering price”), or at the corresponding yield or yields, set forth in Schedule II attached hereto, except as otherwise set forth therein. Schedule II also sets forth, as of the date of this Agreement, the maturities, if any, of the Series 2021 Bonds for which the 10% test has not been satisfied and for which the Issuer and the Representative, on behalf of the Underwriters, agree that the restrictions set forth in the next sentence shall apply, which will allow the Issuer to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Series 2021 Bonds, the Underwriters will neither offer nor sell unsold Series 2021 Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

- (1) the close of the fifth (5<sup>th</sup>) business day after the sale date; or
- (2) the date on which the underwriters have sold at least 10% of that maturity of the Series 2021 Bonds to the public at a price that is no higher than the initial offering price to the public.

The Representative will advise the Issuer promptly after the close of the fifth (5<sup>th</sup>) business day after the sale date whether it has sold 10% of that maturity of the Series 2021 Bonds to the public at a price that is no higher than the initial offering price to the public.

(d) The representative confirms that:

- (1) Any agreement among underwriters, any selling group agreement and each third-party distribution agreement (to which the Representative is a party) relating to the initial sale of the Series 2021 Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter, each dealer who is a member of the selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:
  - (i) (A) to report the prices at which it sells to the public the unsold Series 2021 Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Series 2021 Bonds of that maturity allocated to it have been sold or it is notified by the Representative that the 10% test has been satisfied as to the Series 2021 Bonds of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Representative, and (B) to comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Representative and as set forth in the related pricing wires, and
  - (ii) to promptly notify the Representative of any sales of Series 2021 Bonds that, to its knowledge, are made to a purchaser who is a related party to

an underwriter participating in the initial sale of the Series 2021 Bonds to the public (each such term being used as defined below),

(iii) to acknowledge that, unless otherwise advised by the Underwriter, dealer or broker-dealer, the Representative shall assume that each order submitted by the Underwriter, dealer or broker-dealer is a sale to the public.

(2) any agreement among underwriters or selling group agreement relating to the initial sale of the Series 2021 Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter or dealer that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the Series 2021 Bonds to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Series 2021 Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Series 2021 Bonds of that maturity allocated to it have been sold or it is notified by the Representative or such Underwriter or dealer that the 10% test has been satisfied as to the Series 2021 Bonds of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Representative or such Underwriter or dealer, and (B) comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Representative or the Underwriter or the dealer and as set forth in the related pricing wires.

(e) The Issuer acknowledges that, in making the representations set forth in this section, the Representative will rely on (i) the agreement of each Underwriter to comply with the requirements for establishing issue price of the Series 2021 Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2021 Bonds, as set forth in an agreement among underwriters and the related pricing wires, (ii) in the event a selling group has been created in connection with the initial sale of the Series 2021 Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing issue price of the Series 2021 Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2021 Bonds, as set forth in a selling group agreement and the related pricing wires, and (iii) in the event that an Underwriter or dealer who is a member of the selling group is a party to a third-party distribution agreement that was employed in connection with the initial sale of the Series 2021 Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the Series 2021 Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2021 Bonds, as set forth in the third-party distribution agreement and the related pricing wires. The Issuer further acknowledges that each Underwriter shall be solely liable for its failure to comply with its agreement regarding the requirements for establishing the issue price of the Series 2021 Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2021 Bonds, and that no Underwriter shall be liable for the failure of any other Underwriter, or of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement to comply with the requirements for establishing issue price of the Series 2021 Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2021 Bonds.

(f) The Underwriters acknowledge that sales of any Series 2021 Bonds to any person that is a related party to an underwriter participating in the initial sale of the Series 2021 Bonds to the public (each such term being used as defined below) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

- (1) “public” means any person other than an underwriter or a related party,
- (2) “underwriter” means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2021 Bonds to the public and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (iii) to participate in the initial sale of the Series 2021 Bonds to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Series 2021 Bonds to the public,
- (3) a purchaser of any of the Series 2021 Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and
- (4) “sale date” means the date of execution of this Agreement by all parties.

**Section 6. Representations and Warranties of the Issuer.** By its acceptance hereof, the Issuer hereby represents, warrants and covenants to the City and the Underwriters, as of the date of this Purchase Agreement (and it shall be a condition of the obligation of the Underwriters to purchase and accept delivery of the Series 2021 Bonds at the Closing that the Issuer shall so represent and warrant as of the Closing Date), that:

(a) The Issuer is a public nonprofit corporation of the State of Tennessee (the “State”) created and validly existing under the laws of the State and is an “Industrial Development Board” under the Act;

(b) The Issuer has complied with all applicable provisions of the Constitution of the State and laws of the State, including the Act, with respect to the consummation of, and has full power and authority to consummate, all transactions contemplated by this Purchase Agreement, the Issuer Resolution, the Indenture, the Loan Agreement and any other agreements relating thereto (collectively, the “Issuer Documents”); and the Issuer is authorized under the provisions of the Act to issue the Series 2021 Bonds for the purposes described in the Issuer Resolution and the Indenture;

(c) The Issuer Resolution has been duly adopted by the Board of the Issuer at a meeting duly called and held and duly and validly authorizes the issuance, sale and delivery of the Series 2021 Bonds and the execution and delivery of the Issuer Documents, and the Issuer Resolution, as of the date hereof, has not been amended, modified or repealed in any material respect (other than as contemplated herein or by the Official Statement or with respect to the issuance of the Series 2021 Bonds thereunder);

(d) The Issuer has duly and validly authorized all necessary action to be taken by it for: (i) the issuance, sale and delivery of the Series 2021 Bonds upon the terms set forth herein, (ii) the execution, delivery and performance of the Issuer Documents, including the Issuer Resolution which provides for, among other things, the issuance and delivery of and security for the Series 2021 Bonds, (iii) the carrying out, giving effect to, and consummation of the transactions contemplated hereby, and (iv) the ratification or consent, as the case may be, to the distribution by the Underwriters of the Preliminary Official Statement and the Official Statement;

(e) This Purchase Agreement constitutes a legal, valid, and binding obligation of the Issuer, enforceable in accordance with its terms; the other Issuer Documents, when duly executed and delivered, will constitute legal, valid, and binding obligations of the Issuer, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights; the Series 2021 Bonds, when issued, delivered and paid for, in accordance with the Indenture and this Purchase Agreement, will constitute legal, valid, and binding obligations of the Issuer entitled to the benefits of the Issuer Documents, enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights; upon the issuance, authentication and delivery of the Series 2021 Bonds as aforesaid, and the Indenture will provide, for the benefit of the holders, from time to time, of the Series 2021 Bonds, the legally valid and binding pledge of the Trust Estate as set forth in the Issuer Documents and the City Resolution;

(f) All authorizations, approvals, licenses, permits, consents, and orders of any governmental authority, legislative body, board, agency, or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the approval or adoption, as applicable, of the Issuer Documents, the issuance of the Series 2021 Bonds or the due performance by the Issuer of its obligations under the Issuer Documents and the Series 2021 Bonds have been duly obtained and are in full force and effect, except for the orders as may be required under the blue-sky or securities laws of any jurisdiction in connection with the offering and sale of the Series 2021 Bonds;

(g) The Issuer will furnish such information and execute such instruments and take such action in cooperation with the Underwriters as the Representative may reasonably request, (1) to (i) qualify the Series 2021 Bonds for offer and sale under the blue-sky or other securities laws and regulations of such states and other jurisdictions in the United States as the Representative may designate, and (ii) determine the eligibility of the Series 2021 Bonds for investment under the laws of such states and other jurisdictions; and (2) to continue such qualifications in effect so long as required for the distribution of the Series 2021 Bonds (provided, however, that the Issuer will not be required to qualify as a foreign corporation or to file any general or special consents to service of process under the laws of any jurisdiction) and will advise the Representative immediately of receipt by the Issuer of any written notification with respect to the suspension of the qualification of the Series 2021 Bonds for sale in any jurisdiction or the initiation or threat of any proceeding for that purpose;

(h) The Series 2021 Bonds and the Issuer Resolution conform to the descriptions thereof contained in the Preliminary Official Statement and the Official Statement under the captions “THE SERIES 2021 BONDS”, “APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT”, respectively. The proceeds of the sale of the Series 2021 Bonds will be applied generally as described in the Official Statement under the caption “ESTIMATED SOURCES AND USES OF FUNDS”. The Continuing Disclosure Agreement substantially conforms to the description thereof and form thereof contained in the Preliminary Official Statement and the Official Statement under the captions “CONTINUING DISCLOSURE” and “APPENDIX C FORM OF CONTINUING DISCLOSURE AGREEMENT”, respectively;

(i) Except as described in the Preliminary Official Statement and the Official Statement, there is no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency or public board or body, pending or, to the best knowledge of the Issuer, threatened: (i) affecting the existence of the Issuer or the titles of its officers to their respective offices, (ii) affecting or seeking to prohibit, restrain or enjoin the sale, issuance, or delivery of the Series 2021 Bonds or the charge, collection, or payment of the Trust Estate pledged to the payment of principal of and interest on the Series 2021 Bonds pursuant to the Issuer Documents and the City Resolution, (iii) in any way contesting or affecting the validity or enforceability of the Series 2021 Bonds or the Issuer Documents, (iv) contesting the exclusion from gross income of interest on the Series 2021 Bonds for federal income tax purposes, (v) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, (vi) contesting the powers of the Issuer or any authority for the issuance of the Series 2021 Bonds, the adoption of the Issuer Resolution, or the execution and delivery of the Issuer Documents, nor, to the knowledge of the Issuer, is there any basis therefor, or (vii) wherein an unfavorable decision, ruling, or finding would materially adversely affect the validity or enforceability of the Series 2021 Bonds or the Issuer Documents; provided, however, that for all purposes of this Purchase Agreement, including, without limitation, any certificate delivered by the Issuer in accordance herewith, the Issuer makes no representations with respect to the descriptions in the Preliminary Official Statement or the Official Statement of DTC, or its book-entry-only system;

(j) The execution and delivery of this Purchase Agreement and the other Issuer Documents, and the compliance with the provisions thereof, will not conflict with or constitute on the part of the Issuer a violation of, breach of, or default under: (i) the Act; (ii) any indenture, mortgage, lease, note agreement or other agreement or instrument to which the Issuer is a party or by which the Issuer is bound; or (iii) any constitutional provision or statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Issuer or any of its activities or properties;

(k) (i) The information concerning the Issuer contained in the sections of the Preliminary Official Statement entitled “INTRODUCTION - The Issuer,” “THE ISSUER” and “LITIGATION - The Issuer” as of the date thereof was, and such information in the Official Statement as of the date thereof and as of the Closing Date (and as the same may be supplemented or amended, consistent with Section 3(d) herein) will be, true and correct in all material respects and does not and will not, as applicable, contain any untrue statement of a material fact or omit to state a material fact which is necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading; and (ii) the Issuer has not provided the information in and does not provide



any assurance that the information contained in the other sections or appendices, as the case may be, in the Preliminary Official Statement and the Official Statement is true and correct in all material respects; provided, however, that nothing has come to the attention of the Issuer which would cause it to reasonably believe that anything contained in the Preliminary Official Statement or the Official Statement contains any untrue statement of a material fact or omits to state a material fact which is necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading;

(l) The Issuer is not in breach of or in default in any material respect under any applicable constitutional provision, law, or administrative regulation of the State or the United States relating to the issuance of the Series 2021 Bonds or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement, or other instrument to which the Issuer is a party or to which the Issuer or any of its property or assets is otherwise subject, and no event which would have a material and adverse effect upon the business or financial condition of the Issuer has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the Issuer under any of the foregoing; and the adoption and/or execution and delivery of the Series 2021 Bonds and the Issuer Documents, and compliance with the provisions on the Issuer's part contained therein, will not conflict with or constitute a material breach of or default under any constitutional provision, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement, or other instrument to which the Issuer is a party or to which the Issuer is or to which any of its property or assets are otherwise subject nor will any such execution, delivery, adoption, or compliance result in the creation or imposition of any lien, charge, or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Issuer to be pledged to secure the Series 2021 Bonds or under the terms of any such law, regulation, or instrument, except as provided by the Series 2021 Bonds, the Issuer Documents, and the City Resolution;

(m) The Issuer will cause Regions Bank, as paying agent and registrar for the Series 2021 Bonds (in that capacity, the "Paying Agent and Registrar") to authenticate and deliver the Series 2021 Bonds when ready for delivery;

(n) To the best of the Issuer's knowledge, neither the SEC nor any state securities commission has issued or threatened to issue any order preventing or suspending the use of the Preliminary Official Statement or the Official Statement;

(o) The Issuer covenants that between the date hereof and the Closing it will take no actions which will cause the representations and warranties made in this Section 6 to be untrue as of Closing;

(p) The Issuer has delivered to the Representative true, correct, complete, and legible copies of all information, applications, reports, or other documents of any nature whatsoever submitted to any rating agency for the purpose of obtaining a rating for the Series 2021 Bonds;

(q) The Issuer has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the Issuer is a bond issuer whose arbitrage certificates may not be relied upon;

(r) The Issuer will timely file Form 8038-G, Information Return for Tax Exempt Governmental Obligations, with the Internal Revenue Service in order to maintain the tax exemption for the Series 2021 Bonds; and

(s) Any certificate signed by one or more duly authorized officers of the Issuer (each an "Issuer Authorized Officer") and delivered to the Representative in connection with the sale of the Series 2021 Bonds shall be deemed a representation and warranty by it to the Underwriters as to the statements made therein.

**Section 7. Representations and Warranties of the City.** By its acceptance hereof, the City hereby represents, warrants and covenants to the Issuer and the Underwriters, as of the date of this Purchase Agreement (and it shall be a condition of the obligation of the Underwriters to purchase and accept delivery of the Series 2021 Bonds at the Closing that the City shall so represent and warrant as of the Closing Date), that:

(a) The City Resolution has been duly adopted by the City Council of the City at a meeting duly called and held and duly and validly authorizes the execution and delivery of this Purchase Agreement, the Loan Agreement, the Disclosure Agreement (collectively, the "City Documents") and a request to the Issuer for the issuance, sale and delivery of the Series 2021 Bonds, and the City Resolution, as of the date hereof, has not been amended, modified or repealed, in any material respect (other than as contemplated herein or by the Official Statement or with respect to the issuance of the Series 2021 Bonds thereunder);

(b) The City has duly and validly authorized all necessary action to be taken by it for the execution, delivery and performance of the City Documents;

(c) The City Documents, when executed by the other parties thereto, if any, will have been duly and validly executed and delivered by the City and will be in full force and effect as to the City;

(d) All consents, approvals, authorizations and orders of governmental or regulatory authorities that are required to be obtained by the City in connection with the execution and delivery of the City Documents and the consummation of the transactions contemplated thereby have been or will be, at Closing, duly obtained and in full force and effect;

(e) Other than the City's Excluded Sections (as defined herein), the information concerning the City contained in the Preliminary Official Statement was as of the date thereof, and such information in the Official Statement as of the date thereof and as of the Closing Date (as the same may be supplemented or amended, consistent with Section 3(i) herein) will be, true and correct in all material respects and does not and will not, as applicable, contain any untrue statement of a material fact or omit to state a material fact which is necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading; and notwithstanding the foregoing, the City has not provided the information in the sections and appendices, as the case may be, captioned "INTRODUCTION -The Issuer," "THE ISSUER," "BOOK-ENTRY ONLY SYSTEM," "TAX MATTERS," "SALES IMPACT ANALYSIS," "RATINGS," "UNDERWRITING," "APPENDIX A--DEFINITION OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND LOAN AGREEMENT," and "APPENDIX C—FORM OF PROPOSED OPINIONS OF CO-BOND COUNSEL" in the Preliminary Official Statement and the Official Statement (collectively, the "City's Excluded Sections") and does not provide any assurance that the

information contained in the City's Excluded Sections is true and correct in all material respects; provided, however, nothing has come to the attention of the City which would cause it to reasonably believe that anything contained in the Preliminary Official Statement or the Official Statement contains any untrue statement of a material fact or omits to state a material fact which is necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(f) The financial statements of, and other financial information regarding the City, in the Preliminary Official Statement and the Official Statement fairly present the financial position and results of the City as of the dates and for the periods therein set forth. Prior to the Closing, the City will not take any action within or under its control that will cause any adverse change of a material nature in such financial position, results of operations or condition, financial or otherwise, of the City. Except as described in the Preliminary Official Statement and the Official Statement, the City is not a party to any litigation or other proceeding pending or, to its knowledge, threatened which, if decided adversely to the City, could reasonably be expected to have a materially adverse effect on the financial condition of the City.

(g) The City has delivered to the Representative true, correct, complete, and legible copies of all information, applications, reports, or other documents of any nature whatsoever submitted to any rating agency for the purpose of obtaining a rating for the Series 2021 Bonds.

(h) Any certificate signed by one or more duly authorized officers of the City (each a "City Authorized Officer") and delivered to the Representative in connection with the sale of the Series 2021 Bonds shall be deemed a representation and warranty by it to the Underwriters as to the statements made therein.

**Section 8. Closing.** At or before 1:00 p.m., Central Daylight Time, on [\_\_\_\_\_], 2021, or at such other time or at such other date as shall have been mutually agreed upon by the Issuer, the City and the Representative (the "Closing Date"), (a) the Issuer will deliver the Series 2021 Bonds to the Representative, in definitive form and duly executed and authenticated, in such authorized denominations and registered in such names as the Representative may request through the FAST system of registration with The Depository Trust Company ("DTC"), New York, New York, at a place to be agreed upon by the Issuer, the City and the Representative, (b) the Issuer and the City will deliver their respective closing documents set forth in Section 9 herein to the Representative, and (c) the Representative will accept such delivery and pay the Purchase Price of the Series 2021 Bonds as set forth in Section 1 herein by wire transfer of federal funds to the order of "Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee" or as directed by the Issuer for deposit in the various funds established under the Indenture. Such delivery and such acceptance and payment are herein sometimes called the "Closing." Delivery of the other documents shall be made at such location as shall have been mutually agreed upon by the Issuer, the City and the Representative. The Series 2021 Bonds shall bear proper CUSIP numbers and shall be in typewritten form, with a single bond for each maturity of the Series 2021 Bonds, each such bond to be in a principal amount equal to the principal amount thereof maturing on each such date. The Series 2021 Bonds shall be registered in the name of Cede & Co., as nominee of DTC and will be made available for inspection and checking by the Underwriters in Memphis, Tennessee, not later than one (1) business day prior to the Closing Date.

**Section 9. Conditions to Closing.** The Underwriters have entered into this Agreement in reliance upon the representations, warranties, and agreements of the Issuer contained herein, and in

reliance upon the accuracy of the representations, warranties, and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Issuer of its obligations hereunder, both as of the date hereof and as of the date of the Closing. Accordingly, the Underwriters' obligations under this Purchase Agreement to purchase and pay for the Series 2021 Bonds and accept delivery thereof shall be conditioned upon and subject to:

(a) the performance by the Issuer and the City of their respective obligations to be performed hereunder and under such other documents and instruments, at and prior to the Closing, or such earlier time as may be specified herein; and

(b) the following additional conditions, including the delivery by the Issuer and the City of such documents as are enumerated herein and contemplated hereby, in form and substance satisfactory to the Representative (unless waived in writing by the Representative on behalf of the Underwriters), and the taking of all such action as shall be necessary and appropriate in connection with the transactions contemplated hereby in the opinions of Co-Bond Counsel and Co-Disclosure Counsel:

- (1) The representations and warranties of the Issuer contained herein shall be true, complete, and correct in all material respects on the date hereof and on and as of the date of the Closing, as if made on the date of the Closing;
- (2) The Issuer and the City shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing;
- (3) At the time of the Closing, (i) the Issuer Documents, the City Documents and the Series 2021 Bonds shall have been duly executed, delivered, and authenticated, as applicable, shall be in full force and effect and shall not have been amended, modified, repealed, or supplemented in any meaningful way, and the Official Statement shall have been duly executed and delivered and shall not have been supplemented or amended, except in any such case as may have been agreed to by the Representative; and (ii) all actions of the Issuer required to be taken by the Issuer shall be performed in order for Co-Bond Counsel and Ahmad Zaffarese LLC, as counsel to the Underwriters ("Counsel to the Underwriters") to deliver their respective opinions referred to hereafter;
- (4) At the time of the Closing, all official action of the Issuer relating to the Series 2021 Bonds, the Issuer Documents and the City Documents shall be in full force and effect and shall not have been amended, modified, or supplemented;
- (5) At or prior to the Closing, the Issuer Resolution and the City Resolution shall have been duly adopted by the Issuer and the City, respectively, and the Paying Agent and Registrar shall have duly authenticated the definitive Series 2021 Bonds;
- (6) At the time of the Closing, there shall not have occurred any change or any development involving a prospective change in the condition, financial or otherwise, or in the revenues or operations of the City[, and the financial projections related to the Project,] from that set forth in the Official Statement

that in the reasonable judgment of the Representative, is material and adverse and that makes it, in the reasonable judgment of the Representative, impracticable to market the Series 2021 Bonds on the terms and in the manner described in the Official Statement;

- (7) The Issuer and the City shall not currently be in default in the payment of principal or interest when due on any of its outstanding obligations for borrowed money;
- (8) No suit, action, investigation, or legal or administrative proceeding shall be threatened or pending before any court or governmental agency which is likely to result in the restraint, prohibition, or the obtaining of damages or other relief in connection with the issuance of the Series 2021 Bonds or the consummation of the transactions described herein, or which, in the reasonable judgment of the Representative, would have a materially adverse effect on the transactions described herein;
- (9) All steps to be taken and all instruments and other documents to be executed, and all other legal matters in connection with the transactions described in this Purchase Agreement shall be reasonably satisfactory in legal form and effect to the Representative, Co-Bond Counsel and Counsel to the Representative;

(c) at or prior to the Closing, the Representative shall have received each of the following documents:

- (1) the Official Statement and each supplement or amendment thereto, executed on behalf of the Issuer and the City by the Issuer Authorized Officer and the City Authorized Officer, or representatives thereof, if any, in (i) a “designated electronic format” that meets the requirements of Rule G-32 and (ii) a printed format;
- (2) the unqualified approving opinions of Carpenter Law, PLLC and Butler Snow LLP, as co-bond counsel (together, “Co-Bond Counsel”) in substantially the form attached to the Official Statement as APPENDIX C;
- (3) the supplemental opinions of Co-Bond Counsel addressed to the Issuer, the City and the Underwriters, substantially to the effect that:
  - (i) The Underwriters may rely on the approving opinion of Co-Bond Counsel;
  - (ii) the City has duly adopted and enacted the City Resolution, and the City Resolution is in full force and effect;
  - (iii) the Series 2021 Bonds are exempted securities under the Securities Act of 1933, as amended (the “1933 Act”), and the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”) and it is not necessary, in connection with the offering and sale of the Series 2021 Bonds, to

register the Series 2021 Bonds under the 1933 Act or to qualify the Indenture under the Trust Indenture Act; and

- (iv) said Co-Bond Counsel firm has reviewed the statements and information contained in the Official Statement and such firm is of the opinion that the information relating to the Series 2021 Bonds and legal matters is an accurate and fair description of the laws and legal issues addressed therein and, with respect to the Series 2021 Bonds, such information conforms to the provisions of the Issuer Resolution; and
- (4) the opinion of Counsel to the Underwriters, in substantially the form attached hereto as EXHIBIT B; provided, however, that the Underwriters shall not be excused from their obligation hereunder to purchase all of the Series 2021 Bonds if (i) Underwriters' Counsel fails to deliver such opinion for any reason other than a valid legal basis under Rule 10b-5 of the SEC promulgated under the Exchange Act ("Rule 10b-5") and (ii) the City is not granted reasonable notice and opportunity to cure and address the matter giving rise to such valid legal basis under Rule 10b-5 prior to Closing by an amendment or supplement to the Official Statement, as set forth under Section 3(h) hereof;
- (5) the opinion of Farris Bobango PLC, as general counsel to the Issuer ("Issuer's Counsel") in substantially the form attached hereto as EXHIBIT C;
- (6) the opinions of Bruce Turner, PLLC and Bass Berry & Sims PLC, as co-disclosure counsel to the City (together, "Co-Disclosure Counsel") [in a form acceptable to the Representative and Counsel for the Underwriters] / [in substantially the form attached hereto as EXHIBIT \_\_\_\_] and reliance letters to the Representative concerning same;
- (7) the opinion of the Chief Legal Officer/City Attorney [in a form acceptable to the Representative and Counsel for the Underwriters] / [in substantially the form attached hereto as EXHIBIT \_\_\_\_];
- (8) a closing certificate of the Issuer [in a form reasonably acceptable to the Underwriters] – OR – [substantially to the effect that:];
- (9) a closing certificate of the City [in a form reasonably acceptable to the Underwriters] – OR – [substantially to the effect that:];
- (10) a certificate of the Issuer and a certificate of the City, dated the date of Closing, each respectively signed by an Issuer Authorized Officer and a City Authorized Officer, to the effect that: (i) the representations and warranties of the Issuer and the City contained herein or in any certificate or document delivered by the Issuer and the City pursuant to the provisions hereof are true and correct in all material respects on and as of the date of Closing as if made on the date of Closing; (ii) no litigation, action, suit or proceeding against the Issuer or the City is pending or, to such person's knowledge, threatened in any court or administrative body nor is there a basis for litigation which would (A) contest

the right of the Issuer, the Issuer's governing body, executives and other officials, the Mayor, the City Council, or other officials of the City to hold and exercise their respective positions, (B) contest the due organization and valid existence of the Issuer or the City, or (C) contest the validity, due authorization, and execution of the Series 2021 Bonds or the Issuer Documents, or (D) attempt to limit, enjoin, or otherwise restrict or prevent the City from operating the Project, and appropriating Non Property Tax Revenues to the payment of the Series 2021 Bonds, pursuant to the Issuer Documents and City Documents; (iii) the official actions of the Issuer and of the City authorizing the execution, delivery, and/or performance of the Official Statement, the Series 2021 Bonds, the Issuer Documents and the City Documents have been duly adopted by the Issuer or the City, as the case may be, are in full force and effect, and have not been modified, amended, or repealed; (iv) to such person's knowledge, no event affecting the Issuer has occurred since the dates of the Official Statement which should be disclosed in the Official Statement for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein, in light of the circumstances under which they were made, not misleading in any material respect as of the time of Closing, and the information contained in the Official Statement is correct in all material respects and, as of the date of the Official Statement did not, and as of the date of the Closing do not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading; (v) insofar as the descriptions and statements including financial data, of or pertaining to entities, other than the Issuer and the City, and their activities contained in the Preliminary Official Statement and the Official Statement are concerned, such statements and data have been obtained from sources which the Issuer believes to be reliable and the Issuer has no reason to believe that they are untrue in any material respect; and (vi) there has not been any materially adverse change in the financial condition of the City since June 30, 2020, the latest date as of which audited financial information is available;

- (11) A certificate of the Issuer in form and substance satisfactory to Co-Bond Counsel and Counsel to the Underwriters setting forth the facts, estimates, and circumstances in existence on the date of the Closing, which establish that it is not expected that the proceeds of the Series 2021 Bonds will be used in a manner that would cause the Series 2021 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and any applicable regulations (whether final, temporary, or proposed) issued pursuant to the Code;
- (12) [A letter from the City's auditors consenting to the inclusion of the auditors' letter with the audited financial statements of the City included as an appendix to the Official Statement;]
- (13) A specimen of the Series 2021 Bonds;

- (14) executed copies of the Issuer Documents (including a copy of the Issuer Resolution certified by the Secretary of the Board of the Issuer as having been duly adopted by the Issuer and as being in effect, with such supplements or amendments as may have been agreed to by the Representative);
- (15) executed copies of the City Documents and the City Resolution (certified by the Comptroller under the City's seal as having been duly adopted by the City and as being in effect, with such supplements or amendments as may have been agreed to by the Representative);
- (16) closing certificates of PFM Financial Advisors, LLC, and ComCap Partners (together, the "Co-Financial Advisors"), [in a form acceptable to the Representative and Counsel for the Underwriters] / [in substantially the form attached hereto as EXHIBIT \_\_\_\_];
- (17) written evidence that: (i) Moody's Investors Service, Inc. ("Moody's"), and (ii) S&P Global Ratings ("S&P") have assigned ratings of at least "[A1]" and "[A]", respectively, to the Series 2021 Bonds;
- (18) a copy of the Issuer's DTC Issuer Blanket Letter of Representation and verification that such letter is in effect with respect to the Series 2021 Bonds; and
- (19) such additional legal opinions, certificates, proceedings, instruments and other documents as the Representative, Co-Bond Counsel or Co-Disclosure Counsel may reasonably request to evidence compliance by the Issuer or the City with applicable legal requirements, the truth and accuracy as of the Closing Date of the representations of the Issuer and the City herein, and of the statements and information contained in the Preliminary Official Statement and in the Official Statement and the due performance or satisfaction by the Issuer and the City on or prior to the Closing Date of all the agreements then to be performed and conditions then to be satisfied by the Issuer and the City.

All of the opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Purchase Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance reasonably satisfactory to the Representative.

If the Issuer shall be unable to satisfy the conditions to the obligations of the Underwriters to purchase, to accept delivery of and to pay for the Series 2021 Bonds contained in this Agreement, or if the obligations of the Underwriters to purchase, to accept delivery of and to pay for the Series 2021 Bonds shall be terminated for any reason permitted by this Purchase Agreement, this Purchase Agreement shall terminate and neither the Underwriters nor the Issuer shall be under any further obligation hereunder, except that the respective obligations of the Issuer and the Underwriters set forth in Sections 3, 10, and 11 hereof shall continue in full force and effect.

**Section 10. Termination of Purchase Agreement.**



(a) The Issuer, at the direction of the City, shall have the right to cancel the obligation to sell and deliver the Series 2021 Bonds by written notification from the Issuer to the Representative (with a copy to the City) of the election to cancel if:

- (1) the Purchase Agreement is not executed and delivered;
- (2) the Purchase Agreement is terminated pursuant to the terms thereof; or
- (3) the Underwriters fail to purchase all of the respective Series 2021 Bonds.

(b) The Representative shall have the right to terminate this Purchase Agreement and to cancel the obligation to purchase and accept delivery of the Series 2021 Bonds hereunder, if, in the sole judgment of the Representative (reasonably exercised, by written notification from the Representative to the Issuer (with a copy to the City) of the election to cancel), at any time after the execution of this Purchase Agreement and prior to the Closing Date, the market price or marketability of the Series 2021 Bonds, or the ability of the Underwriters to enforce contracts for the sale of the Series 2021 Bonds, shall be materially adversely affected by any of the following events:

- (1) trading in securities generally on the New York Stock Exchange shall have been suspended or minimum or maximum prices for trading shall have been fixed and be in force, or maximum ranges for prices for securities shall have been required and be in force on the New York Stock Exchange, whether by virtue of a determination by that exchange or by order of the SEC or any other governmental authority having jurisdiction;
- (2) a general banking moratorium shall have been declared by federal, New York or Tennessee banking authorities and be in force or a major financial crisis or a material disruption in commercial banking, securities settlement or clearance services shall have occurred which in the reasonable opinion of the Representative materially adversely affects the market for the Series 2021 Bonds or the sale, at the contemplated offering prices, by the Underwriters of the Series 2021 Bonds;
- (3) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war or other calamity or crisis (including terrorism) the effect of which on financial markets is such as to make it, in the reasonable opinion of the Representative, impractical or inadvisable to proceed with the offering or delivery of the Series 2021 Bonds as contemplated by the Official Statement;
- (4) legislation shall have been enacted by the legislature of the United States of American or the State of Tennessee, or a ruling, resolution, regulation or temporary regulation, release or announcement shall have been made or shall have been proposed to be made by a state or federal authority with appropriate jurisdiction, with respect to state or federal taxation (as the case may be) upon interest received on obligations of the same general character as the Series 2021 Bonds as contemplated hereby which, in the reasonable opinion of the

Representative, materially and adversely affects the market price of the Series 2021 Bonds;

- (5) a decision by a court of the United States shall be rendered, or a stop order, ruling, regulation, release or no-action letter by or on behalf of the SEC or any other governmental agency having jurisdiction over the subject matter shall be issued or made to the effect that the issuance, offering or sale of the Series 2021 Bonds, or of obligations of the same general character as the Series 2021 Bonds as contemplated hereby, or any document relating to the issuance, offering or sale of the Series 2021 Bonds, is subject to registration or qualification under the Securities Act of 1933, as amended (the "Securities Act"), or the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"), or is in violation of any provision of either of such acts or the Exchange Act;
- (6) legislation shall have been enacted, or actively considered for enactment with an effective date prior to Closing Date or legislation shall be favorably reported out of committee to either house of the Congress of the United States or be pending in committee, or shall have been recommended to the Congress for passage by the President of the United States or a member of the President's Cabinet, or a decision by a court of the United States shall be rendered or a ruling, regulation, proposed regulation or statement by or on behalf of the SEC or other governmental agency having jurisdiction of the subject matter herein shall be made, to the effect that securities of the Issuer or of any similar public body are not exempt from the registration, qualification or other requirements of the Securities Act, or the Trust Indenture Act;
- (7) an event or circumstance shall exist which in the reasonable judgment of the Representative causes the Official Statement to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements and information contained therein, in light of the circumstances under which they were made, not misleading;
- (8) the purchase of and payment for the Series 2021 Bonds by the Underwriters, or their resale or reoffering by the Underwriters, on the terms and conditions contemplated by this Purchase Agreement and the Official Statement, is prohibited by any applicable law or governmental regulation or by order of any court, governmental body, board, agency, or commission;
- (9) there shall have occurred or any notice shall have been given of any intended downgrading, suspension, withdrawal or negative change in credit watch status by any national rating service to any of [the Issuer's or] the City's obligations;
- (10) the marketability of the Series 2021 Bonds or the market price thereof, in the opinion of the Representative, has been materially and adversely affected by disruptive events, occurrences or conditions in the securities or debt markets;

- (11) additional material restrictions not in force on the date of this Purchase Agreement have been imposed on trading in securities generally by a governmental authority or national association of securities dealers;
- (12) any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance or sale of the Series 2021 Bonds or in any way contesting or affecting any authority for or the validity of the Series 2021 Bonds, the Issuer Documents or the City Documents, or the existence or powers of the Issuer or the City; or
- (13) any material amendment is made to the Official Statement pursuant to Section 3(c) of this Purchase Agreement which, in the reasonable judgment of the Representative, will materially adversely affect the market price of the Series 2021 Bonds or the ability of the Underwriters to enforce confirmations for the purchase of the Series 2021 Bonds.

**Section 11. Expenses; Indemnification.**

(a) Except as provided in paragraph (b) below, the Underwriters are under no obligation to pay, and the City, on behalf of the Issuer, shall pay, any expenses incident to the performance of its obligations hereunder, including but not limited to: (1) the cost of the preparation, reproduction, printing, distribution, mailing, execution, delivery, filing and recording, as the case may be, of this Purchase Agreement, the Preliminary Official Statement, the Official Statement, the Issuer Documents, the City Documents and all other agreements and documents required in connection with the consummation of the transactions contemplated hereby; (2) the cost of the preparation, engraving, printing, execution and delivery of the definitive Series 2021 Bonds; (3) the fees and disbursements of Co-Bond Counsel, Issuer's Counsel, Co-Disclosure Counsel, [Special Counsel], the Co-Financial Advisors, the Trustee, Trustee's Counsel, the Paying Agent and Registrar, DAC, and any other experts retained by the Issuer or the City; (4) the fees and disbursements of any other engineers, accountants, and other experts, consultants or advisers retained by the Issuer; (5) the initial or acceptance fee of the Paying Agent and Registrar, if any; (6) any fees charged by investment rating agencies for the rating of the Series 2021 Bonds; and (G) advertising expenses (except any advertising expenses of the Underwriters as set forth in part (b) below); (7) the out-of-pocket, miscellaneous and closing expenses, including the cost of travel, of the officers and trustees of the Issuer; (8) any expenses (included in the expense component of the Underwriters' discount) incurred by the Representative on behalf of the Issuer in connection with the marketing, issuance and delivery of the Series 2021 Bonds, including but not limited to meals, transportation and lodging of the Underwriters' employees and representatives, approved in advance by the Issuer and the City; and (9) any other expenses reasonably considered expenses of the Issuer which are incident to the transactions described herein. Notwithstanding anything herein to the contrary, the Issuer's obligation to pay expenses shall be limited to amounts available to it from the proceeds of the sale of the Series 2021 Bonds. The Issuer acknowledges that it has had an opportunity, in consultation with such advisors as it may deem appropriate, if any, to evaluate and consider the fees and expenses being incurred as part of the issuance of the Series 2021 Bonds.

(b) The Underwriters shall pay: (1) the cost of qualifying the Series 2021 Bonds under state blue-sky laws and determining their eligibility for investment under the laws of such jurisdictions as the Underwriters may designate, including filing fees and fees and disbursements of Co-Underwriters' Counsel, in connection with such qualification and determination and the review of such laws; (2) the cost of preparing and publishing all advertisements relating to the Series 2021 Bonds upon

commencement of the offering of the Series 2021 Bonds; (3) the cost of the transportation and lodging for officials and representatives of the Underwriters to attend meetings and the Closing; (4) all other expenses incurred by the Underwriters in connection with the public offering and distribution of the Series 2021 Bonds, including without limitation, the cost of preparing documents prepared by Underwriters' Counsel and the fees and expenses of Underwriters' Counsel; (5) any fees of the MSRB in connection with the issuance, offering or sale of the Series 2021 Bonds; and (6) the cost of obtaining a CUSIP number assignment for the Series 2021 Bonds. The Issuer acknowledges that the Underwriters will pay certain fees from the underwriter's expense allocation of the underwriting discount.

(c) The Underwriters agree to indemnify and hold harmless the Issuer and the City, each of its respective officers, directors, employees and agents and each person, if any, who controls the Issuer or the City within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (the "Indemnified Party") for any costs, expenses, claims, losses or liabilities whatsoever arising from any untrue statement of a material fact or omission of a material fact necessary in order to make the statements made under the caption "UNDERWRITING" in the Preliminary Official Statement or the Official Statement, in which they were made, not misleading.

(d) Within a reasonable time after an Indemnified Party under paragraph (c) of this Section 11 shall have been served with the summons or other first legal process or shall have received written notice of the threat of a claim in respect of which an indemnity may be claimed, such Indemnified Party shall, if a claim for indemnity in respect thereof is to be made against the Underwriters under this Section 11, notify the Representative in writing of the commencement thereof; but the omission to so notify the Representative shall not relieve it from any liability that it may otherwise have to any Indemnified Party under applicable law other than pursuant to this Section 11. The Underwriters shall be entitled to participate at their own expense in the defense.

(e) No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to indemnification from any person who was not guilty of such fraudulent misrepresentation. This indemnity agreement will be in addition to any liability which the Underwriters may otherwise have.

**Section 12. Representations and Warranties of the Underwriters.** The Representative, on behalf of itself and each Underwriter, represents and warrants to the Issuer and the City that:

(a) The Representative on its own behalf and on behalf of each Underwriter, represents that each is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly authorized to transact business in the State;

(b) The Representative has been duly authorized to execute this Purchase Agreement on behalf of itself and the Underwriters and that it has been authorized to act hereunder on behalf of the Underwriters;

(c) The Representative has the full power and authority to take all actions required or permitted to be taken by the Representative by or under, and to perform and observe the covenants and agreements on its part contained in, this Purchase Agreement;

(d) This Purchase Agreement has been duly executed and delivered by the Representative, on behalf of itself and each Underwriter;

(e) The Representative and each Underwriter, on its own behalf, represents that it is either registered with the Financial Industry Regulatory Authority, Inc. ("FINRA"), as a broker-dealer and the MSRB as a municipal securities dealer, or is otherwise registered with the necessary regulatory authorities required for it to serve as an Underwriter for the Series 2021 Bonds under this Purchase Agreement and that at all times during the offering and sale of the Series 2021 Bonds, such entities will continue to be so registered; and

(f) There is no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, or before or by any court, public board or body pending or, to the knowledge of the Representative, threatened against or affecting the Representative or any of the Underwriters, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or by the Official Statement or the validity and legality of this Purchase Agreement or the Official Statement. To the best of the knowledge of the undersigned authorized signatory of the Representative, the Representative is in compliance with the rules and regulations of FINRA (to the extent it is regulated by the FINRA) and any other body which regulates the Representative as it relates to all transactions contemplated in this Purchase Agreement or in the Official Statement.

The foregoing representations and warranties of the Representative and the obligations set forth in Section 11(c) herein shall survive the execution and delivery of this Purchase Agreement, the execution and delivery of the Series 2021 Bonds and the instruments and documents contemplated thereby. The Issuer and the City acknowledge that the Representative makes the representations and warranties contained in paragraphs 12(a), 12(b) and 12(e) reliant upon certain representations made by each of the other Underwriters to the Representative.

Simultaneously with the delivery of this Purchase Agreement, the Representative shall cause to be delivered to the Issuer and the City certificates executed by the properly authorized representatives of each of the Underwriters certifying the matters set forth in this Section 12 with respect to each such firm.

**Section 13. Notices.** All notices, demands and formal actions shall be in writing and mailed, faxed, sent by electronic communication (provided that facsimile and electronic communications must be confirmed by the sender) or hand delivered to: (a) the Issuer, at 100 Peabody Place, Suite 1100 Memphis, Tennessee 38103, Attention: President/CEO, Fax: (901) 527-9224; (b) the City at 125 N. Main Street, Memphis, Tennessee 38103, Attention: Chief Financial Officer, Fax: (901) 576-6193 with a copy to the Chief Legal Officer/City Attorney at 125 N. Main Street, Room 336, Memphis, Tennessee 38103, Fax: (901) 636-6531; and (c) the Representative, at Loop Capital Markets LLC, Fred Prime, Managing Director; Attention: Public Finance Department; 111 West Jackson Blvd., Suite 1901; Chicago, IL 60604; Fax: (312) 913-4927.

**Section 14. Parties in Interest.** This Purchase Agreement is made solely for the benefit of the Issuer and the Underwriters (including successors or assigns of the Underwriters) and no other person shall acquire or have any right hereunder or by virtue hereof. This Purchase Agreement may not be assigned by the Issuer. All of the Issuer's and the City's representations, warranties and agreements contained in this Purchase Agreement shall remain operative and in full force and effect, regardless of (i) any investigations made by or on behalf of any of the Underwriters; (ii) delivery of and payment for

the Series 2021 Bonds pursuant to this Purchase Agreement; and (iii) any termination of this Purchase Agreement.

**Section 15. Business Day.** For purposes of this Purchase Agreement, “business day” means any day on which the New York Stock Exchange is open for trading.

**Section 16. Section Headings.** Section headings have been inserted in this Purchase Agreement for convenience of reference only, and it is agreed that such Section headings are not a part of this Purchase Agreement and will not be used in the interpretation of any provisions of this Purchase Agreement.

**Section 17. Counterparts.** This Purchase Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Purchase Agreement by facsimile, portable document format (PDF), or other electronic means shall be effective as delivery of a manually executed counterpart to this Purchase Agreement.

**Section 18. Benefit.** This Purchase Agreement is made solely for the benefit of the Issuer, the City and the Underwriters (including their successors or assigns) and no other person, partnership, association or corporation shall acquire or have any right hereunder or by virtue hereof.

**Section 19. Effective Date.** This Purchase Agreement shall become effective upon acceptance hereof by the Issuer and the City, and shall be valid and enforceable at the time of such acceptance.

**Section 20. Entire Agreement; Amendment; No Personal Liability; Choice of Law; Severability.** This Purchase Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby, and supersedes all prior agreements and understandings between the parties. This Purchase Agreement may not be amended, supplemented or modified without the written consent of the Issuer, the City and the Representative. None of the officers, directors, employees or agents of the Issuer or the City shall be charged personally by the Underwriters with any liability, or be held liable to the Underwriters under any term or provision of this Purchase Agreement because of its execution or attempted execution, or because of any breach or attempted or alleged breach thereof. The validity, interpretation and performance of this Purchase Agreement shall be governed by the internal laws of the State, without regard to conflict of law principles. If any provision of this Purchase Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative, or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision or provisions of any constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision.

[Execution Pages Follow]

**SIGNATURE PAGE TO  
BOND PURCHASE AGREEMENT**

**ECONOMIC DEVELOPMENT GROWTH ENGINE  
INDUSTRIAL DEVELOPMENT BOARD  
OF THE  
CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE**

**ECONOMIC DEVELOPMENT BONDS  
(CITY OF MEMPHIS PROJECT),  
SERIES 2021**

**LOOP CAPITAL MARKETS LLC,**  
on its own behalf and as representative of the  
Underwriters

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

**SIGNATURE PAGE TO  
BOND PURCHASE AGREEMENT**

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**ECONOMIC DEVELOPMENT GROWTH ENGINE  
INDUSTRIAL DEVELOPMENT BOARD  
OF THE  
CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE**

**ECONOMIC DEVELOPMENT BONDS  
(CITY OF MEMPHIS PROJECT),  
SERIES 2021**

Accepted and agreed to as of the  
date first above written.

**ECONOMIC DEVELOPMENT GROWTH  
ENGINE INDUSTRIAL DEVELOPMENT  
BOARD OF THE CITY OF MEMPHIS AND  
COUNTY OF SHELBY, TENNESSEE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

[SIGNATURES CONTINUED ON FOLLOWING PAGE]



**SIGNATURE PAGE TO  
BOND PURCHASE AGREEMENT**

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**ECONOMIC DEVELOPMENT GROWTH ENGINE  
INDUSTRIAL DEVELOPMENT BOARD  
OF THE  
CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE**

**ECONOMIC DEVELOPMENT BONDS  
(CITY OF MEMPHIS PROJECT),  
SERIES 2021**

Acknowledged and agreed to as of  
the date first above written.

**CITY OF MEMPHIS, TENNESSEE**

By: \_\_\_\_\_  
Jim Strickland  
Mayor

Date: \_\_\_\_\_

**SCHEDULE I**  
**UNDERWRITERS**

**SCHEDULE II**  
**SERIES 2021 BONDS**  
**SERIAL BONDS**

| <b><u>Maturity</u></b><br><b><u>(December 1)</u></b> | <b><u>Principal</u></b><br><b><u>Amount</u></b> | <b><u>Interest</u></b><br><b><u>Rate</u></b> | <b><u>Price</u></b> | <b><u>Yield</u></b> |
|--|---|--|---------------------|---------------------|
| 2021   | \$  | %  |                     | %                   |
| 2022   |   |  |                     |                     |
| 2023   |   |  |                     |                     |
| 2024   |   |  |                     |                     |
| 2025   |   |  |                     |                     |
| 2026   |   |  |                     |                     |
| 2027   |   |  |                     |                     |
| 2028   |   |  |                     |                     |
| 2029   |   |  |                     |                     |
| 2030   |   |  |                     |                     |
| 2031   |   |  |                     |                     |
| 2032   |   |  |                     |                     |
| 2033   |   |  |                     |                     |
| 2034   |   |  |                     |                     |
| 2035   |   |  |                     |                     |
| 2036   |   |  |                     |                     |
| 2037   |   |  |                     |                     |
| 2038   |   |  |                     |                     |
| 2039   |   |  |                     |                     |
| 2040   |   |  |                     |                     |
|  |   |  |                     |                     |
| 2041   |   |  |                     |                     |
| 2042   |   |  |                     |                     |
| 2043   |   |  |                     |                     |
| 2044   |   |  |                     |                     |
| 2045*  |   |  |                     |                     |

\*Final Maturity

**Optional Redemption.** The Series 2021 Bonds maturing on or before [\_\_\_\_\_], shall not be subject to redemption prior to maturity. The Series 2021 Bonds maturing on or after [\_\_\_\_\_] (or portions thereof in authorized denominations of \$5,000 and integral multiples thereof) are subject to optional redemption by the City, on and after [\_\_\_\_\_], in whole or in part, at any time in such order as determined by the City at a redemption price equal to the principal amount of the Series 2021 Bonds or portion thereof to be redeemed together with interest accrued thereon to the date fixed for redemption.

<sup>c</sup> Priced to [\_\_\_\_\_] par call.

**EXHIBIT A**

**ECONOMIC DEVELOPMENT GROWTH ENGINE  
INDUSTRIAL DEVELOPMENT BOARD  
OF THE  
CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE**

**§ \_\_\_\_\_  
ECONOMIC DEVELOPMENT BONDS (CITY OF MEMPHIS PROJECT),  
SERIES 2021**

**ISSUE PRICE CERTIFICATE**

The undersigned, as the duly authorized representative of Loop Capital Markets LLC (the “Representative”), on behalf of itself and the underwriters listed in the Bond Purchase Agreement (together, the “Syndicate”), with respect to the Economic Development Bonds (City of Memphis Project), Series 2021 issued by the Economic Development Growth Engine Industrial Development Board of the City of Memphis and Shelby County, Tennessee (the “Issuer”) in the principal amount of \$ \_\_\_\_\_ (the “Bonds”) for the benefit of the City of Memphis, Tennessee (the “City”), hereby certifies, based on its records and information, as follows:

1. ***Sale of the General Rule Maturities.*** As of the date of this certificate, for each Maturity of the General Rule Maturities, the first price at which at least 10% of such Maturity was sold to the Public is the respective price listed in Schedule A.

2. ***Initial Offering Price of the Hold-the-Offering-Price Maturities.***

(a) The Syndicate offered the Hold-the-Offering Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B.

(b) As set forth in the Bond Purchase Agreement, the Representative has agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, the Syndicate would neither offer nor sell any of the unsold Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any third-party distribution agreement shall contain the agreement of each broker-dealer who is a party to the third-party distribution agreement, to comply with the hold-the-offering-price rule. No information has come to the attention of the Representative that any underwriter has offered or sold any unsold Bonds of any Maturity of the Bonds at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.

3. ***Defined Terms.***

(a) "General Rule Maturities" means those Maturities of the Bonds listed in Schedule A hereto as the "General Rule Maturities."

(b) "Hold-the-Offering-Price" Maturities means those Maturities of the Bonds listed in Schedule A hereto as the "Hold-the-Offering-Price Maturities."

(c) "Holding Period" means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date, or (ii) the date on which the Syndicate has sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

(d) "Maturity" means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(e) "Public" means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an underwriter or a related party to an underwriter. The term "related party" for purposes of this certificate means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(f) "Sale Date" means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is \_\_\_\_\_.

(g) "underwriter" means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Representative's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer and the City with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Carpenter Law, PLLC and Butler Snow LLP in connection with rendering their opinions that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer and to the City from time to time relating to the Bonds. Notwithstanding anything set forth herein, the Representative is not engaged in the practice of law and makes no representation as to the legal sufficiency of the factual matters set forth herein.

EXECUTED and DELIVERED as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

LOOP CAPITAL MARKETS LLC,  
as Representative

By: \_\_\_\_\_

Managing Director

**EXHIBIT B**

**FORM OF OPINION OF COUNSEL TO THE UNDERWRITERS**

[\_\_\_\_\_], 2021

Loop Capital Markets LLC  
Memphis, Tennessee

Re: Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee \$ \_\_\_\_\_ Economic Development Bonds (City of Memphis Project), Series 2021

Dear Loop Capital Markets LLC:

We have acted as counsel for Loop Capital Markets LLC, on behalf of itself and as representative of [\_\_\_\_\_] (collectively, the "Underwriters"), named in the Bond Purchase Agreement, dated [\_\_\_\_\_], 2021 (the "Purchase Agreement"), by and among Loop Capital Markets LLC, as representative of the Underwriters (the "Representative"), the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby (the "Issuer"), and the City of Memphis, Tennessee (the "City"), in connection with the purchase and sale by the Underwriters of the Issuer's \$[\_\_\_\_\_] aggregate principal amount of Economic Development Bonds (City of Memphis Project), Series 2021 (the "Series 2021 Bonds") upon their initial issuance and delivery.

In our capacity as counsel to the Underwriters with respect to the Series 2021 Bonds, we have participated with representatives of the Issuer and the City, the Underwriters and other parties in the preparation of the Preliminary Official Statement and the Official Statement and have reviewed the contents thereof. In the course of such participation, we have reviewed information furnished to us by, and have participated in conferences with, representatives of the Issuer, the Issuer's Counsel, the City, the City's Co-Financial Advisors, the City's Co-Disclosure Counsel, Co-Bond Counsel to the Series 2021 Bonds and the Underwriters (as each such party is identified and defined in the Preliminary Official Statement and the Official Statement). We also have reviewed the documents relating to the Series 2021 Bonds described in the Preliminary Official Statement and the Official Statement, the documents, certificates, letters and opinions delivered to the Underwriters pursuant to the Purchase Agreement, and other documents and records relating to the issuance and sale of the Series 2021 Bonds. We have relied upon, and have assumed the correctness of, certifications and representations of officials of the Issuer, the Issuer's Counsel, the City, the City's Co-Financial Advisors, the Underwriters, and upon written opinions of Co-Bond Counsel to the Series 2021 Bonds and the City's Co-Disclosure Counsel. Otherwise, we have not undertaken any independent investigation or verification whatsoever as to the accuracy, completeness, adequacy or fairness of the information contained in the Preliminary Official Statement and the Official Statement, and, without limiting the generality of the foregoing, in particular we have not undertaken any independent investigation or verification with respect to the City's operations and programs. We also note that pursuant to federal securities laws, the Issuer and the City are responsible for the statements contained in the Preliminary Official Statement and the Official Statement. Moreover, the limitations inherent in our role as counsel to the Underwriters are such that we cannot and do not assume responsibility for or pass on the accuracy, completeness, adequacy or fairness of statements made in the Preliminary Official Statement

and the Official Statement, and we express no view, advice or opinion with respect to the foregoing except as expressly stated in this letter.

Our advice set forth hereinafter is based upon our aforementioned assumptions, review and conferences (which did not extend beyond the date of the Official Statement), is given in reliance upon the accuracy of the information contained in the aforementioned certificates, written opinions, letters and other documents, and is given without having undertaken to independently determine or verify the accuracy, completeness, adequacy or fairness of the information contained in the Preliminary Official Statement and the Official Statement, excepting only the independent review of the documents described hereinabove and the matters of federal laws of the United States and laws of the State of Tennessee described therein. Based solely on and subject to all of the foregoing, in connection with the initial issuance and delivery of the Series 2021 Bonds on the date hereof, we advise you that, during the course of the activities described hereinabove, no information came to the attention of the attorneys in our firm who rendered legal services in connection with the initial issuance and sale of the Series 2021 Bonds that causes us to believe that the Preliminary Official Statement as of its date or the Official Statement as of its date and as of the date of this letter (in each case, with respect to the Preliminary Official Statement and the Official Statement, excluding the information described hereinafter as to which we express no advice or opinion) contained or contains any untrue statement of a material fact or omitted or omits any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, we express no view, advice or opinion as to (i) financial statements, or financial, statistical, demographic or other numerical information of any kind, information as to DTC, any other clearing system and their respective book-entry system, or forecasts, projections, trends, estimates, assumptions or expressions of opinion included in the Preliminary Official Statement and/or the Official Statement (including, without limitation, in the appendices thereto), (ii) the information in the Preliminary Official Statement and/or the Official Statement under the captions "BOOK-ENTRY ONLY SYSTEM," "LITIGATION," "TAX MATTERS" and the information in Appendices C, D, and E of the Preliminary Official Statement and/or the Official Statement, (iii) matters of law other than federal laws of the United States and laws of the State of Tennessee, and (iv) in the Preliminary Official Statement, the offering price(s), interest rate(s), maturity date(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery date, ratings and other terms of the Series 2021 Bonds depending on such matters, all often referred to as "permitted omissions" under Rule 15c2 12 under the Securities Exchange Act of 1934, as amended.

We have not passed upon, and the foregoing is subject to, the validity of the Series 2021 Bonds and the exclusion from gross income for federal income tax purposes of the interest on the Series 2021 Bonds, as to which we understand that you are relying upon the opinion, dated the date hereof, of [ \_\_\_\_\_ ], serving as Co-Bond Counsel.

We are issuing this letter to and for sole benefit of the Underwriters in connection with the Underwriters' initial purchase and primary offering of the Series 2021 Bonds. No person other than the Underwriters may rely upon this opinion without our express prior written consent. This letter may not be utilized by the Underwriters for any other purpose whatsoever. Our engagement as counsel to the Underwriters terminates upon the closing for the issuance and sale of the Series 2021 Bonds on the date hereof.

We assume no obligation to review or supplement this letter or any opinion or advice contained herein, subsequent to the date hereof, whether by reason of a change in applicable law, by legislative or regulatory action or judicial decision or order, or for any other reason whatsoever. We are passing



only upon the matters set forth herein and are not passing upon the accuracy, adequacy or completeness of any statement made in connection with any offer or sale of the Series 2021 Bonds, except as specifically addressed above.

Very truly yours,

Ahmad Zaffarese LLC

**EXHIBIT C**

**FORM OF OPINION OF COUNSEL TO THE ISSUER**

[\_\_\_\_\_], 2021

Loop Capital Markets LLC

[insert other underwriters]

As Underwriters under the Bond Purchase Agreement hereinafter mentioned  
c/o Loop Capital Markets LLC, Memphis, Tennessee

Regions Bank, as Trustee Nashville, Tennessee

Economic Development Growth Engine

Industrial Development Board of the City of Memphis and County of Shelby, Tennessee  
Memphis, Tennessee

Carpenter Law, PLLC, as Co- Bond Counsel

Memphis, Tennessee

Butler Snow LLP, as Co-Bond Counsel

Memphis, Tennessee

Re: Economic Development Growth Engine Industrial Development Board of the City  
of Memphis and County of Shelby, Tennessee \$ \_\_\_\_\_ Economic  
Development Bonds (City of Memphis Project), Series 2021

Dear Recipients:

We have acted as counsel to the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (the "Issuer"), a public, nonprofit corporation organized and existing under the laws of the State of Tennessee, pursuant to the provisions of *Tennessee Code Annotated*, Section 7-53-101 *et seq.* as amended (the "Act"), in connection with the issuance of its \$ \_\_\_\_\_ Economic Development Bonds (City of Memphis Project), Series 2021, dated the date of original issuance and delivery (the "Bonds"). The Bonds are issued under that certain Trust Indenture (the "Indenture") dated as of \_\_\_\_\_ 1, 2021, between the Issuer and Regions Bank, as bond trustee (the "Trustee").

In rendering this opinion we have (1) examined the Issuer Documents (defined below), the Act, and such other documents, proceedings, records, instruments, certificates, materials and proofs as we have deemed relevant and necessary as a basis for the opinions hereinafter expressed; and with your consent (2) relied, without independent investigation or inquiry, upon the representations and warranties of the parties contained in the Issuer Documents, (b) certificates of certain public officials, and (3) assumed, without independent investigation or inquiry, that all information furnished to us is accurate and complete and the representations and warranties of the parties contained in the Issuer Documents and the certificates are truthful and accurate.

In our examination, we have assumed the authenticity of all documents submitted to us as originals, the conformity to original copies of all documents submitted to us as certified or photo static

copies, the authenticity of the originals of such latter documents, and the accuracy of the statements contained in such certificates.

In connection with the opinions expressed herein, we have examined, among other things, such representations, statements and certificates of public officials, the Issuer, officers and representatives of the Issuer and others as we have deemed relevant or proper as a basis for the opinions set forth herein and such other documents as we have deemed relevant as a basis for such opinions including, but not limited to, the following:

- (a) the Indenture;
- (b) a certain Loan Agreement (the "Agreement"), dated as of \_\_\_\_\_ 1, 2021, by and between the Issuer and the City of Memphis (the "City");
- (c) a certain Bond Purchase Agreement (the "Bond Purchase Agreement") dated as of \_\_\_\_\_, 2021, by and among the Issuer, the City and Loop Capital Markets LLC, as representative of the underwriters named therein;
- (d) Closing certificates of the Issuer;
- (e) Charter of Incorporation of the Issuer, with amendments, certified by the Tennessee Secretary of State;
- (f) Certificate of Existence as to the Issuer dated \_\_\_\_\_, 2021, issued by the Secretary of State of the State of Tennessee, a copy of which is attached hereto;
- (g) Bylaws of the Issuer;
- (h) Resolution of the Board of Directors of the Issuer adopted March \_\_\_\_\_, 2021; and
- (i) the Bonds.

Based upon the foregoing, and such other information and documents as we have deemed advisable and proper and subject to the assumptions and other qualifications hereinafter stated, we are of the opinion that:

1. The Issuer is a public, nonprofit corporation duly organized and validly existing under the laws of the State of Tennessee.
2. The Issuer has full power to enter into, execute, deliver and perform its obligations under the Bonds, the Indenture, the Agreement, and the Bond Purchase Agreement (collectively, the "Issuer Documents") and to carry out and perform its obligations under the Issuer Documents.
3. The execution and delivery of the issuer Documents have been duly authorized by all necessary action on the part of the Issuer, and the Issuer Documents have been duly executed and delivered by the Issuer, and, assuming due authorization, execution and delivery by the other parties thereto (other than the Issuer), constitute legal, valid and binding instruments enforceable against the

Issuer in accordance with their respective terms, except to the extent that (a) the enforceability thereof may be limited by future proceedings under bankruptcy, moratorium, reorganization, fraudulent conveyances, avoidable preferences, debt arrangement, insolvency, or other laws or equitable principles of general application from time to time affecting the rights of creditors and secured parties generally (regardless whether the application of such principles is considered in a proceeding in equity or at law); (b) a particular court may refuse to grant certain equitable remedies, including, without limitation, specific performance, with respect to the enforcement of any provisions of said documents; and (c) the indemnity provisions may be invalid or contrary to public policy.

We further express no opinion as to the enforceability of any provisions of the Issuer Documents (a) restricting access to legal or equitable remedies, (b) purporting to establish evidentiary standards or waiving or affecting any rights to notice, demand, or exhaustion of collateral, or (c) relating to self-help, subordination, delay, omission to enforce rights or remedies, indemnity, severability, equal or ratable liens, equitable liens, marshaling of assets, or transfer of licenses or permits through foreclosure.

4. The execution and delivery of the Issuer Documents and the Issuer's performance of, and compliance by the Issuer with, the provisions of the Issuer Documents do not and will not in any material respect conflict with, or result in the breach of, or constitute a default under the Charter of Incorporation, as amended, of the Issuer or Bylaws of the Issuer or, to the best of our knowledge, any provision of any judgment, order, decree, indenture, agreement or instrument binding on the Issuer.

5. No additional or further approval, consent, or authorization of any governmental or public agency or authority not already obtained is required by the Issuer in connection with the issuance and sale of the Bonds (excepting only federal and state securities laws as to which the undersigned expresses no opinion) or the entering into and performing of its obligations under the Issuer Documents.

6. The Issuer has authorized the execution, delivery and distribution of the Preliminary Official Statement dated \_\_\_\_\_, 2021, of the Issuer and the City in connection with the offering of the Bonds (the "Preliminary Official Statement"), and the use thereof by the Underwriters in connection with the public offering and sale of the Bonds, and the Official Statement has been duly executed and delivered by the Issuer.

7. The information contained in the Preliminary Official Statement and the Official Statement under the caption "THE ISSUER" and the sub-caption "LITIGATION - The Issuer" are accurate statements.

Without limitation on any other qualifications or assumptions expressed elsewhere in this letter, the foregoing opinions are subject in their entirety to the following additional qualifications and assumptions:

(a) We have assumed that all parties to the Issuer Documents and the transactions contemplated thereby, other than the Issuer, have been and will be acting with all requisite power and authority, that all actions of officials of such other parties have been and will be duly authorized and that all undertakings of such other parties are legal, valid and binding obligations thereof enforceable in accordance with their terms and are in accordance with all applicable laws and regulations.

(b) We do not intend to, and do not, make any representation or express any opinion herein as to: the value of any collateral or property; the existence of any particular category of collateral or property; title to any real or personal property; the priority of any security interest or of any other interest in real or personal property; the perfection of any security interest or of any other interest in real or personal property; or the adequacy or sufficiency of any security.

(c) Whenever any statement or opinion herein is qualified by the phrase "to the best of our knowledge," this means the conscious awareness of the applicable facts or other information by Mark E. Beutelschies and Stephen L. Anderson, the lawyers in this firm primarily responsible for representing the Issuer and that in making such statement or rendering such opinion they have relied exclusively with respect to factual matters upon statements of or information furnished by representatives of the Issuer, without any further investigation or inquiry.

(d) In rendering the opinion set forth in paragraph 1 above as to the existence and good standing of the Issuer, we have conclusively relied on the Certificate of Existence as to the Issuer issued by the Tennessee Secretary of State.

(e) We have assumed the genuineness of all signatures (other than signatures on behalf of Issuer actually witnessed by us), the legal capacity of all natural persons, and the conformity to originals of all documents submitted to us as photocopies, fax copies, electronic copies or conformed copies.

(f) Our opinion is limited to the matters specifically addressed herein and we express no opinion and no opinion is to be inferred or implied on any other matters not specifically addressed in this opinion. This opinion is delivered as of the date hereof and is based on the current state of the law. We undertake no obligation to update or supplement the matters discussed herein.

(g) We express no opinion as to the laws of any jurisdiction other than the State of Tennessee on matters expressly addressed hereinabove. No opinion is expressed herein with respect to any party to the Issuer Documents other than the Issuer.

(h) The opinions set forth herein are limited to the laws of Tennessee and we express no opinion with respect to the effect of any federal laws or any laws of any other jurisdiction. We express no opinion herein as to whether or not the interest payable on the Bonds is exempt from federal income tax or State of Tennessee taxation and no opinion as to any Federal or State laws relating to the offering or sale of securities. We express no opinion regarding the effect or requirements of Tennessee securities or blue-sky laws. We express no opinion as to any usury laws.

(i) We have not passed upon any matters relating to the business, affairs or condition (financial or otherwise) of the Issuer or the City and no inference should be drawn that we have expressed any opinion on matters relating to the ability of the Issuer (other than its legal ability) or the City to perform their obligations under the Issuer Documents or the completeness or accuracy of any disclosure to the purchasers of the Bonds by any party in connection with or the purchase of the Bonds.

This opinion letter is solely for your benefit. This opinion may not be delivered to or relied upon by any other person other than you, and is to be relied upon only in connection with this transaction.



DRAFT 4.21.2021

LOAN AGREEMENT

BY AND BETWEEN

THE CITY OF MEMPHIS, TENNESSEE

AND

ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT  
BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE

ECONOMIC DEVELOPMENT BONDS (CITY OF MEMPHIS PROJECT), SERIES 2021

DATED AS OF [\_\_\_\_], 2021

The rights of the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, hereunder have been assigned to Regions Bank, as Bond Trustee, under a Trust Indenture dated as of [\_\_\_\_], 2021, from the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee, except to the extent such rights constitute Unassigned Rights as defined herein.



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This is a **LOAN AGREEMENT** dated as of [\_\_\_\_], 2021 (herein referred to sometimes as this "**Loan Agreement**"), by and between the **CITY OF MEMPHIS, TENNESSEE**, a Tennessee municipal corporation (the "**Borrower**"), and the **ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE** (the "**Issuer**"), a public nonprofit corporation created and existing under and by virtue of Sections 7-53-101 *et seq.*, Tennessee Code Annotated, as amended (the "**Act**").

## **PRELIMINARY STATEMENT**

The Issuer and Regions Bank, as bond trustee (the "**Bond Trustee**"), have entered into a Trust Indenture (as the same may from time to time be supplemented, amended and restated, the "**Trust Indenture**") dated as of [\_\_\_\_], 2021, authorizing and providing for the issuance of Bonds to (i) pay Costs of the Project, including interest on Bonds during construction of the Project and for two (2) years after the estimated date of completion of the Project, (ii) pay certain expenses incurred in connection with the issuance of Bonds, and (iii) fund any debt service reserves, all as permitted under the Act (collectively, "**Financing Purposes**").

The Borrower desires to obtain the proceeds of the Bonds, which will be loaned to the Borrower hereunder for Financing Purposes.

Pursuant to the Act, the Issuer desires to obtain funds for such loan to the Borrower by the issuance and sale of its Economic Development Bonds (City of Memphis Project), Series 2021 (collectively, the "**Bonds**") issued under and secured by the Trust Indenture. Pursuant to the Trust Indenture, the Issuer will pledge and assign its rights under this Loan Agreement (except for the right of the Issuer to receive payment of its fees and expenses, the Issuer's right to indemnification under this Loan Agreement, the Issuer's right to approve, execute and deliver supplements, amendments and restatements to this Loan Agreement, the Issuer's right to grant consents under this Loan Agreement, and the rights provided the Issuer in Section 11.7 hereof, herein referred to collectively as the "**Unassigned Rights**"), as security for Bonds issued under the Trust Indenture. Also pursuant to the Trust Indenture, an amount equal to the principal of, premium, if any, and interest on the Bonds will be payable to the Bond Trustee, solely out of (i) the payments to be made by the Borrower under this Loan Agreement (except for Unassigned Rights) and (ii) money on deposit in certain funds held under the Trust Indenture (collectively, the "**Funds**").

In consideration of the premises, the respective representations and agreements contained herein, the acceptance of this Loan Agreement by the Issuer to evidence said loan to the Borrower and for other good and valuable consideration, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest payable under this Loan Agreement and the performance of all the covenants of the Borrower contained herein, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Unless the context requires otherwise, the capitalized terms used and not otherwise defined in this Loan Agreement shall have the same meanings as set forth in the Trust Indenture.

All accounting terms not otherwise defined in the Trust Indenture or herein shall have the meanings assigned to them in accordance with generally accepted accounting principles.

All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Loan Agreement as a whole and not to any particular Article, Section or other subdivision unless the context indicates otherwise.

## ARTICLE II

### REPRESENTATIONS

Section 2.1. *Representations by the Issuer.* The Issuer represents and warrants that:

(a) The Issuer is a public nonprofit corporation validly created and existing under the Act, is authorized to enter into the transactions contemplated by this Loan Agreement and to carry out its obligations hereunder, has been duly authorized to execute and deliver this Loan Agreement and agrees that it will do or cause to be done all things necessary to preserve and keep in full force and effect its existence.

(b) The issuance and sale of the Bonds, the loan of the proceeds of Bonds to the Borrower to provide a portion of the money required for the Financing Purposes, the approval, execution and delivery of this Loan Agreement and the Trust Indenture, the performance of all covenants and agreements of the Issuer contained in this Loan Agreement and the Trust Indenture, and of all other acts and things required under the Constitution and laws of Tennessee to make this Loan Agreement a valid and binding obligation enforceable against the Issuer in accordance with its terms, are authorized by the Act and have been duly authorized by proceedings of the Issuer adopted at meetings thereof which were duly called and held.

(c) To provide funds to loan to the Borrower for Financing Purposes, the Issuer has authorized the Bonds to be issued upon the terms set forth in the Trust Indenture, under the provisions of which Trust Indenture the Issuer's interest in this Loan Agreement and the payments of principal, interest and other revenues hereunder (other than Unassigned Rights) are pledged and assigned to the Bond Trustee as security for the payment of the principal of, premium, if any, and interest on the Bonds.

(d) The execution and delivery of this Loan Agreement, the consummation of the transactions contemplated hereby and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate restriction or of any agreement or instrument to which the Issuer is now a party and do not and will not constitute a default under any of the foregoing. Furthermore, the recitals of fact and statements contained in this Loan Agreement with respect to the Issuer are true.

(e) No litigation, proceeding or investigation is pending or, to the knowledge of the Issuer, threatened against the Issuer seeking to restrain, enjoin or in any way limit the approval, issuance or delivery of the Bonds or this Loan Agreement by the Issuer or which would in any manner challenge or adversely affect the corporate existence or powers of the Issuer to enter into

or carry out the transactions described in or contemplated by, the execution, delivery or validity of or the performance by the Issuer of the terms and provisions of, this Loan Agreement or the Trust Indenture.

Section 2.2. *Representations and Warranties by the Borrower.* The Borrower makes the following representations and warranties as the basis for its covenants herein:

(a) The Borrower is duly authorized and has full power under the laws of Tennessee and all other applicable provisions of law and its charter and bylaws to create, issue, enter into, execute and deliver, as the case may be, this Loan Agreement; all action on its part necessary for the valid execution and delivery of this Loan Agreement has been duly and effectively taken; and this Loan Agreement, in the hands of the holder hereof, will be the legal and valid obligation of the Borrower.

(b) The execution and delivery of this Loan Agreement, the consummation of the transactions contemplated hereby and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate restriction or of any agreement or instrument to which the Borrower is now a party and do not and will not constitute a default under any of the foregoing. Furthermore, the recitals of fact and statements contained in this Loan Agreement with respect to the Borrower are true.

(c) Except as may be specifically described in the Official Statement dated [\_\_\_\_], 2021, relating to the Bonds (as the same may be supplemented or amended, the “**Official Statement**”), no litigation, proceeding or investigation is pending or, to the knowledge of the Borrower, threatened against the Borrower seeking to restrain, enjoin or in any way limit the approval, issuance or delivery of (i) the Official Statement, (ii) the Bonds by the Issuer, or (iii) this Loan Agreement by the Borrower, or which would in any manner challenge or adversely affect the corporate existence or powers of the Borrower to enter into or carry out the transactions described in or contemplated by, the execution, delivery or validity of or the performance by the Borrower of the terms and provisions of, this Loan Agreement. In addition, except as otherwise may be described in the Official Statement, no litigation, proceedings or investigations are pending or, to the knowledge of the Borrower, threatened against it except litigation, proceedings or investigations involving claims for which the probable ultimate recoveries and the estimated costs and expenses of defense, in the opinion of the Borrower (i) will be entirely within its applicable insurance policy coverage limits, subject to applicable deductibles or (ii) will not have a material adverse effect on the operations or condition, financial or otherwise, of the Borrower, taken as a whole.

(d) This Loan Agreement and any other written statement furnished by the Borrower to the Issuer do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or herein not misleading. There is no fact which the Borrower has not disclosed to the Issuer which materially adversely affects or, so far as the Borrower can now foresee, will materially adversely affect the financial condition of the Borrower, its ability to own, operate and lease its facilities or its ability to make the payments under this Loan Agreement when and as the same become due and payable.

(e) The Borrower represents and warrants that the proceeds of the Bonds will be used solely for Financing Purposes, which are deemed to be a "project" as defined in Section 7-53-101 of the Act, all for use in connection with its governmental purposes.

### ARTICLE III

#### THE PROJECT

Section 3.1. *Completion of the Project.* The Borrower agrees to use reasonable efforts to cause the Project to be constructed, renovated, rehabilitated, remodeled, furnished and equipped and completed with reasonable dispatch.

### ARTICLE IV

#### CONSTRUCTION FUND; INVESTMENT OF FUNDS

Section 4.1. *Operation of the Construction Fund.*

(a) *Disbursements from the Construction Fund.* [The Borrower agrees that money on deposit in the Construction Fund shall be disbursed by the Bond Trustee only in accordance with or as permitted by the provisions of Section 303 of the Trust Indenture.]

(b) *Disposition of Surplus Construction Fund Money.* The Borrower agrees that if after payment by the Bond Trustee of amounts requested pursuant to Written Requests theretofore tendered under the provisions of Section 303(b) of the Trust Indenture there shall remain any money in the Construction Fund, such money may be withdrawn and shall be used or deposited as provided in Section 303(d) of the Trust Indenture.

Section 4.2. *Investment of Funds.* The Borrower agrees that money at any time on deposit in any Fund created under the Trust Indenture shall at all times be invested or reinvested by the Bond Trustee in Permitted Investments in the manner and to the extent provided in the Trust Indenture and that the Borrower will take all actions necessary, including without limitation providing the Bond Trustee with all necessary directions, to assure that such money is invested in accordance with the provisions of the Trust Indenture.

### ARTICLE V

#### ISSUANCE OF THE BONDS

Section 5.1. *Proceeds of the Bonds; Security Interest in Funds.* The Borrower agrees that the proceeds of the Bonds being loaned to the Borrower under this Loan Agreement shall be deposited with the Bond Trustee and applied as provided in the Trust Indenture. The Borrower hereby assigns to the Issuer, and grants a security interest to the Issuer in, all right, title and interest of the Borrower in any funds held by the Bond Trustee pursuant to the Trust Indenture, except as otherwise provided in the Trust Indenture.

Section 5.2. *Payment of the Bonds; Assignment of Loan Agreement.* The Borrower agrees that the principal of, premium, if any, and interest on the Outstanding Bonds shall be made payable in accordance with the provisions of the Trust Indenture and this Loan Agreement

and that this Loan Agreement and payments to be made hereunder (excluding Unassigned Rights) shall be assigned and pledged to the Bond Trustee to secure the payment of the Bonds.

Section 5.3. *Right of Bond Trustee to Enforce Loan Agreement.* The Borrower agrees that this Loan Agreement and the Trust Indenture, and all of the rights, interests, powers, privileges and benefits accruing to or vested in the Issuer hereunder and under the Trust Indenture, may be protected and enforced in conformity with the Trust Indenture and (excluding Unassigned Rights) may be thereby assigned by the Issuer to the Bond Trustee as additional security for the Bonds and may be exercised, protected and enforced for or on behalf of the Bondholders in conformity with the provisions of this Loan Agreement and the Trust Indenture.

## ARTICLE VI

### **PAYMENTS HEREUNDER; FUND DEPOSITS; PREPAYMENTS AND OTHER PAYMENTS**

Section 6.1. *Payment of Principal, Premium, if any, and Interest.* The Borrower will duly and punctually pay the principal of, premium, if any, and interest payable under this Loan Agreement, and any other payment pledged under the Trust Indenture at the dates and the places, in the manner mentioned in and subject to the limitations set forth in this Loan Agreement or in any additional instrument pledged under the Trust Indenture, according to the true intent and meaning hereof and thereof. Notwithstanding any schedule of payments under this Loan Agreement or any other instrument pledged under this Loan Agreement or the Trust Indenture, the Borrower agrees to make payments hereunder and thereunder and to be liable therefor at such times and in such amounts (including principal, premium, if any and interest) so as to provide for payment of the principal of, premium, if any, and interest on the Bonds from time to time Outstanding under the Trust Indenture when due, whether upon a scheduled interest payment date, at maturity or by mandatory Sinking Fund Redemption.

Section 6.2. *Payment of Non-Property Tax Revenues.* To provide for payments and prepayments under this Loan Agreement, the Borrower covenants and agrees to appropriate and pay to the Bond Trustee, on or before the 25th day of the month prior to each Interest Payment Date, a portion of Non-Property Tax Revenues, in accordance with Section 6-54-118, Tennessee Code Annotated, sufficient to provide for deposit and/or payment by the Bond Trustee in accordance with and as prescribed by the Trust Indenture. Notwithstanding the forgoing, payments of Non-Property Tax Revenues by the Borrower pursuant to this Loan Agreement are subject to annual appropriation by the Borrower, and the provisions of this Section shall not preclude the Borrower from using Non-Property Tax Revenues for any other purpose, including the payment of other indebtedness of the Borrower.

Section 6.3. *Credits toward Obligations.* Notwithstanding any provision contained in this Loan Agreement or in the Trust Indenture to the contrary, in addition to any credits toward payments under this Loan Agreement resulting from the payment or prepayment thereof from other sources, the Borrower shall receive credits for the following:

(a) *Interest and Principal.* Any money on deposit from funds provided by the Borrower under this Loan Agreement or otherwise (including from the Non-Property Tax Revenues paid to the Bond Trustee in accordance with the provisions of Section 6.2 hereof)



deposited in the Debt Service Fund shall be credited against the obligations of the Borrower under Section 6.1 hereof to pay interest and principal under this Loan Agreement as the same become due in order to provide for the payment of interest and principal on the Outstanding Bonds as the same become due.

(b) *Purchase of Bonds.* The principal amount of Bonds of any maturity purchased by the Borrower and delivered to the Bond Trustee for cancellation, or purchased by the Bond Trustee on behalf of the Borrower and cancelled, shall be credited against the obligation of the Borrower to pay under this Loan Agreement the principal (including through a mandatory Sinking Fund Redemption) in connection with the Bonds of the maturity so purchased. Such purchases may be made by the Borrower in such order as the Borrower shall elect prior to such purchase or, if no such election is made prior to such purchase, in the inverse order thereof; provided, however, that the purchase of a Bond of one maturity may not be credited against a payment under this Loan Agreement which would be used, in the normal course, for payment of the principal of another maturity of Bonds.

Section 6.4. *Prepayment Generally.* The Borrower shall be permitted to prepay its obligations under this Loan Agreement to the extent and in the manner permitted by the Trust Indenture and for the redemption of Bonds. In addition, if such prepayment is made in compliance with the terms of the Trust Indenture, the Issuer agrees to accept prepayment of payments payable under this Loan Agreement to the extent required to provide for a permitted purchase, prepayment or refunding of the Bonds. No other prepayment of payments payable under this Loan Agreement shall be permitted. Such prepayments shall be made by paying to the Bond Trustee an amount sufficient, together with income from any investments of funds permitted by the Trust Indenture for such purpose, to redeem (when redeemable) all or a part of the Bonds of the maturity designated by the Borrower at the redemption prices specified therefor in the Trust Indenture. Any prepayment pursuant to this Section shall include accrued interest and premium, if any, required for redemption of the Bonds to be redeemed by such prepayment. Notwithstanding any prepayment for a part of the Outstanding Bonds made pursuant to this Section, the Borrower is obligated to make payments payable under this Loan Agreement to the extent any portion of the Bonds remains Outstanding.

Section 6.5. *Notice of Prepayment.* The Borrower shall give the Issuer and the Bond Trustee a Written Request not less than 60 days (or such lesser period as may be acceptable to the Issuer and the Bond Trustee) prior to any optional prepayment made under this Loan Agreement. The notice from the Borrower shall designate the date of prepayment and the amount thereof and direct the redemption of Bonds of the maturity designated by the Borrower in the Written Request and in the amounts corresponding to the prepayment made under this Loan Agreement. Such notice may be withdrawn by the Borrower prior to delivery to the Bondholders by the Bond Trustee of notice of redemption pursuant to the Trust Indenture or in connection with the recession of any conditional notice of redemption pursuant to the Trust Indenture.

Section 6.6. *Effect of Partial Prepayment.* Upon any partial prepayment under this Loan Agreement, each installment of interest which shall thereafter be payable under this Loan Agreement shall be reduced, taking into account the interest rate or rates on the Bonds remaining Outstanding after the redemption of Bonds from the proceeds of such partial prepayment and after the purchase, delivery and cancellation of the Bonds described in Section 6.3(b) hereof, so

that the interest remaining payable under this Loan Agreement shall be sufficient to pay the interest on such Outstanding Bonds when due.

Section 6.7. *Principal Schedules.* On the date of any partial prepayment under this Loan Agreement, the Borrower, upon consultation with the Bond Trustee, shall deliver to the Issuer an amortization schedule setting forth the amount of the principal installments to be paid under this Loan Agreement after the date of such partial prepayment and the unpaid principal balance remaining after payment of each such installment.

Section 6.8. *Additional Payments.* The Borrower agrees to pay the following items to the following persons as additional payments under this Loan Agreement:

(1) To the Bond Trustee when due, all fees including any disbursements, expenses or advances of the Bond Trustee for services rendered under the Trust Indenture and all fees and charges of any Paying Agents, registrars, counsel, accountants, consultants, engineers and other persons incurred in the performance of services under the Trust Indenture on request of the Bond Trustee for which the Bond Trustee and such other persons are entitled to payment or reimbursement;

(2) To the Issuer, upon demand, all fees and expenses incurred by the Issuer in relation to this Loan Agreement or the Bonds which are not otherwise required to be paid by the Borrower under the terms of this Loan Agreement, and all fees, expenses, taxes and assessments of the Issuer as provided for under the Act;

(3) To the Bond Trustee, the amount of all advances of funds made by the Bond Trustee under the provisions of the Trust Indenture with respect to the Trust Indenture or this Loan Agreement, with interest thereon at the Bond Trustee's announced prime rate per annum then in effect from the date of each such advance; and

(4) To the Bond Trustee to indemnify and save the Bond Trustee harmless from any and all loss, costs, liability and expense suffered or incurred by the Bond Trustee by reason of having returned any unclaimed money to the Borrower as provided by Section 1302 of the Indenture.

(5) To the Issuer at the requisite times the amounts, as computed by the Borrower, required by Section 148(f) of the Code to be paid to the United States Department of the Treasury in connection with the Bonds.

## ARTICLE VII

### COVENANTS OF THE BORROWER

Section 7.1. *Maintenance of Corporate Existence and Status.* The Borrower covenants and agrees that, as long as any of the Bonds remains Outstanding, it will maintain its existence as a municipal corporation organized under the laws of the State of Tennessee and that it will not take any action nor suffer any action to be taken by others which will alter, change or destroy such status unless the successor governing body, whether the Borrower or another entity, retains or assumes all of the obligations of the Borrower under this Loan Agreement, the Trust Indenture and the Bonds.

Section 7.2. *Consent to Assignment of Rights to the Bond Trustee.* The Borrower agrees that this Loan Agreement and all payments to be made hereunder (excluding Unassigned Rights) shall be assigned and pledged to secure the payment of the Bonds and all of the rights, interests, powers, privileges and benefits accruing to or vested in the Issuer thereunder may be protected and enforced in conformity with the Trust Indenture, and may be assigned by the Issuer to the Bond Trustee as additional security for the Bonds.

Section 7.3. *Maintenance; Recording.* The Borrower, at its own expense, will take all necessary action to maintain and preserve this Loan Agreement, the Bonds and the Trust Indenture so long as any portion of the indebtedness or other financial obligation under this Loan Agreement remains unpaid. The Borrower will, forthwith after the execution and delivery of this Loan Agreement and thereafter from time to time, cause this Loan Agreement, the Bonds, the Trust Indenture, all documents securing this Loan Agreement, any other document securing any obligation pledged under the Trust Indenture (including any amendments and supplements thereof) and any financing statements in respect thereof to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice hereof and thereof and fully to perfect and protect the lien of the Trust Indenture upon the trust estate referred to therein or any part thereof. Furthermore, the Borrower, at its own expense, from time to time, will perform or cause to be performed any other act as provided by law and will execute or cause to be executed any and all continuation statements and further instruments that may be requested by the Bond Trustee for such publication, perfection and protection. Except to the extent it is exempt therefrom, the Borrower will pay or cause to be paid all filing and registration and recording fees incident to such filing and registration and recording, and all expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Loan Agreement, the Bonds, the Trust Indenture, any obligation pledged under the Trust Indenture and any other instruments of further assurance.

Section 7.4. *Protection of Non-Property Revenues.* The Borrower covenants that it will not take any action or permit any action to be taken which would cause the Project, including any ancillary structure or facility associated with the Project, to cease to be qualified as a "project" under the Act, in each case if the same would result in the termination or the diminution, in any way material to the security for or payment of the Bonds.

Section 7.5. *Books and Records.* The Borrower covenants that it will keep or cause to be kept proper books of records and accounts, in which entries which are full, true and correct in all material respects, for all dealings or transactions of, or in relation to, the business and affairs of the Borrower in accordance with generally accepted principles of accounting consistently applied.

Section 7.6. *Indemnity.* To the extent permitted by law and without representation that it is permitted by law, the Borrower will pay, and will protect, indemnify and save harmless the Issuer and the Bond Trustee and their officers, directors, employees, and counsel from and against any and all liabilities, losses, damages, costs and expenses (including attorneys' fees and expenses of the Borrower, the Issuer and the Bond Trustee), causes of action, suits, claims, demands and judgments of whatsoever kind and nature (including those arising or resulting from

any injury to or death of any person or damage to property) arising from or in any manner directly or indirectly growing out of or connected with the following:

(1) the use, non-use, condition or occupancy of any of the Borrower's facilities included in the Project, any repairs, construction, alterations, renovation, relocation, remodeling and equipping thereof or thereto or the condition of any of such facilities including adjoining sidewalks, streets or alleys and any equipment at any time located on such facilities or used in connection therewith but which are not the result of the negligence of the Issuer or the Bond Trustee;

(2) violation of any agreement, warranty, covenant or condition of this Loan Agreement by the Borrower;

(3) violation of any contract, agreement or restriction by the Borrower relating to such facilities;

(4) violation by the Borrower of any law, ordinance, regulation or court order affecting such facilities or the ownership, occupancy or use thereof;

(5) any statement or information concerning the Borrower, any of its directors, officers, trustees or agents or its or their Property, contained in the Official Statement furnished to the Issuer or the purchaser of the Bonds, that is untrue or incorrect in any material respect, and any omission from the Official Statement of any statement or information which should be contained therein for the purpose for which Official Statement is to be used or which is necessary to make the statements therein concerning the Borrower, its directors, officers, trustees or agents and its Property not misleading in any material respect, provided that the Official Statement has been approved by the Borrower and the indemnified party did not have knowledge of the omission or misstatement or did not use the Official Statement with reckless disregard of, or gross negligence in regard to, the accuracy or completeness of the Official Statement;

(6) the issuance of the Bonds, the duties, activities, acts or omissions of any Person in connection with the issuance of the Bonds, or the obligations of the various parties arising under the bond documents, or the duties, activities, acts or omissions of any Person in connection with the design, construction, installation, operation, or maintenance of the Project; and

(7) the failure of any remarketing agent or any broker or dealer to comply in all respects with all state and federal securities and other laws in connection with the marketing of the Bonds.

Such indemnity shall extend to each person, if any, who "controls" the Issuer or the Bond Trustee, as the case may be, as that term is defined in Section 15 of the Securities Act of 1933, as amended.

The Issuer or the Bond Trustee shall promptly notify the Borrower in writing of any claim or action brought against the Issuer, the Bond Trustee or any controlling person, as the case may be, in respect of which indemnity may be sought against the Borrower under this Section 7.6, setting forth the particulars of such claim or action. The Borrower will assume the defense thereof, including the employment of counsel satisfactory to the Issuer, the Bond Trustee, or such controlling person, as the case may be, and the payment of all expenses. The

Issuer, the Bond Trustee or any such controlling person, as the case may be, may employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall not be payable by the Borrower unless such employment has been specifically authorized in writing by the Borrower.

The obligations of the Borrower set forth in this Section 7.6 shall survive the termination of this Loan Agreement and shall remain in effect with respect to any event occurring prior to the time when all Bonds shall have been paid in full.

The Issuer shall not be required to take any action not expressly required herein. Further, the other provisions hereof or of the Trust Indenture notwithstanding, the Issuer shall not be obligated to take any action or execute any document which might in its reasonable judgment result in any expense or liability upon the Issuer unless the Issuer shall have been furnished with assurance of payment or reimbursement for any expense, and with reasonable indemnity for liability of, the Issuer, its incorporators, directors, officers and counsel.

Section 7.7. *Discharge of Orders, Etc.* The Borrower covenants to cause any order, writ or warrant of attachment, garnishment, execution, replevin or similar process filed against any part of the funds or accounts held by the Bond Trustee under the Trust Indenture to be discharged, vacated, bonded or stayed within 90 days after such filing (which 90-day period shall be extended for so long as the Borrower is contesting such process in good faith), but, notwithstanding the foregoing, in any event not later than five days prior to any proposed execution or enforcement with respect to such filing or any transfer of money or investments pursuant to such filing.

Section 7.8. *Tax Exemption.* In order to maintain the exclusion from gross income for purposes of federal income taxation of interest on the Bonds, the Borrower shall comply with the provisions of the Code applicable to the Bonds, including without limitation the provisions of the Code relating to the computation of the yield on investments of the "gross proceeds" of the Bonds, as such term is defined in the Code, and reporting of the earnings on such gross proceeds and rebates of earnings on such gross proceeds to the United States Department of the Treasury. All necessary computations of the yield on investments and of the amount required to be rebated to the United States Department Treasury shall be made by the Borrower at times and in amounts required by the Code. In furtherance of the foregoing, the Issuer shall comply with the provisions of the Tax Certificate and with such written instructions as may be provided by Bond Counsel or a special tax counsel.

The Borrower shall not take any action or fail to take any action which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code; nor shall any part of the proceeds of the Bonds or any other funds of the Issuer be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code.

The Borrower shall make any and all payments required to be made pursuant to Section 6.8(5) hereof at times and in amounts sufficient to enable the Issuer to make all payments required to be made to the United States Department of the Treasury in connection with the Bonds pursuant to Section 148(f) of the Code. The obligation of the Borrower to comply with the provisions of this Section 7.8 with respect to payments of rebates to the United States

Department of the Treasury shall remain in full force and effect so long as the Issuer shall be required by the Code to rebate such earnings on the gross proceeds of the Bonds notwithstanding that the Bonds are no longer Outstanding.

Section 7.9. *Appropriations.* The Borrower covenants that it shall include in its annual budget and appropriate for payment to the Bond Trustee from its Non-Property Tax Revenues, and deposit in the Debt Service Fund, the amount necessary, together with all other amounts on deposit or to be deposited therein, to pay the principal of, premium, if any, and interest on the Bonds by the time moneys are required by the Trust Indenture to be on deposit in the Debt Service Fund for such purpose.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

Section 8.1. *Events of Default.* The occurrence and continuance of any of the following events shall constitute an "event of default" hereunder:

(a) failure of the Borrower to make any payment of any installment of interest, principal or premium under this Loan Agreement or any other obligation pledged under the Trust Indenture or any other payment required by Section 6.1 or 6.2 hereof when the same shall become due and payable, whether upon a scheduled Interest Payment Date, at maturity, upon any date fixed for prepayment, or purchase in lieu of redemption or otherwise;

(b) failure of the Borrower to comply with or perform any of the other covenants, conditions or provisions of this Loan Agreement and to remedy such default within 60 days after notice thereof from the Issuer or the Bond Trustee to the Borrower, unless such default is such that it is capable of being remedied but cannot be remedied within such 60 day period and corrective action is instituted by the Borrower within such 60 day period and is diligently pursued until such default is remedied;

(c) proof that any representation or warranty made by the Borrower herein or in any statement or certificate furnished to the Issuer or the Bond Trustee or the purchaser of the Bonds in connection with the sale of the Bonds or furnished by the Borrower pursuant hereto is or was untrue in any material respect as of the date of the issuance or making thereof and shall not be made good within 30 days after notice thereof to the Borrower by the Issuer or the Bond Trustee;

(d) insolvency or bankruptcy of the Borrower, the inability of the Borrower to pay its debts as they mature, failure of the Borrower to generally pay its debts as such debts become due, an assignment by the Borrower for the benefit of its creditors, application for, or consent by the Borrower to, the appointment of a trustee, custodian or receiver for the Borrower or for a material part of the Property of the Borrower;

(e) appointment of a trustee, custodian or receiver for the Borrower or for the material part of the Property of the Borrower which is not discharged within 30 days after such appointment;

(f) bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, proceedings under Title 11 of the United States Code, as amended, or other proceedings for

relief under any bankruptcy law or similar law for the relief of debtors instituted by or against the Borrower (other than bankruptcy proceedings instituted by the Borrower against third parties) which, if instituted against the Borrower, is allowed, consented to or is not dismissed, stayed or otherwise nullified within 30 days after such institution;

(g) failure to pay any installment of interest, principal or premium on any Bond when the same shall become due and payable under the provisions of the Trust Indenture as a result of any act or failure to act by the Borrower which is not in accordance with the provisions of this Loan Agreement; or

(h) failure of the Borrower to comply with or perform its obligations pursuant to Section 7.1 or 7.7 hereof.

The Borrower will give immediate notice to the Issuer and the Bond Trustee of the occurrence of any event of default described in Section 8.1(d)-(h).

Section 8.2. *Remedies Upon Default.* Upon the occurrence and during the continuance of any event of default hereunder, the Issuer shall have the following rights and remedies, in addition to any other remedies herein or by law provided:

(a) *Right to Bring Suit, Etc.* The Bond Trustee, on behalf of the Issuer, with or without entry, personally or by attorney, may, in its discretion, proceed to protect and enforce its rights by pursuing any available remedy, including a suit or suits in equity or at law, whether for damages, for the specific performance of any obligation, covenant or agreement contained in or related to this Loan Agreement or the Trust Indenture, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, as the Bond Trustee shall deem most effectual to collect the payments then due and thereafter to become due under this Loan Agreement or any other obligation pledged under the Trust Indenture, to enforce performance and observance of any obligation, agreement or covenant of the Borrower hereunder or thereunder or to protect and enforce any of the Issuer's rights or duties hereunder or thereunder. Notwithstanding anything herein to the contrary, in no event shall any obligation of the Borrower under this Loan Agreement be accelerated upon an event of default hereunder or otherwise.

(b) *Application of Proceeds of Remedies.* The proceeds resulting from the exercise of any such remedies, together with any other sums which then may be held by the Issuer or the Bond Trustee under this Loan Agreement, whether under the provisions of this Article or otherwise, and which are available for such application shall be applied as follows:

FIRST: To the payment of the costs and expenses of the exercise of such remedies, including reasonable compensation to the respective agents, attorneys and counsel of the Issuer and the Bond Trustee, the expenses of any judicial proceedings wherein the remedies are pursued and all expenses, liabilities and advances made or incurred by the Issuer, the Bond Trustee and their respective agents, attorneys and counsel, as permitted by this Loan Agreement, together with interest at the Bond Trustee's announced prime rate per annum then in effect on all such advances; and to the payment of all taxes, assessments or claims incurred with respect to the Property of the

Borrower prior to the time of the claim for which the remedy was obtained, except any taxes, assessments, liens or other charges, subject to which Property may have been sold.

SECOND: As provided by Section 705(a) of the Trust Indenture.

THIRD: To the payment of any other sums required to be paid by the Borrower pursuant to this Loan Agreement or any other obligations pledged under the Trust Indenture.

FOURTH: To the payment of any other sums required to be paid by the Borrower pursuant to any provision of the Trust Indenture.

FIFTH: If any surplus remains, to the Borrower, its successors or assigns, upon the written request of the Borrower, to whomsoever may be lawfully entitled to receive the same upon written request, or as any court of competent jurisdiction may direct.

Section 8.3. *Remedies Cumulative.* No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute.

Section 8.4. *Delay or Omission Not a Waiver.* No delay or omission of the Issuer in the exercise of any right or power accruing upon any event of default shall impair any such right or power, or shall be construed to be a waiver of any such event of default or an acquiescence therein; and every power and remedy given by this Loan Agreement to the Issuer may be exercised from time to time and as often as may be deemed expedient by the Issuer.

Section 8.5. *Waiver of Extension, Appraisal, Stay, Laws.* To the extent permitted by law, the Borrower will not, during the continuance of any event of default hereunder, insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension of law wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Loan Agreement; nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of any of the Borrower's property prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the United States of America or by any state or territory thereof, or otherwise, to redeem the property so sold or any part thereof; and, to the extent permitted by law, the Borrower hereby expressly waives all benefits or advantage of any such law or laws and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Issuer, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

Section 8.6. *Remedies Subject to Provisions of Law.* All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in



the premises and be limited to the extent necessary so that they will not render this Loan Agreement invalid or unenforceable under the provisions of any applicable law.

## **ARTICLE IX**

### **SUPPLEMENTS AND AMENDMENTS TO THIS LOAN AGREEMENT**

Section 9.1. *Supplements and Amendments to this Loan Agreement.* The Borrower and the Issuer, with the consent of the Bond Trustee, may from time to time enter into such supplements and amendments to this Loan Agreement as to them may seem necessary or desirable to effectuate the purposes or intent hereof; provided, however, that no such amendment shall be effective if not adopted in accordance with the terms of the Trust Indenture. In this regard, any and all supplements and amendments to this Loan Agreement, and the execution and delivery thereof, shall be subject to the provisions of Article X of the Trust Indenture. Upon the execution of any such supplement or amendment by the parties hereto as in this Section permitted and provided, this Loan Agreement shall be deemed to be supplemented, modified and amended in accordance therewith.

## **ARTICLE X**

### **DEFEASANCE**

Section 10.1. *Defeasance.* If the Borrower shall pay and discharge or provide, in a manner permitted by the Trust Indenture, for the payment and discharge of the whole amount of the principal of, premium, if any, and interest on the Bonds, this Loan Agreement or any obligation pledged under the Trust Indenture, and shall pay or cause to be paid all other sums payable hereunder and under the Trust Indenture, or shall make arrangements satisfactory to the Issuer for such payment and discharge, then all property, rights and interest hereby conveyed or assigned or pledged shall revert to the Borrower and the estate, right, title and interest of the Bond Trustee and the Issuer therein shall thereupon cease, terminate and become void. Furthermore, in such case, this Loan Agreement and the covenants of the Borrower contained herein, shall be discharged and the Issuer, on demand of the Borrower and at the Issuer's cost and expense, shall execute and deliver to the Borrower a proper instrument or proper instruments acknowledging the satisfaction and termination of this Loan Agreement and shall convey, assign and transfer or cause to be conveyed, assigned or transferred, and shall deliver or cause to be delivered, to the Borrower all Property, including money, then held by the Issuer other than money deposited with the Bond Trustee for the payment of the principal of, premium, if any, or interest on this Loan Agreement or any other obligation pledged under the Trust Indenture. Furthermore, any money or other Property subsequently obtained in trust by the Issuer under or in connection with the Trust Indenture, including without limitation any unclaimed money delivered to the Issuer in accordance with the provisions of Section 1302 of the Trust Indenture, shall be promptly delivered to the Borrower.

**ARTICLE XI**  
**MISCELLANEOUS PROVISIONS**

Section 11.1. *Payment of Expenses of Issuance of Bonds.* The Borrower agrees to be liable and pay for any commitment and other financing costs, recording expenses, trustee's acceptance fees, title insurance costs, legal fees, printing expenses and other fees and fair and customary expenses incurred or to be incurred by or on behalf of the Issuer in connection with or as an incident to the issuance and sale of the Bonds.

Section 11.2. *Loan Agreement for Benefit of Parties Hereto.* Nothing in this Loan Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto, the Bond Trustee on behalf of the Bondholders and the holders of rights under this Loan Agreement or any other obligation pledged under the Trust Indenture, any right, remedy or claim under or by reason of this Loan Agreement or any covenant, condition or stipulation hereof. The covenants, stipulations and agreements in this Loan Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto and, to the extent set forth herein, the Bond Trustee, and their respective successors and assigns and the holder of rights under this Loan Agreement or other obligations pledged under the Trust Indenture.

Section 11.3. *Severability.* In case any one or more of the provisions contained in this Loan Agreement, any instrument representing any other obligation under the Trust Indenture or in the Trust Indenture shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

Section 11.4. *Notices.* All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid or by overnight courier, with proper address as indicated below. The Issuer, the Borrower and the Bond Trustee may, by written notice given by each to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required, permitted or contemplated by this Loan Agreement. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the Issuer:

Economic Development Growth Engine Industrial Development Board of the  
City of Memphis and County of Shelby, Tennessee  
100 Peabody Place, Suite 1100  
Memphis, Tennessee 38103  
Attn: President

With a copy to:

Farris Bobango Branan PLC  
999 S. Shady Grove Road, Suite 500

Memphis, Tennessee 38120  
Attn: Stephen L. Anderson, Esq.

To the Borrower:

City of Memphis, Tennessee  
125 North Main Street  
Room 368  
Memphis, Tennessee 38103  
Attn: Chief Financial Officer/Director of Finance

With a copy to:

City of Memphis, Tennessee  
125 North Main Street Room 336  
Memphis, Tennessee 38103  
Attn: Chief Legal Officer/City Attorney

To the Bond Trustee:

Regions Bank  
150 Fourth Avenue  
Suite 1500  
Nashville, Tennessee 37219  
Attn: Corporate Trust Services

Section 11.5. *Successors and Assigns.* Whenever in this Loan Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included. All the covenants, promises and agreements in this Loan Agreement contained by or on behalf of the Borrower, or by or on behalf of the Issuer, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 11.6. *Counterparts.* This Loan Agreement is being executed in any number of counterparts, all of which are identical. Each counterpart of this Loan Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument.

Section 11.7. *Immunity of Officers, Employees and Members of the Issuer and the Borrower.* No recourse shall be had for the payment of the principal, premium or interest payable under this Loan Agreement or any other obligation pledged under the Trust Indenture or for any claim based thereon or upon any representation, obligation, covenant or agreement contained herein or therein against any 'past, present or future officer, member, employee, director or other agent of the Issuer or the Borrower, respectively, or of any successor thereto, whether public or private, either directly or through the Issuer, the Borrower or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise. All such liability of any such officers, members, employees, directors or other agents is hereby expressly waived and released as a condition of, and in consideration for, the execution of this Loan Agreement and the issuance of any other obligation pledged under the Trust Indenture. Notwithstanding any other provision of this Loan Agreement, the Issuer shall not be liable to any person for any failure of the Issuer to take action under this

Loan Agreement unless the Issuer (a) is requested in writing by an appropriate person to take such action, (b) is assured of payment of, or reimbursement for, any reasonable expenses in connection with such action, and (c) is afforded, under the existing circumstances, a reasonable period to take such action and reasonable indemnity for taking such action.

Section 11.8. *Governing Law.* It is the intention of the parties hereto that this Loan Agreement and all other obligations pledged under the Trust Indenture, and the rights and obligations of the parties hereunder and thereunder, shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee.

[Signature Page Follows]

IN WITNESS WHEREOF, the Borrower and the Issuer have caused this Loan Agreement to be executed in their respective corporate names and attested by their duly Authorized Officers, all as of the date first above written.

**THE BORROWER:**

**CITY OF MEMPHIS, TENNESSEE**, a  
Tennessee municipal corporation

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Comptroller

Approved as to Form

By: \_\_\_\_\_  
Chief Legal Officer/City Attorney

58198889.v5

**THE ISSUER:**

**ECONOMIC DEVELOPMENT GROWTH  
ENGINE INDUSTRIAL DEVELOPMENT  
BOARD OF THE CITY OF MEMPHIS  
AND COUNTY OF SHELBY,  
TENNESSEE**,  
a Tennessee public nonprofit corporation

By: \_\_\_\_\_  
Chair

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TRUST INDENTURE

BETWEEN

ECONOMIC DEVELOPMENT GROWTH ENGINE  
INDUSTRIAL DEVELOPMENT BOARD OF THE  
CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE

AND

REGIONS BANK,  
AS BOND TRUSTEE

DATED AS OF \_\_\_\_\_, 2021

\_\_\_\_\_

ECONOMIC DEVELOPMENT GROWTH ENGINE  
INDUSTRIAL DEVELOPMENT BOARD OF THE  
CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE

ECONOMIC DEVELOPMENT BONDS (CITY OF MEMPHIS PROJECT), SERIES 2021

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**THIS TRUST INDENTURE** (as the same may from time to time be supplemented, amended and restated, this “**Indenture**”), dated as of \_\_\_\_\_, 2021, is entered into between **ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE**, a public nonprofit corporation organized under the laws of the State of Tennessee (as hereinafter defined, the “**Issuer**”), and **REGIONS BANK**, an Alabama banking corporation, as bond trustee (as hereinafter defined, the “**Bond Trustee**”), duly established, existing and authorized to accept and execute trusts of the character herein set out under and by virtue of the laws of the State of Alabama, with a corporate trust office and post office address at Nashville, Tennessee.

**WITNESSETH:**

**WHEREAS**, the Issuer is a public nonprofit corporation organized under the laws of the State of Tennessee and created under Sections 7-53-101 *et seq.*, Tennessee Code Annotated (as heretofore and hereafter amended, the “**Act**”); and

**WHEREAS**, the City of Memphis, Tennessee (as hereinafter defined, the “**Borrower**”) desires to provide for Bonds (as hereinafter defined) to be issued under and pursuant to this Indenture and the loan of the proceeds thereof to the Borrower to (i) pay Costs of the Project (as hereinafter defined), [including interest on Bonds during construction of the Project and for two (2) years after the estimated date of completion of such Project], and (ii) pay certain expenses incurred in connection with the issuance of Bonds, all as permitted under the Act, by entering into a Loan Agreement, dated as of \_\_\_\_\_, 2021, by and between the Issuer and the Borrower (as the same may from time to time be amended, supplemented and restated, the “**Loan Agreement**”) providing for a loan by the Issuer to the Borrower; and

**WHEREAS**, the Issuer is authorized under the Act, among other things, to issue bonds for the purpose of loaning funds to the Borrower for the foregoing purposes and to enter into a trust indenture providing for the issuance of such bonds and for their payment and security; and

**WHEREAS**, the Issuer has determined that the public interest will be best served and that the purposes of the Act can be more advantageously obtained by the Issuer’s issuance of bonds in order to loan funds to the Borrower as aforesaid; and

**WHEREAS**, the execution and delivery of this Indenture and the Loan Agreement have been in all respects duly and validly authorized by resolutions duly passed and approved by the Issuer; and

**WHEREAS**, all things necessary to make the Bonds, when authorized by the Issuer and authenticated by the Bond Trustee and issued as provided in this Indenture, the valid, binding and legal obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid assignment and pledge of the payments and prepayments under the Loan Agreement to be applied to the payment of the principal of, premium, if any, and interest on the Bonds and a valid assignment of certain of the rights of the Issuer under the Loan Agreement, have been done and performed, and the creation, execution and delivery of this Indenture, and the creation, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

**NOW, THEREFORE, THIS INDENTURE WITNESSETH:**

**GRANTING CLAUSES**

That the Issuer in consideration of the premises and of the purchase of the Bonds and of other good and lawful consideration, the receipt of which is hereby acknowledged, and to secure the payment of the principal of, premium, if any, and interest on the Bonds and the performance and observance of all of the covenants and conditions herein or therein contained, has executed and delivered this Indenture and has conveyed, granted, assigned, transferred, pledged, set over and confirmed and granted a security interest and by these presents does hereby convey, grant, assign, transfer, pledge, set over and confirm and grant a security interest, unto the Bond Trustee, its successor or successors and its or their assigns forever, in the property hereinafter described (said property being herein sometimes referred to as the “**Trust Estate**”) to wit:

**DIVISION I**

All right, title and interest of the Issuer in and to the Loan Agreement and all amounts payable to the Issuer under the Loan Agreement and all security therefor (excluding Unassigned Rights as hereinafter defined);

**DIVISION II**

All right, title and interest of the Issuer in and to the funds, accounts and subaccounts established pursuant to this Indenture and the assets thereof and income and earnings thereon for the benefit of the Holders of the Outstanding Bonds; and

**DIVISION III**

Any and all other property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, conveyed, pledged, assigned or transferred as and for additional security hereunder by the Issuer or the Borrower or by anyone on their behalf to the Bond Trustee, including without limitation funds of the Borrower held by the Bond Trustee as security for any of the Bonds;

**TO HAVE AND TO HOLD**, all and singular, the properties and the rights and privileges hereby conveyed, assigned and pledged by the Issuer or intended so to be, unto the Bond Trustee and its successors and assigns forever, in trust, nevertheless, with power of sale for the equal and *pro rata* benefit and security of each and every Holder of the Bonds issued and to be issued hereunder, without preference, priority or distinction as to participation in the benefit and protection hereof of one Bond over or from the other Bonds, by reason of priority in the issue or negotiation or maturity thereof, or for any other reason whatsoever, except as herein otherwise expressly provided, so that each and all of the Bonds shall have the same right, lien and privilege under this Indenture and shall be equally secured hereby with the same effect as if the same had all been made, issued and negotiated simultaneously with the delivery hereof and were expressed to mature on one and the same date, except as herein otherwise expressly provided;

**PROVIDED, NEVERTHELESS**, and these presents are upon the express condition that if the Issuer or its successors or assigns shall well and truly pay or cause to be paid the principal of such Bonds with interest according to the provisions set forth in the Bonds and each of them or shall provide for the payment or redemption of such Bonds by depositing or causing to be deposited with the Bond Trustee the entire amount of funds or securities requisite for payment or redemption thereof when and as authorized by the provisions hereof, and shall also pay or cause to be paid all other sums payable hereunder by the Issuer, then these presents and the estate and rights hereby granted shall cease, determine and become void, and thereupon the Bond Trustee, on payment of its lawful charges and disbursements then unpaid, on demand of the Issuer and upon the payment of the cost and expenses thereof, shall duly execute, acknowledge and deliver to the Issuer such instruments of satisfaction or release as may be necessary or proper to discharge this Indenture, including if appropriate any required discharge of record, and if necessary shall grant, reassign and deliver to the Issuer, its successors or assigns, all and singular the property, rights, privileges and interests by it hereby granted, conveyed and assigned, and all substitutes therefor, or any part thereof, not previously disposed of or released as herein provided; otherwise this Indenture shall be and remain in full force.

**AND IT IS HEREBY COVENANTED, DECLARED AND AGREED** by and between the parties hereto that all Bonds are to be issued, authenticated and delivered, and that all the Trust Estate is to be held and applied, subject to the further covenants, conditions, releases, uses and trusts hereinafter set forth, and the Issuer, for itself and its successors, does hereby covenant and agree to and with the Bond Trustee and its respective successors in said trust, for the benefit of those who shall hold the Bonds, or any of them, as follows:

## **ARTICLE I**

### **DEFINITIONS**

Section 101. Definitions. In addition to the words and terms elsewhere defined in this Indenture, the following words and terms as used in this Indenture shall have the following meanings unless the context or use indicates another or different meaning or intent:

“**Act**” has the meaning given to such term in the recitals to this instrument.

“**Authorized Officer**” means, when used in connection with the Borrower, the Mayor, Comptroller and Chief Financial Officer of the City of Memphis, Tennessee, or any other officer of the Borrower designated in writing by the Mayor of the City of Memphis, Tennessee, to execute an Officer’s Certificate on behalf of the Borrower, and when used in connection with the Issuer, the President, the Chairman, Vice Chairman, the Secretary, any Assistant Secretary and any officer of the Issuer authorized by its bylaws or by or pursuant to a resolution of the Issuer to act on behalf of the Issuer.

“**Bond**” or “**Bonds**” means one or more of the Bonds issued by the Issuer pursuant to the terms and conditions of Article II hereof.

“**Bond Counsel**” means Butler Snow LLP, Carpenter Law, PLLC or any other nationally recognized municipal bond counsel acceptable to the Issuer and the Bond Trustee.

“**Bond Register**” means the registration books of the Issuer kept by the Bond Trustee to evidence the registration and transfer of Bonds.

“**Bond Registrar**” means the Bond Trustee, as keeper of the Bond Register.

“**Bond Trustee**” means Regions Bank, as bond trustee hereunder, or any successor trustee hereunder.

“**Bond Year**” means any twelve-month period beginning on December 1 in one calendar year and ending on, but including, November 30 of the next calendar year. For the purpose of calculating debt service payable on the Bonds in any Bond Year, principal and interest payable on the Bonds on December 1 of any Bond Year shall be deemed to be payable on November 30 of the preceding Bond Year.

“**Bondholder**,” “**Holder**” and “owner of the Bonds” means any Person in whose name a Bond is registered on the Bond Register.

“**Borrower**” means the City of Memphis, Tennessee, a municipal corporation organized under the laws of the State, and any of the Borrower’s successors and assigns.

“**Business Day**” means any day of the year on which banks located in Memphis, Tennessee, or in the city in which the principal corporate trust office of the Bond Trustee is located, are not required or authorized by law or executive order to remain closed.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time and the regulations promulgated thereunder.

“**Construction Fund**” means the Construction Fund created by Section 303 hereof.

“**Costs of Issuance Fund**” means the Costs of Issuance Fund created by Section 302 hereof.

“**Costs of the Project**” means any cost of the Project permitted to be financed pursuant to the Act.

“**County**” means the County of Shelby, Tennessee, a political subdivision of the State.

“**Debt Service Fund**” means the Debt Service Fund created by Section 402 hereof.

“**Defaulted Interest**” means interest on any Bond which is payable but not duly paid on the date due.

“**Depository Participant**” means a member of, or participant in, the Securities Depository.

“**DTC**” means The Depository Trust Company.

“**DTC Letter of Representations**” means the blanket letter of representations from the Issuer to DTC dated May 17, 2017.

“**Escrow Obligations**” means:

(a) noncallable Government Obligations; or

(b) noncallable senior debt obligations described in (b) of Permitted Investments if:

(i) money and noncallable Escrow Obligations on deposit in the escrow are sufficient at all times to pay in full all principal of and interest and premium, if any, on such debt obligations which sufficiency has been verified by the report of an independent certified public accountant or financial analyst (a “**Verification of Sufficiency**”) and no replacement of an Escrow Obligation in such escrow shall be permitted except with a direct obligation of the United States of America or money, and then only upon delivery of a new Verification of Sufficiency,

(ii) the Bond Trustee has received an opinion of Independent Counsel (which counsel and opinion, including without limitation the form, scope substance and other aspects thereof are acceptable to the Bond Trustee and not objected to by the Issuer) to the effect that such money and Escrow Obligations are not available to satisfy any other claims, including those by or against the Bond Trustee or escrow agent for such bonds and notes, and

(iii) the Bond Trustee has received an opinion of nationally recognized bankruptcy counsel (which counsel and opinion, including without limitation the form, scope, substance and other aspects thereof are acceptable to the Bond Trustee and not objected to by the Issuer) to the effect that payments made on such debt obligations from such escrow would not be both (A) avoidable as a preferential transfer under section 547(b) of title 11 of the United States Code (the “**Bankruptcy Code**”) and (B) recoverable under section 550 of the Bankruptcy Code, in a case under the Bankruptcy Code in which either issuer or any other person liable on such debt obligations is a debtor should the issuer or any other person liable on such debt obligations become a debtor in a proceeding commenced under the United States Bankruptcy Code.

“**Fiscal Year**” means any twelve-month period beginning on July 1 of any calendar year and ending on and including June 30 of the next succeeding calendar year, or such other twelve-month period selected by the Borrower, from time to time, as its fiscal year.

“**Fitch**” means Fitch Ratings Inc., or any of its successors and assigns, or, if no longer performing the functions of a securities ratings agency, any other nationally recognized securities ratings agency designated by the Borrower by notice to the Bond Trustee.

“**Government Obligations**” means (i) direct obligations of the United States of America for the full and timely payment of which the full faith and credit of the United States of America is pledged, or (ii) obligations the payment of which is fully and unconditionally guaranteed by the United States of America.

“**Indenture**” has the meaning given to such term in the initial paragraph of this instrument.

“**Independent Counsel**” means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state and, without limitation, may include independent legal counsel for the Issuer, the Borrower or the Bond Trustee; provided, however, that any such attorney may not be an employee of the Issuer or the Borrower or of any affiliate or subsidiary of, or other entity controlled by, either of them.

“**Interest Payment Date**” means, with respect to the Bonds, each \_\_\_\_\_ 1 and \_\_\_\_\_ 1, commencing on \_\_\_\_\_ 1, 202\_.

“**Issuer**” has the meaning given to such term in the first paragraph of this instrument, and any of the Issuer’s successors and assigns.

“**Lien**” means any mortgage or pledge of, security interest in or lien, charge or encumbrance on any Property of the Borrower which secures any obligation to any Person and any capitalized lease under which the Borrower is the lessee or lessor.

“**Loan Agreement**” has the meaning given to such term in the recitals to this instrument.

“**Moody’s**” means Moody’s Investors Service, Inc., or any of its successors and assigns, or if no longer performing the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the Borrower by notice to the Bond Trustee.

“**Non-Property Tax Revenues**” means all legally available revenues of the City, a portion of which shall be appropriated and paid by the City and applied to the payments required by the Loan Agreement and in accordance with Section 6-54-118, Tennessee Code Annotated, and which shall not include ad valorem property tax revenues.

“**Officer’s Certificate**” means a certificate signed (i) in the case of a certificate delivered on behalf of the Borrower, by an Authorized Officer of the Borrower or, (ii) in case of a certificate delivered on behalf of the Issuer, by an Authorized Officer of the Issuer or, (iii) in case of a certificate delivered on behalf of any corporation, by the President or any authorized Vice-President of such corporation or any other officer duly authorized by such corporation or, (iv) on behalf of any other Person, by the chief executive officer, the chief financial officer or any other authorized officer of such other Person, in each case whose authority to execute such Certificate shall be evidenced to the satisfaction of the Bond Trustee.

“**Operating Expenses**” means all costs, fees and expenses of any kind arising out of or incurred by the Issuer, the Bond Trustee, or any other person in connection with the administration of the trust estate, or the performance or exercise by such person of any duties, powers and rights hereunder or under the Bonds, including but not limited to the fees and expenses of the Bond Trustee, bond insurance premiums not paid from the Proceeds of Bonds, costs of compliance with Section 607 hereof, but shall not include the principal or redemption price of or redemption premium or interest on Bonds, in each case to the extent constituting a Cost of the Project.



**“Opinion of Bond Counsel”** means a written opinion of Bond Counsel in form and substance acceptable to the Issuer and the Bond Trustee.

**“Opinion of Counsel”** means a written opinion of counsel who is acceptable to the Bond Trustee and the Issuer in form and substance acceptable to the Issuer and the Bond Trustee.

**“Optional Redemption Fund”** means the Optional Redemption Fund created by Section 403 hereof.

**“Outstanding”** means when used in connection with any Bond, a Bond which has been duly authenticated and delivered by the Bond Trustee under this Indenture, other than:

(a) A Bond cancelled after purchase in the open market or because of payment at or redemption prior to maturity;

(b) A Bond for the payment or redemption of which money or Escrow Obligations shall have been theretofore deposited with the Bond Trustee pursuant to the provisions of Article XI hereof (whether upon or prior to the maturity or Redemption Date of any such Bonds); provided, however, that if such Bond is to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Bond Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Bond Trustee shall have been filed with the Bond Trustee;

(c) A Bond in lieu of which another Bond has been authenticated under this Indenture; and

(d) For the purpose of any waivers, consents, notices or other actions hereby required or permitted to be given or taken, a Bond owned by or on behalf of the Issuer or the Borrower or by or on behalf of any affiliate or subsidiary of, or any other entity controlled by, either the Issuer or the Borrower.

**“Paying Agent”** means the bank or banks, if any, designated pursuant to this Indenture to receive and disburse the principal of and interest on the Bonds.

**“Permitted Investments”** means and includes any of the following, to the extent, at the time of the acquisition thereof, the same are legal for investment of the Issuer’s funds under the Act:

(a) Government Obligations;

(b) debt obligations of any agency or instrumentality of the United States of America created by an act of Congress including, but not limited to, the Federal Home Loan Banks, Freddie Mac, Federal Farm Credit Banks Funding Corporation, and Fannie Mae;

(c) obligations issued by any state of the United States of America or any political subdivision thereof, rated by at least two Rating Agencies in one of the three highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise), provided that such obligations are fully secured by and payable solely from an escrow fund held by a trustee consisting of money or Government Obligations;

(d) (i) U.S. dollar denominated corporate notes, bonds, or other debt obligations of any United States or foreign corporation, financial institution, non-profit organization, trust, or other entity which obligations are rated by at least one Rating Agency in one of the three highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise), or (ii) commercial paper of any United States corporation, company, financial institution, non-profit organization, trust or other entity rated by at least two Rating Agencies in one of the two highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise);

(e) certificates of deposit or time deposits of any bank, trust company or savings and loan, which (a) deposits are fully insured by a federally sponsored deposit insurance program, or (b) bank or its parent holding company's, or trust company's, debt conforms to the rating requirements of (d)(i) above;

(f) banker's acceptances of any bank, which bank or its parent holding company's debt conforms to the rating requirements of (d)(i) above;

(g) repurchase agreements, entered in conformance with prevailing industry standard guidelines, of obligations listed in (a) or (b) above, delivered versus payment to the Bond Trustee and continuously collateralized at (i) 104% or greater if invested in obligations consisting of the securities described in (a) above or (ii) 105% or greater if invested in obligations consisting of the securities described in (b) above, provided that under both (i) and (ii) the counterparties' debt is rated in conformance with the rating requirements of (d)(i) above;

(h) forward delivery agreements with any financial institution that at the time of investment has long-term obligations rated by at least one Rating Agency in one of the four highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) under which obligations described in (a) and/or (b) above are delivered;

(i) investment agreements of any corporation which agreements or the corporation's long-term debt is rated by at least one Rating Agency in one of the three highest ratings categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise);

(j) asset backed securities of corporations, trusts or financial institutions which are rated in the highest rating category (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) by at least two Rating Agencies; and

(k) shares of a money market fund or commingled trust which fund's or trust's investments are restricted to investments described in (a), (b), (c), (e), (f), (g) and/or (j) above.

**“Person”** means any natural person, firm, joint venture, association, partnership, business trust, corporation, limited liability company, public body, agency or political subdivision thereof or any other similar entity.

**“Proceeds”** means the aggregate principal amount of Bonds minus any original issue discount and plus any original issue premium on the Bonds, and accrued interest, if any.

[**“Project”** means and consists of the maintenance, reconstruction, and improvement of AutoZone Park, the FedEx Forum, the Historic Melrose high school building, and multifamily housing facilities to be occupied by persons of low or moderate income, elderly, or handicapped persons.]

**“Property”** means any and all rights, titles and interests in and to any and all property whether real or personal, tangible or intangible, and wherever situated.

**“Rating Agency”** means Fitch, Moody’s or Standard & Poor’s and any other nationally recognized credit rating agency then maintaining a rating on any Outstanding Bonds at the request of the Issuer or the Borrower. If at any time any of the aforementioned agencies does not have a rating with respect to any Outstanding Bonds, then a reference herein to Rating Agency or Rating Agencies shall not include such agency.

**“Record Date”** means, when used in connection with any Bond, the 15<sup>th</sup> day (whether or not a business day) of the calendar month next preceding an Interest Payment Date.

**“Redemption Date”** means any date on which Bonds are to be redeemed in accordance with the provisions of Article V hereof.

**“S&P”** or **“Standard & Poor’s”** means S&P Global Ratings, or any of its successors and assigns, or if no longer performing the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the Borrower by notice to the Bond Trustee.

**“Securities Depository”** means DTC and its successors and assigns or if (i) the then-acting Securities Depository resigns from its functions as depository of the Bonds or (ii) the Issuer discontinues use of the then-acting Securities Depository pursuant to Section 209 hereof, any other securities depository which is selected by the Issuer at the request of the Borrower.

[**“Sinking Fund Redemption”** means, when used in connection with the Bonds, the mandatory redemption thereof required to be made in accordance with Section [501] of this Indenture.]

**“Special Record Date”** means the date fixed by the Bond Trustee pursuant to Section 206 hereof for the payment of Defaulted Interest.

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

**“Supplemental Indenture”** means any indenture amending or supplementing this Indenture or any prior Supplemental Indenture executed and becoming effective in accordance with the terms and provisions of Article IX hereof

**“Tax Certificate”** means a certificate or certificates of an Authorized Officer of the Issuer and the Borrower, including the appendices, schedules and exhibits thereto, executed in connection with the issuance the Bonds in which the Issuer and Borrower make representations and agreements as to arbitrage compliance with the provisions of Section 141 through 150, inclusive, of the Code, or any similar certificate, agreement or other instrument made, executed

and delivered in lieu of said certificate, in each case as the same may be amended or supplemented.

“**Unassigned Rights**” means the right of the Issuer to receive payment of its fees and expenses, the Issuer’s right to indemnification under the Loan Agreement, the Issuer’s right to approve, execute and deliver supplements, amendments and restatements to the Loan Agreement, the Issuer’s right to grant consents under the Loan Agreement, and the rights provided the Issuer in Section 11.7 of the Loan Agreement.

“**Written Request**” means with reference to the Issuer, a request in writing signed by the President, Chairman, Vice-Chairman, Treasurer, Secretary or Assistant Secretary of the Issuer, and, with reference to the Borrower, means a request in writing signed by any officer of the Borrower authorized to execute an Officer’s Certificate on its behalf, as the case may be.

Section 102. Accounting Terms. All accounting terms not otherwise defined herein shall have the meanings assigned to them in accordance with generally accepted accounting principles. Headings of articles and sections herein and the table of contents hereof are solely for the convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

Section 103. Construction. All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision unless the context indicates otherwise.

## ARTICLE II

### THE BONDS

Section 201. Authorization of Bonds. There are hereby authorized to be issued \_\_\_\_\_ (\$ \_\_\_\_\_) aggregate principal amount of Bonds for the purposes of providing funds for a loan to the Borrower pursuant to the Loan Agreement to (i) pay the Costs of the Project, including interest on the Bonds, and (ii) pay certain expenses incurred in connection with the issuance of the Bonds.

(a) The Bonds shall be designated “Economic Development Bonds (City of Memphis Project), Series 2021.” The Bonds shall bear interest from their respective dates and shall be issuable as registered bonds, in the denominations of \$5,000 and integral multiples thereof unless the Issuer shall otherwise direct, the Bonds shall be lettered “2021 R-” and numbered from one upward in order of issuance. The Bonds, as initially issued, will be dated as of their date of initial issuance. Interest on the Bonds will be payable on each Interest Payment Date.

The Bonds shall mature on \_\_\_\_\_ 1 of each of the years set forth and in the principal amount set forth opposite such respective year, and shall bear interest (based on a 360-day year of twelve 30-day months) at the respective rates set forth, in the following schedule:

| Maturity<br>Date<br>( ) | Principal<br>Amount | Interest<br>Rate |
|-------------------------|---------------------|------------------|
|-------------------------|---------------------|------------------|

(b) The principal of, premium, if any, and interest on the Bonds shall be payable in any currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts, and such principal and premium, if any, shall be payable upon presentment at the designated corporate trust office of the Bond Trustee, or its successor as Bond Trustee, or at the office of any alternate Paying Agent, if any, named in any such Bond. Payment of the interest on any Bond due on any Interest Payment Date shall be made to the Person appearing on the Bond Register as the registered owner thereof as of the close of business of the Bond Trustee on the Record Date for such interest payment and shall be paid (i) by check or draft of the Bond Trustee mailed on the Interest Payment Date to such registered owner at such owner's address as it appears on the Bond Register or at such other address as is furnished to the Bond Trustee in writing by such owner or (ii) in the case of an interest payment on Bonds, to any such registered owner of \$1,000,000 or more in aggregate principal amount of Bonds as of the close of business of the Bond Trustee on the Record Date for a particular Interest Payment Date, by wire transfer to such registered owner upon written request from such registered owner, which request shall contain the wire transfer address (which shall be in the continental United States) to which such registered owner wishes to have such wire directed, which written request is received not less than fifteen days prior to such Record Date (it being understood that such request may refer to multiple interest payments).

Section 202. Limited Obligation; No Liability of State. The Bonds shall be limited obligations of the Issuer payable solely from (i) amounts payable under the Loan Agreement (except for Unassigned Rights) and (ii) moneys on deposit in funds or accounts held under this Indenture as and to the extent provided in this Indenture, all of which are hereby assigned and pledged hereunder for the payment as herein provided of the Bonds and shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the Bonds, except as may be otherwise expressly authorized or provided in this Indenture. The Issuer has no taxing power.

The Bonds and the interest thereon do not now and shall never constitute a charge against the general credit or taxing power of the Issuer, the State or any political subdivision thereof including, without limitation, the Borrower and the County, and the Bonds and the interest thereon do not now and shall never constitute a debt of the State or any political subdivision thereof, including, without limitation, the Borrower and the County, within the meaning of any constitutional or statutory provision whatsoever. Neither the State nor any political subdivision thereof including, without limitation, the Borrower and the County, shall in any event be liable for the payment of the principal of, premium, if any, or interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever that may be undertaken by the Issuer (except to the extent that the Borrower is obligated under the Loan Agreement). No breach by the Issuer of any such pledge, mortgage, obligation or agreement shall impose any liability, pecuniary or otherwise, upon the State or any political subdivision thereof including,

without limitation, the Borrower and the County, or any charge upon their general credit or taxing power.

Section 203. Execution. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of its Chair, Vice Chair or President and by the manual or facsimile signature of its Secretary, Assistant Secretary or Treasurer (or such other officer as may be designated by the Issuer). The facsimile signatures of said officers shall have the same force and effect as if such officers had manually signed each of said Bonds. In case any officer the facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such facsimile signature shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

Section 204. Authentication. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until a certificate of authentication on such Bond substantially in the form on Exhibit A hereto, with such appropriate variations, omissions and insertions as are permitted or required by this Indenture or deemed necessary by the Bond Trustee and the Issuer, shall have been duly executed by the Bond Trustee, and such executed certificate of the Bond Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Bond Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if manually signed by an authorized officer or signatory of the Bond Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 205. Form of Bonds. The Bonds issued under this Indenture shall be substantially in the form set forth on Exhibit A hereto with such appropriate variations, omissions and insertions as are permitted or required by this Indenture or deemed necessary by the Bond Trustee and the Issuer.

Section 206. Payment of Defaulted Interest. Defaulted Interest with respect to any Bond shall cease to be payable to the Holder of such Bond on the relevant Record Date and shall be payable to the Holder in whose name such Bond is registered at the close of business of the Bond Trustee on the Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Borrower shall notify the Bond Trustee in writing of the amount of Defaulted Interest proposed to be paid on the Bonds and the date of the proposed payment (which date shall be such as will enable the Bond Trustee to comply with the next sentence hereof), and at the same time the Borrower shall deposit with the Bond Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Bond Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Holders of the Bonds entitled to such Defaulted Interest as provided in this Section. Following receipt of such funds, the Bond Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than fifteen nor less than ten days prior to the date of the proposed payment and not less than ten days after the receipt by the Bond Trustee of the notice of the proposed payment. The Bond Trustee shall promptly notify the Borrower of such Special Record Date and, in the name and at the expense of the Borrower, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed,

first-class postage prepaid, to each registered owner of a Bond at the address of such owner as it appears on the registration books kept by the Bond Trustee not less than ten days prior to such Special Record Date.

Section 207. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any temporary or definitive Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Bond Trustee may authenticate a new Bond of like form, date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided, however, that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Bond Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Bond Trustee evidence of such loss, theft or destruction satisfactory to the Bond Trustee, together with indemnity satisfactory to the Bond Trustee and the Issuer. In the event any such Bond shall have matured, instead of issuing a duplicate Bond the Issuer may pay the same without surrender thereof. The Issuer and the Bond Trustee may charge the Holder or owner of such Bond with their reasonable fees and expenses in this connection.

Section 208. Transfer and Exchange of Bonds; Persons Treated as Owners. The Issuer shall cause the Bond Register to be kept by the Bond Trustee at its designated corporate trust office. At reasonable times and under reasonable regulations established by the Bond Trustee, the Bond Register may be inspected and copied by the Issuer.

Upon surrender for transfer of any Bond at the designated corporate trust office of the Bond Trustee, the Issuer shall execute and the Bond Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of the same maturity and of authorized denomination for the aggregate principal amount which the registered owner is entitled to receive. Any Bond or Bonds may be exchanged at said office of the Bond Trustee for a like aggregate principal amount of Bond or Bonds of the same maturity of other authorized denominations. The execution by the Issuer of any Bond shall constitute full and due authorization of such Bond, and the Bond Trustee shall thereby be authorized to authenticate, date and deliver such Bond.

All Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Bond Trustee, duly executed by the registered owner or by such owner's duly authorized attorney.

No service charge shall be imposed for any exchange or transfer of Bonds. The Issuer and the Bond Trustee may, however, require payment by the person requesting an exchange or transfer of Bonds of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto, except in the case of the issuance of a Bond or Bonds for the unredeemed portion of a Bond surrendered for redemption.

The Issuer and the Bond Trustee shall not be required to register the transfer of or exchange any Bond after notice calling such Bond or portion thereof for redemption has been given or during the fifteen-day period next preceding the first mailing of such notice of redemption.

New Bonds delivered upon any transfer or exchange shall be valid obligations of the Issuer, evidencing the same debt as the Bonds surrendered, shall be secured by this Indenture and shall be entitled to all of the security and benefits hereof to the same extent as the Bond surrendered.

The Issuer and the Bond Trustee may treat the registered owner of any Bond as the absolute owner thereof for all purposes, whether or not such Bond shall be overdue, and shall not be bound by any notice to the contrary. All payments of or on account of the principal of and premium, if any, and interest on any such Bond as herein provided shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Any Bond surrendered for the purpose of payment or retirement or for exchange or transfer, or for replacement pursuant to Section 207 hereof, shall be cancelled upon surrender thereof to the Bond Trustee or any Paying Agent. If the Issuer or the Borrower shall acquire any of the Bonds, the Issuer or such Borrower shall deliver such Bonds to the Bond Trustee for cancellation and the Bond Trustee shall cancel the same. Any such Bonds cancelled by any Paying Agent other than the Bond Trustee shall be promptly transmitted by such Paying Agent to the Bond Trustee. Certification of Bonds cancelled by the Bond Trustee and Bonds cancelled by a Paying Agent other than the Bond Trustee which are transmitted to the Bond Trustee shall be made to the Issuer and to the Borrower. Cancelled Bonds may be destroyed by the Bond Trustee unless instructions to the contrary are received from the Issuer or the Borrower.

Section 209. Book-Entry Only System. The Bonds shall be initially issued in the form of a separate single fully registered Bond for each of the maturities bearing interest as set forth above. Upon initial issuance, the ownership of the Bonds shall be registered in the Bond Register in the name of Cede & Co., as nominee of the Securities Depository, and except as hereinafter provided, all of the Outstanding Bonds shall be registered in the Bond Register in the name of Cede & Co., as nominee of the Securities Depository.

With respect to Bonds registered in the Bond Register in the name of Cede & Co., as nominee of the Securities Depository:

- (1) the Issuer, the Bond Trustee and the Borrower shall have no responsibility or obligation to any Depository Participant or to any person on behalf of whom such a Depository Participant holds a beneficial interest in the Bonds. Without limiting the immediately preceding sentence, the Issuer, the Bond Trustee and the Borrower shall have no responsibility or obligation with respect to (i) the accuracy of the records of the Securities Depository, Cede & Co. or any Depository Participant with respect to any beneficial ownership interest in any Bond, (ii) the delivery to any Depository Participant or any other Person, other than a Bondholder, as shown in the Bond Register, of any notice with respect to any Bonds, including without limitation any notice of redemption, (iii) the payment to any Depository Participant or any other Person, other than a Bondholder, as shown in the Bond Register, of any amount with respect to principal of,



premium, if any, or interest on, or the purchase price of, any Bond, or (iv) any consent given by the Securities Depository as registered owner.

(2) The Bond Trustee and each Paying Agent, if any, shall pay all principal of, premium, if any, and interest on the Bonds and the purchase price of any Bond only to or upon the order of the respective Bondholders, as shown in the Bond Register as provided in this Indenture, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to payment of principal of, premium, if any, and interest on the Bonds and the purchase price of any Bond to the extent of the sum or sums so paid.

(3) No Person other than a Bondholder, as shown in the Bond Register, shall receive a Bond certificate evidencing the obligation of the Issuer to make payments of principal, premium, if any, and interest pursuant to this Indenture.

The Bondholders have no right to designate a depository for the Bonds. The Issuer or the Bond Trustee may remove the Securities Depository or any successor thereto for any reason at any time. In such event, the Issuer or the Bond Trustee if the Issuer shall fail to do so, shall (i) at the request of the Borrower appoint a successor Securities Depository, qualified to act as such under Section 17(a) of the Securities Exchange Act, notify the prior Securities Depository of the appointment of such successor securities depository and transfer one or more separate Bond certificates to such successor securities depository or (ii) at the request of the Borrower notify the Securities Depository of the availability through the Securities Depository of Bond certificates and transfer one or more separate Bond certificates to Depository Participants having Bonds credited to their Securities Depository accounts. In such event, the Bonds shall no longer be restricted to being registered in the Bond Register in the name of Cede & Co., as nominee of the Securities Depository, but may be registered in the name of the successor Securities Depository, or its nominee, or in whatever name or names the Depository Participants receiving Bonds shall designate, in accordance with the provisions of this Indenture.

The Issuer has executed the DTC Letter of Representations. Such DTC Letter of Representation is for the purpose of effectuating the Book-Entry Only System only and shall not be deemed to amend, supersede or supplement the terms of this Indenture which are intended to be complete without reference to the DTC Letter of Representation. In the event of any conflict between the terms of the DTC Letter of Representation and the terms of this Indenture, the terms of DTC Letter of Representation shall control. The Securities Depository may exercise the rights of a Bondholder hereunder only in accordance with the terms hereof applicable to the exercise of such rights.

### ARTICLE III

#### APPLICATION OF BOND PROCEEDS AND REQUIRED FUND DEPOSITS

Section 301. Deposit of Funds. The Issuer, for and on behalf of the Borrower, shall deposit with the Bond Trustee, or as otherwise may be directed by the Borrower, all of the net Proceeds loaned to the Borrower from the sale of the Bonds (including accrued interest on such Bonds from the date from which interest is to be paid thereon to the date of their delivery to the purchasers), and the Bond Trustee shall apply such Proceeds, as follows:

- (1) Deposit \$[\_\_\_\_], to the credit of the Construction Fund to be used for the payment of the Costs of the Project.
- (2) Deposit the balance of the proceeds of the Bonds in the amount of \$[\_\_\_\_] to the credit of the Costs of Issuance Fund hereby created to be used for the payment of expenses for any recording, trustee's and depository's fees and expenses, accounting and legal fees, municipal bond insurance premiums, financing costs (including costs of acquiring investments for the funds and escrows) and other fees and expenses incurred or to be incurred by or on behalf of the Issuer or the Borrower in connection with or incident to the issuance and sale of the Bonds.

At such time as the Bond Trustee is furnished with a Written Request executed by the Borrower and the Issuer stating that all such fees and expenses have been paid, the Bond Trustee shall transfer any money remaining in the Costs of Issuance Account to the Debt Service Fund, in accordance with such Written Request.

Section 302. Cost of Issuance Fund. There is hereby established with the Bond Trustee a separate fund to be known as the "**Costs of Issuance Fund**." Any such Proceeds may be credited to the Costs of Issuance Fund to be used for the payment of expenses for any recording, trustee's and depository's fees and expenses, accounting and legal fees, municipal bond insurance premiums, financing costs (including costs of acquiring investments for the funds and escrows) and other fees and expenses incurred or to be incurred by or on behalf of the Issuer or the Borrower in connection with or incident to the issuance and sale of such Bonds. Accounts may be created in the Costs of Issuance Fund for any purpose pursuant to a Written Request from the Borrower delivered to the Bond Trustee. At such time as the Bond Trustee is furnished with a Written Request executed by the Borrower and the Issuer stating that all such fees and expenses have been paid, the Bond Trustee shall transfer any money remaining in the Costs of Issuance Fund to the Debt Service Fund or otherwise in accordance with such Written Request.

Section 303. Construction Fund. (a) There is hereby established with the Bond Trustee a separate fund to be known as the "**Construction Fund**," to the credit of which a deposit shall be made pursuant to the provisions of Section 301 hereof. Accounts may be created in the Construction Fund for any purpose pursuant to a Written Request from the Borrower delivered to the Bond Trustee. Any money received by the Bond Trustee from any source for the acquisition, construction, renovation, rehabilitation, remodeling, furnishing or equipping portions of the Project shall be deposited in the Construction Fund unless otherwise specifically excepted

hereunder. The money in the Construction Fund shall be held in trust by the Bond Trustee, shall be applied to the payment of Costs of the Project and, pending such application, shall be held as trust funds under this Indenture in favor of the Holders of the Outstanding Bonds and for the further security of such Holders until paid out or transferred as provided in this Section.

(b) All payments from the Construction Fund shall be made only upon receipt by the Bond Trustee of a requisition of the Borrower, signed by an Authorized Officer of the Borrower, in the form attached hereto as Exhibit B setting forth or certifying the following:

(A) the name of the Person or Persons to whom payment is due;

(B) the respective amounts to be paid to each such Person and the account within the Construction Fund from which such amount is to be paid;

(C) (i) the purpose in terms sufficient for identification for which each obligation to be paid was incurred and (ii) the items for which payment or reimbursement is being requested;

(D) that obligations in the stated amounts have been incurred by or on behalf of the Borrower and are presently due and payable and constitute Costs of the Project within the meaning of this Indenture and that each item thereof is a proper charge against the Construction Fund and has not been paid or reimbursed, as the case may be, from the proceeds of the Bonds;

(E) that such requisition contains no item representing payment on account of any retained percentage which the Borrower is at the date of such requisition entitled to retain, unless the Borrower has waived such retention right;

(F) that there is no outstanding indebtedness known to the Borrower, after due inquiry, for work, materials or supplies which, if unpaid, could be the basis for a vendor's or mechanic's or similar lien on the Project or any part of it, other than indebtedness to be paid pursuant to the requisition or from amounts withheld to secure completion, and that no notice of any lien or claim affecting the right of any Person to receive a payment requested in the requisition has been filed with or served upon the Borrower;

(G) that the withdrawal and use of the Construction Fund money for the purpose intended will not cause any representations or certifications of the Borrower to be untrue;

(H) that the Borrower has copies of all invoices and statements with respect to the amounts to be paid pursuant to such requisition; and

(I) that, as to any payment to be made under a construction contract:

(1) the Borrower has obtained written waiver by the construction manager or general contractor under such contract of mechanics' and vendors' liens for all work and material described in the requisition performed or furnished by such construction manager or general contractor; and

(2) either (i) a lien search report dated within two business days of the date of the requisition reflects no liens, stop notices or other evidence of nonpayment of any mechanic, materialman or other person; or (ii) waivers of mechanics' and vendors' liens for all work and material performed or furnished to the Project from all others (other than the construction manager or general contractor); and

(3) the contractor is entitled to payment in the amount shown in the requisition.

(c) The Bond Trustee shall maintain adequate records pertaining to the Construction Fund and all disbursements therefrom. All such records and all requisitions, certificates and other documents or instruments received by the Bond Trustee pertaining to the Construction Fund or disbursements therefrom or in connection with the Project or its completion, may be relied upon by the Bond Trustee and shall be retained by the Bond Trustee until the [sixtieth month following certification of the completion of the Project pursuant to paragraph (d) of this Section.]

(d) The completion date of the Project shall be established by the filing with the Bond Trustee of an Officer's Certificate of the Borrower to the effect that the moneys, if any, on deposit in the Construction Fund are no longer required by the Borrower for the payment of Costs of the Project.

Upon the filing of such Officer's Certificate, any money then remaining in the Construction Fund, shall upon the Written Request of the Borrower be (x) transferred to the Debt Service Fund in the amounts set forth in such Written Request, or (y) applied to the redemption or defeasance in accordance with Section 1103 hereof of Outstanding Bonds in accordance with such Written Request.

#### **ARTICLE IV**

#### **REVENUES AND FUNDS**

Section 401. Source of Payment of Bonds. The Bonds herein authorized and all payments to be made by the Issuer thereon and into the various funds established under this Indenture are not general obligations of the Issuer but are limited obligations payable solely from the sources described in Section 202 hereof.

Section 402. Debt Service Fund. There is hereby established with the Bond Trustee a separate fund to be known as the “**Debt Service Fund.**” All payments of Non-Property Tax Revenues made by the Borrower pursuant to the Loan Agreement pledged hereunder, as and when received by the Bond Trustee, shall be deposited in the Debt Service Fund and shall be held therein until disbursed as herein provided. Pursuant to the assignment and pledge of payments under the Loan Agreement set forth in the granting clauses contained herein, the Issuer will direct the Borrower to make such payments to the Bond Trustee when and as the same become due and payable by the Borrower under the Loan Agreement.

(b) The Bond Trustee shall apply the money on deposit in the Debt Service Fund, first, to the payment of interest on Outstanding Bonds when due, and, then, to the payment of the principal of Outstanding Bonds when due either at maturity or through mandatory Sinking Fund Redemption:

Section 403. Optional Redemption Fund. The Issuer shall establish with the Bond Trustee and maintain so long as any of the Bonds are Outstanding a separate fund to be known as the “**Optional Redemption Fund.**” In the event of (a) prepayment by or on behalf of the Borrower of amounts payable under the Loan Agreement pledged under this Indenture, including prepayment with condemnation or insurance proceeds, or (b) deposit with the Bond Trustee by the Borrower or the Issuer of money from any other source for redeeming Bonds, except as otherwise provided in this Indenture, such money shall be deposited in the Optional Redemption Fund. Money on deposit in the Optional Redemption Fund shall be used, first, to make up any deficiencies existing in the Debt Service Fund and, second, for the redemption or purchase of Bonds in accordance with the provisions of Article V hereof.

Section 404. Investment of Funds. (a) Upon a Written Request of the Borrower filed with the Bond Trustee, money in the Debt Service Fund, Costs of Issuance Fund, Construction Fund, and Optional Redemption Fund shall be invested in Permitted Investments. Such investments shall be made so as to mature or allow withdrawals at par on or prior to the date or dates that money therefrom is anticipated to be required, and the income resulting therefrom shall be credited to the fund or account from which the investment was made, subject to application as provided by subsection (b) of this Section. The Bond Trustee, when authorized by the Borrower, may trade with itself in the purchase and sale of securities for such investment. The Bond Trustee shall not be liable or responsible for any loss resulting from any such investments.

(b) Except as otherwise provided herein, all income in excess of the requirements of the funds specified in paragraph (a) of this Section derived from the investment of money on deposit in any such *funds* shall be deposited in the following funds, in the order listed:

(i) the Debt Service Fund to the extent of the amounts required to be deposited in each to provide for the payments due on the next required payment date on the Bonds occurring within thirteen (13) months of the date of such deposit; and

(ii) the balance, if any, in the Optional Redemption Fund, in accordance with the Written Request of the Borrower;

(c) The Bond Trustee will not make any investment of any money in any fund or account held by it hereunder, or sell any investment held in any such fund or account, except on the following terms and conditions:

(i) Each such investment shall be made in the name of the Bond Trustee (in its capacity as such) or in the name of a nominee for the Bond Trustee under its complete and exclusive control;

(ii) The Bond Trustee shall have sole control over such investment, the income thereon, and the proceeds thereof;

(iii) Any certificate or instrument evidencing such investment shall be delivered to the Bond Trustee or its agent or securities depository; and

(iv) The proceeds of each sale of such an investment shall be remitted by the purchaser thereof directly to the Bond Trustee for deposit in the fund or account to which such investment was credited.

Section 405. Trust Funds. All money received by the Bond Trustee under the provisions of this Indenture shall be trust funds under the terms hereof for the benefit of all Bonds Outstanding hereunder and shall not be subject to lien or attachment of any creditor of the Issuer or the Borrower. Such money shall be held in trust and applied in accordance with the provisions of this Indenture. The Issuer shall be deemed to have fulfilled its obligation to establish the funds created by this Article IV upon the execution and delivery of this Indenture.

## ARTICLE V

### REDEMPTION OF BONDS

Section 501. Optional Redemption. TBD.

Section 502. Mandatory Redemption. TBD

Section 503. Selection of Bonds to be Redeemed. If less than all the Bonds are to be redeemed, the particular Bonds or portions thereof to be redeemed shall be selected using the procedures established by the Securities Depository or if none, by the Bond Trustee by lot, which shall be deemed to include pro rata redemption of Bonds within each stated maturity and mandatory sinking fund payments, and which may provide for the selection for redemption of portions (equal to Authorized Denominations) of the principal of Bonds; provided that after any partial redemption of the Bonds, all Bonds that remain Outstanding shall be in Authorized Denominations. No portion of a Bond may be redeemed that would result in a Bond having a principal amount that is less than the minimum Authorized Denomination.

Section 504. Notices of Redemption. (a) Notice to Bond Trustee of Intent to Redeem. Bonds shall be called for redemption by the Bond Trustee pursuant to Section 501 hereof upon receipt by the Bond Trustee at least [sixty][forty-five] days prior to the Redemption Date of a Written Request of the Borrower requesting such redemption; provided, however, that the Borrower may give such Written Request at such later time as may be approved by the Bond

Trustee, in its sole discretion, but in no event shall such Written Request for the redemption of Bonds be given less than thirty days prior to the Redemption Date. Such Written Request shall specify the maturity and principal amount of the Bonds so to be called for redemption, the applicable redemption price or prices and the provision or provisions above specified pursuant to which such Bonds are to be called for redemption.

(b) Notice to Bondholders of Redemption: Conditional Notice. Notice of the call for any redemption shall state the following: (a) the name of the Bonds, (b) the CUSIP number of the Bonds to be redeemed, (c) the original date of the Bonds, (d) the interest rate and maturity date of the Bonds to be redeemed, (e) the date of the redemption notice, (f) the Redemption Date, (g) the redemption price and (h) the address and telephone number of the principal office of the Bond Trustee. Such notice shall further state that on the Redemption Date for such Bonds there shall become due and payable upon each Bond to be redeemed the redemption price thereof, or the redemption price of the specified portion of the principal amount thereof in the case of a Bond to be redeemed in part only, with interest accrued and unpaid to such date, and that from and after such date, interest thereon shall cease to accrue and be payable. The redemption notice shall be given by mailing a copy of such notice of redemption by first class mail, postage prepaid, not less than thirty or more than sixty days prior to the Redemption Date, to the registered owners of the Bonds to be redeemed to the address shown on the Bond Register not less than thirty or more than sixty days prior to the Redemption Date.

Any notice of redemption may state that it is conditioned upon the receipt by the Bond Trustee of sufficient moneys to pay the redemption price, plus interest accrued and unpaid to the Redemption Date, or upon satisfaction of any other condition, or that it may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before payment of such redemption price and accrued interest if any such condition so specified is not satisfied or if any other such event occurs. Notice of such rescission shall be given by the Bond Trustee to affected registered owners of Bonds as promptly as practicable upon the failure of such condition or the occurrence of such other event and shall be given in the same manner as the notice of redemption was given.

Failure to give any notice of redemption by mailing or a defect in such notice or the mailing as to any Bond shall not affect the validity of any proceedings for redemption as to any other Bond with respect to which notice was properly given. Failure of any registered owner to receive any mailed notice of redemption shall not affect the sufficiency or validity of the proceedings for the redemption of the related Bonds.

If a notice of redemption is given in accordance with the provisions of this Section 503, subject to rescission of any conditional notice, the Bonds, or portions thereof, thus called shall not bear interest after the applicable Redemption Date, shall no longer be protected by this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

At the written direction of the Borrower, funds on deposit with the Bond Trustee for the redemption of Bonds may be invested in Government Obligations until needed for redemption payout.

Section 505. Purchase in Lieu of Optional Redemption and Cancellation. In lieu of redeeming Bonds pursuant to Section 501, the Borrower may use such money otherwise available under this Indenture for redemption of Bonds to purchase Bonds in the open market at a price not exceeding the redemption price then applicable hereunder, plus accrued interest to the date of purchase, and direct the Bond Trustee to apply such money to the payment of the purchase price of the Bonds so purchased. The Bonds so purchased shall be delivered to the Bond Trustee for cancellation and the Issuer shall receive credit for any such Bonds so purchased in the same manner as if such Bonds had been redeemed.

Section 506. Cancellation. All Bonds which have been purchased and surrendered for cancellation or which have been redeemed shall be cancelled and cremated or otherwise destroyed by the Bond Trustee and shall not be reissued and a counterpart of the certificate of cremation or other destruction evidencing such cremation or other destruction shall be furnished by the Bond Trustee to the Issuer and the Borrower.

Section 507. Agent for Delivery. The Issuer hereby appoints the Bond Trustee as its agent for delivery of any Bond issued under this Indenture which is redeemed or prepaid.

## ARTICLE VI

### GENERAL COVENANTS

Section 601. Payment of Principal, Premium, if any, and Interest. Subject to the limited source of payment referred to in Section 202 hereof, the Issuer covenants that it will promptly pay the principal of, premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in said Bonds according to the true intent and meaning thereof. Nothing in the Bonds or in this Indenture shall be considered as assigning or pledging any funds or assets of the Issuer (except the money and the Loan Agreement (other than Unassigned Rights)) pledged under this Indenture.

Section 602. Legal Authorization; Right to Indemnity. The Issuer represents that it is duly authorized under the Constitution and laws of the State to issue the Bonds authorized hereby and to execute this Indenture and to assign the Loan Agreement and to pledge the payments thereunder and the other rights and assets herein pledged in the manner and to the extent herein set forth; that all action on its part required for execution and delivery of this Indenture has been duly and effectively taken (or for the issuance of the Bonds will be duly taken as provided therein); and that the Bonds in the hands of the owners thereof will be valid and enforceable obligations of the Issuer according to the import thereof. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings of its members pertaining thereto. However, the Issuer shall not be required to take any action not expressly provided for herein. Furthermore, the other provisions of this Indenture notwithstanding, the Issuer shall not be obligated to take any action or execute any document which might in its reasonable judgment involve it in any expense or liability unless it shall have been furnished with assurance of payment or reimbursement for any expense and with reasonable indemnity for liability of the Issuer, its incorporators, directors, officers and counsel.



Section 603. Ownership; Instruments of Further Assurance. The Issuer represents that it lawfully owns the Loan Agreement and that the pledge and assignment thereof and of the payments to be made thereunder hereby made are valid and lawful. The Issuer covenants that it will defend its interest in the Loan Agreement and the assignment thereof to the Bond Trustee, for the benefit of the Holders and owners of the Bonds, against the claims and demands of all persons whomsoever. The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Bond Trustee may reasonably require for better assuring, transferring, mortgaging, conveying, pledging, assigning and confirming unto the Bond Trustee, the Loan Agreement and all payments thereon and thereunder (except Unassigned Rights) and all other funds pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds.

Section 604. Books and Records. The Issuer covenants that so long as any Bonds are Outstanding and unpaid, to the extent of the amounts derived from the Loan Agreement, it will keep, or cause to be kept by the Bond Trustee, proper books of record and account. Such books shall at all times be open for any lawful purpose to the inspection of such accountants or other agencies as the Bond Trustee may from time to time designate.

Section 605. Rights Under the Loan Agreement. The Issuer agrees that the Bond Trustee in its own name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Borrower under and pursuant to the Loan Agreement for and on behalf of the Bondholders (other than the rights of the Issuer to decline to make additional loans and to issue Bonds and Unassigned Rights), whether or not the Issuer is in default hereunder.

Section 606. Designation of Additional Paying Agents. The Issuer may cause the necessary arrangements to be made through the Bond Trustee and to be thereafter continued for the designation of alternate Paying Agents, if any, and for the making available of funds hereunder for the payment of such of the Bonds as shall be presented when due at the designated corporate trust office of the Bond Trustee, or its successor in trust hereunder, or at the designated office of said alternate Paying Agents.

Section 607. Tax Exemption; Rebates. In order to maintain the exclusion from gross income for purposes of federal income taxation of interest on the Bonds, the Issuer shall comply with the provisions of the Code applicable to the Bonds, including without limitation the provisions of the Code relating to the computation of the yield on investments of the "gross proceeds" of the Bonds, as such term is defined in the Code, and reporting of the earnings on such gross proceeds and rebates of earnings on such gross proceeds to the United States Department of the Treasury. All necessary computations of the yield on investments and of the amount required to be rebated to the United States Department Treasury shall be made by the Borrower at times and in amounts required by the Code. In furtherance of the foregoing, the Issuer shall comply with the provisions of any Tax Certificate applicable and with such written instructions as may be provided by Bond Counsel or a special tax counsel.

The Issuer shall not take any action or fail to take any action which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code; nor shall any part of the Proceeds of the Bonds or any other funds of the Issuer be used directly or indirectly to acquire

any securities or obligations the acquisition of which would cause any Bond to be an “arbitrage bond” within the meaning of Section 148(a) of the Code. The Issuer shall make any and all payments required to be made to the United States Department of the Treasury in connection with any Bonds pursuant to Section 148(f) of the Code to the extent that funds are made available therefor by the Borrower, pursuant to the Loan Agreement. The Issuer shall make any and all payments required by Section 148(f) of the Code to be made to the United States Department of the Treasury in connection with any Bonds to the extent that money is made available therefor by the Borrower pursuant to the Loan Agreement. The obligation of the Issuer to comply with the provisions of this Section with respect to the rebate to the Department of the Treasury of the United States of America relating to any Bonds shall remain in full force and effect so long as the Issuer shall be required by the Code to rebate such earnings on the gross proceeds of Bonds notwithstanding that any such Bonds are no longer Outstanding.

## ARTICLE VII

### EVENTS OF DEFAULT; REMEDIES

Section 701. Events of Default. Each of the following events is hereby declared an “event of default,” that is to say, if:

(a) payment of any installment of interest payable on any of the Bonds shall not be made when the same shall become due and payable; or

(b) payment of the principal of or the premium, if any, payable on any of the Bonds shall not be made when the same shall become due and payable, either at maturity, by proceedings for redemption, through failure to make any payment to any fund hereunder or otherwise; or

(c) any event of default as defined in Section 8.1 of the Loan Agreement shall occur and be continuing from and after the date the Issuer is entitled under the Loan Agreement to declare the amount due thereunder to be immediately due and payable; or

(d) the Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Indenture or any agreement supplemental hereto to be performed on the part of the Issuer, and such default shall continue for the period of thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer and the Borrower by the Bond Trustee (or if such default cannot with due diligence and dispatch be wholly cured within thirty (30) days but can be wholly cured, the Issuer or the Borrower shall fail immediately upon receipt of such notice to commence with due diligence and dispatch the curing of such default or, having so commenced the curing of such default, shall thereafter fail to prosecute and complete the same with due diligence and dispatch); the Bond Trustee may give such notice in its discretion and shall give such notice at the written request of the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding hereunder; provided, however, that if such default cannot with due diligence and dispatch be wholly cured within thirty (30) days but can be wholly cured, the failure of the Issuer

to remedy such default within such thirty (30) day period shall not constitute a default hereunder if the Issuer shall immediately upon receipt of such notice commence with due diligence and dispatch the curing of such default and, having so commenced the curing of such default, shall thereafter prosecute and complete the same with due diligence and dispatch; or

(e) the default by the Borrower in the performance of its covenant in Section 7.7 of the Loan Agreement relating to the discharge, vacating, bonding or stay of any order, writ or warrant of attachment, garnishment, execution, replevin or similar process filed against any part of the funds or accounts held by the Bond Trustee hereunder, such default being an event of default specified in Section 8.1(b) of the Loan Agreement.

Section 702. Remedies; Rights of Bondholders. Upon the occurrence of any event of default, the Bond Trustee may, subject to its right to indemnification as provided in Section 801 hereof, pursue any available remedy including a suit at law or in equity to enforce the payment of the principal of, premium, if any, and interest on the Bonds then Outstanding hereunder or to compel performance hereunder or under the Loan Agreement, or seek to enjoin any violation hereunder or thereunder; **provided, however,** that in no event may the principal of any Bonds be declared to be immediately due and payable upon the occurrence of an Event of Default hereunder.

If an event of default shall have occurred, and if it shall have been requested so to do by the Holders of not less than twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding and the Bond Trustee shall have been indemnified as provided in Section 801 hereof, the Bond Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Section as the Bond Trustee shall deem most expedient in the interests of the Holders of Bonds; provided, however, that the Bond Trustee shall have the right to decline to comply with any such request if the Bond Trustee shall be advised by counsel (who may be its own counsel) that the action so requested may not lawfully be taken or the Bond Trustee in good faith shall determine that such action would be unjustly prejudicial to the Holders of Bonds not parties to such request.

No remedy by the terms of this Indenture conferred upon or reserved to the Bond Trustee (or to the Holders of Bonds) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Bond Trustee or to the Holders of Bonds hereunder now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default or event of default, or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or event of default, hereunder, whether by the Bond Trustee or by the Holders of Bonds, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereon.

Section 703. Direction of Proceedings by Bondholders. Upon compliance with Section 801(m) hereof, the Holders of a majority in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Bond Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, including the enforcement of the rights of the Issuer under the Loan Agreement [or the appointment of a receiver or any other proceedings hereunder]; provided, however, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture. For the avoidance of doubt, Bondholders cannot direct that the Bonds be accelerated and the Bond Trustee may not accelerate the Bonds on its own accord.

Section 704. [Appointment of Receivers. Upon the occurrence of an event of default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Bond Trustee and the Holders of Bonds under this Indenture, the Bond Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the rights and properties pledged hereunder and of the revenues, issues, payments and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.]

Section 705. Application of Money. All money received by the Bond Trustee pursuant to any right given or action taken under the provisions of this Article shall, after any payments as may be required by Section 8.2(b) of the Loan Agreement, be deposited in the Debt Service Fund and together with all money in the funds maintained by the Bond Trustee under Article III and IV (except money held for the payment of Bonds called for prepayment or redemption which have become due and payable) shall be applied as follows:

(a) All such money shall be applied:

First: To the payment to the Persons entitled thereto of all installments of interest then due on the Outstanding Bonds, in the order of the maturity of the installments of such interest, and, if the amount available shall not be sufficient to pay in full any particular installment, then ratably according to the amounts due on such installment, without any discrimination or privilege; and

Second: To the payment to the Persons entitled thereto of the unpaid principal of any of the Outstanding Bonds which shall have become due (other than Bonds called for redemption for the payment of which money is held pursuant to the provisions of this Indenture), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, then ratably according to the amount of principal due on such date, without any discrimination or privilege.

(b) If the principal of all the Outstanding Bonds shall have become due, all such money shall be applied to the payment of the principal and interest then due and unpaid on the Bonds, which payment shall, except as otherwise provided in Section 712 hereof and other than with respect to Bonds called for redemption for which money is held pursuant to the provisions of this Indenture, be without preference or priority of principal or interest over the other, or of any installment of interest over any other installment of

interest, ratably according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or privilege.

Whenever money is to be applied by the Bond Trustee pursuant to the provisions of this Section, such money shall be applied by it at such times, and from time to time, as the Bond Trustee shall determine, having due regard for the amount of such money available for application and the likelihood of additional money becoming available for such application in the future. Whenever the Bond Trustee shall apply such money, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable, or, with respect to payments of Defaulted Interest, shall be such date as is required by Section 206 hereof) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Bond Trustee shall give such notice as it may deem appropriate of the deposit with it of any such money and of the fixing of any such date and of the Special Record Date by mailing a copy of such notice by first class mail to the registered owners of the Bonds, at least ten days prior to the Special Record Date. The Bond Trustee shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Bond Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all Bonds and interest thereon have been paid under the provisions of this Section and all expenses and charges of the Bond Trustee have been paid, any balance remaining shall be paid to the Persons entitled to receive the same; if no other Person shall be entitled thereto, then the balance shall be paid to the Borrower.

Section 706. Remedies Vested in Bond Trustee. All rights of action including the right to file proof of claims under this Indenture or under any of the Bonds may be enforced by the Bond Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Bond Trustee shall be brought in its name as Bond Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery of judgment shall be, except as otherwise provided in Section 712 hereof, for the equal benefit of the Holders of the Outstanding Bonds.

Section 707. Rights and Remedies of Bondholders. No Holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereof [or for the appointment of a receiver or any other remedy hereunder], unless a default shall have become an event of default and the Holders of twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding shall have made written request to the Bond Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and unless also they have offered to the Bond Trustee indemnity as provided in Section 801(m), and unless the Bond Trustee shall thereafter fail or refuse to exercise the power hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case at the option of the Bond Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture and to any action or cause of action for the enforcement of this Indenture, [or for the appointment of a receiver or for any other remedy hereunder]; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by any action or to enforce any right hereunder

except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Holders of all Bonds Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Holder to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of and interest on each of the Bonds issued hereunder to the respective Holders thereof at the time and place, from the source and in the manner in said Bonds expressed. Notwithstanding the above, no provision herein shall permit a Bondholder or the Bond Trustee to cause the principal of any Bonds to be declared to be immediately due and payable upon the occurrence of an Event of Default hereunder.

Section 708. Termination of Proceedings. In case the Bond Trustee shall have proceeded to enforce any right under this Indenture [by the appointment of a receiver, or otherwise], and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Bond Trustee, then and in every case the Issuer and the Bond Trustee shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder with respect to the property pledged and assigned hereunder, and all rights, remedies and powers of the Bond Trustee shall continue as if no such proceedings had been taken.

Section 709. Waiver of Events of Default. The Bond Trustee may in its discretion waive any event of default hereunder and its consequences and may rescind any declaration of maturity of principal, and shall do so upon written request of the Holders of (1) at least a majority in aggregate principal amount of all the Outstanding Bonds in respect of which default in the payment of principal and/or interest exists, or (2) at least a majority in aggregate principal amount of all the Outstanding Bonds in the case of any other event of default; provided, however, that there shall not be waived (a) any event of default in the payment of the principal of any Outstanding Bonds when due whether by mandatory Sinking Fund Redemption or at the dates of maturity specified therein or (b) any default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission all arrears of interest, with interest thereon (to the extent permitted by law) at the rate borne by the Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of payments of principal when due, as the case may be, and all expenses of the Bond Trustee and any Paying Agent in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission or in case any proceeding taken by the Bond Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Bond Trustee and the Bondholders shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

Section 710. Borrower's Rights of Possession and Use of Its Property. Whether or not the Borrower is in full compliance with the terms and provisions of the Loan Agreement or an event of default hereunder shall have occurred and be continuing, none of the Issuer, the Bond Trustee, the holders of Bonds [or any receiver appointed pursuant to Section 704 hereof] shall be permitted to possess, use or control the Borrower's Property and appurtenances thereto, which at all times shall be free of claims of the Issuer, the Bond Trustee, the Holders of Bonds [and any such receiver].

Section 711. Notice of Default. In the event of any default hereunder, the Bond Trustee will promptly give written notice thereof to the Issuer and the Borrower setting forth the nature of such default.

Section 712. Extension of Payment: Penalty. In case the time for the payment of principal of or the interest on any Bonds shall be extended, whether or not such extension be by or with the consent of the Issuer, such principal or such interest so extended shall not be entitled in case of default hereunder to the benefit or security of this Indenture except subject to the prior payment in full of the principal of all Bonds then Outstanding and of all interest thereon, the time for the payment of which shall not have been extended.

## ARTICLE VIII

### THE BOND TRUSTEE

Section 801. Acceptance of the Trusts. The Bond Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Bond Trustee, prior to the occurrence of an event of default and after the curing of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants shall be read into this Indenture against the Bond Trustee. In case an event of default has occurred (which has not been cured or waived), the Bond Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in the exercise of such rights and powers as an ordinary, prudent man would exercise or use in the conduct of his own affairs.

(b) The Bond Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers, or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all matters of trusts hereof and duties hereunder, and may in all cases pay such reasonable compensation to any attorney, agent, receiver or employee retained or employed by it in connection herewith. The Bond Trustee may act upon the opinion or advice of an attorney, surveyor, engineer or accountant selected by it in the exercise of reasonable care or, if selected or retained by the Issuer or the Borrower, approved by the Bond Trustee in the exercise of such care. The Bond Trustee shall not be responsible for any loss or damage resulting from any action or nonaction based on its good faith reliance upon such opinion or advice.

(c) The Bond Trustee shall not be responsible for any recital herein, or in the Bonds (except with respect to the certificate of the Bond Trustee endorsed on the Bonds), or for the investment of money as herein permitted as directed by the Issuer (except that no investment shall be made except in compliance with Section 404 hereof), or for the recording or re-recording, filing or re-filing of this Indenture, or any supplement or amendment hereto, or for the validity of the execution by the Issuer of this Indenture, or of any instruments of further assurance, or for the sufficiency of the security for the Bonds

issued hereunder or intended to be secured hereby, or for the value or title of the property herein conveyed or otherwise as to the maintenance of the security hereof. The Bond Trustee may (but shall be under no duty to) require of the Issuer and the Borrower full information and advice as to the performance of the covenants, conditions and agreements in the Loan Agreement and shall make its best efforts, but without any obligation, to advise the Issuer and the Borrower of any impending default known to the Bond Trustee. Except as otherwise provided in Section 703 hereof, the Bond Trustee shall have no obligation to perform any of the duties of the Issuer under the Loan Agreement.

(d) The Bond Trustee shall not be accountable for the use or application by the Issuer or the Borrower of any of the Bonds or the Proceeds thereof or for the use or application of any money paid over by the Bond Trustee in accordance with the provisions of this Indenture or for the use and application of money received by any Paying Agent. The Bond Trustee may become the owner of Bonds secured hereby with the same rights it would have if not Bond Trustee.

(e) The Bond Trustee shall be protected in acting upon any notice, order, requisition, request, consent, certificate, order, opinion (including an opinion of Independent Counsel), affidavit, letter, telegram or other paper or document in good faith deemed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Bond Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Bond Trustee shall be entitled to rely upon a certificate signed on behalf of the Issuer by its President, Chair, Vice Chair, Secretary or Assistant Secretary as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Bond Trustee has been notified as provided in paragraph (h) of this Section, or of which by said paragraph it is deemed to have notice, may accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Bond Trustee may accept a certificate of the President, Chair, Vice Chair, Secretary or Assistant Secretary of the Issuer to the effect that a resolution in the form therein set forth has been adopted by the Issuer as conclusive evidence that such resolution has been duly adopted, and is in full force and effect.

(g) The permissive right of the Bond Trustee to do things enumerated in this Indenture shall not be construed as a duty and the Bond Trustee shall not be answerable for other than its gross negligence or willful default.

(h) The Bond Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the Issuer to cause to be made any of the payments to the Bond Trustee required to be made by Article IV unless the Bond



Trustee shall be specifically notified in writing of such default by the Issuer or by any Holder of any Bond then Outstanding and all notices or other instruments required by this Indenture to be delivered to the Bond Trustee must, in order to be effective, be delivered at the corporate trust office of the Bond Trustee, and in the absence of such notice so delivered the Bond Trustee may conclusively assume there is no default except as aforesaid.

(i) The Bond Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in possession of or managing any Property constituting the Project.

(j) At any and all reasonable times, the Bond Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all books, papers and records of the Issuer pertaining to the Bonds, and to take such memoranda from and in regard thereto as may be desired.

(k) The Bond Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(l) Notwithstanding anything elsewhere in this Indenture contained, the Bond Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any money, the release of any Property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Bond Trustee deemed reasonably necessary for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any money, the release of any Property or the taking of any other action by the Bond Trustee.

(m) Before taking any action under this Article VIII hereof the Bond Trustee may require that a satisfactory security or an indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability.

(n) All money received by the Bond Trustee or any Paying Agent shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law or by this Indenture. Neither the Bond Trustee nor any Paying Agent shall be under any liability for interest on any money received hereunder except such as may be agreed upon.

(o) The Bond Trustee agrees that it will file all continuation statements in such manner and in such places as may be required by law in order to continue any security interest of the Holders of the Bonds and the rights of the Bond Trustee with respect to each financing statement originally filed in connection with the issuance of the Bonds in the jurisdictions where the original financing statements were filed, if any. The Bond Trustee

shall have no responsibility for determining the jurisdictions or the filing requirements to establish perfection of any financing statement proposed to be filed in connection with the issuance of the Bonds.

Section 802. Fees, Charges and Expenses of Bond Trustee and any Additional Paying Agent. The Bond Trustee shall be entitled to payment and/or reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Bond Trustee in connection with such services. The Bond Trustee shall be entitled to payment and/or reimbursement for the reasonable fees and charges of the Bond Trustee as Paying Agent and Bond Registrar for the Bonds as hereinabove provided. Any additional Paying Agent shall be entitled to payment and reimbursement for its reasonable fees and charges as additional Paying Agent for the Bonds. Upon an event of default, but only upon an event of default, the Bond Trustee and any additional Paying Agent shall have a right of payment prior to payment on account of interest or principal of, or premium, if any, on any Bond for the foregoing advances, fees, costs and expenses incurred.

Section 803. Notice to Bondholders if Default Occurs. If a default occurs of which the Bond Trustee is by paragraph (h) of Section 801 hereof required to take notice or if notice of default be given as in said paragraph (h) provided, then the Bond Trustee shall give written notice thereof by mail to the last known owners of all Bonds then Outstanding shown by the Bond Register; provided, however, that if an event of default occurs (other than an event of default under Sections 701(a) and 701(b)) the Bond Trustee may withhold such notice if, in the judgment of the Bond Trustee, such withholding is in the interests of the owners of the Bonds.

Section 804. Intervention by Bond Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Bond Trustee and its counsel has a substantial bearing on the interests of owners of the Bonds, the Bond Trustee may intervene on behalf of Bondholders and, subject to the provisions of Section 801(a) and Section 801(m), shall do so if requested in writing by the owners of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then Outstanding. The rights and obligations of the Bond Trustee under this Section are subject to the approval of a court of competent jurisdiction.

Section 805. Successor Bond Trustee. Any corporation, association or other entity into which the Bond Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation, association or other entity resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, provided such corporation or association is otherwise eligible under Section 806 hereof, shall be and become successor Bond Trustee hereunder and vested with all of the title to the whole property or Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 806. Bond Trustee Required; Eligibility. There shall at all times be a Bond Trustee hereunder which shall be a bank or trust company organized under the laws of the United States of America, the State of Tennessee, or any other state authorized to exercise corporate trust powers, subject to supervision or examination by federal or state authorities, and having a

reported combined capital and surplus of not less than \$100,000,000. If at any time the Bond Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner provided in Section 807 hereof. No resignation or removal of the Bond Trustee and no appointment of a successor Bond Trustee shall become effective until the successor Bond Trustee has accepted its appointment under Section 810 hereof.

Section 807. Resignation by the Bond Trustee. The Bond Trustee and any successor Bond Trustee may at any time resign from the trusts hereby created by giving written notice to the Issuer and the Borrower and by registered or certified mail to each registered owner of Bonds then Outstanding. Such notice to the Issuer and the Borrower may be served personally or sent by registered or certified mail.

Section 808. Removal of the Bond Trustee. The Bond Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Bond Trustee and to the Issuer and signed by the owners of a majority in aggregate principal amount of the Bonds then Outstanding. So long as no event of default has occurred and is continuing under this Indenture or the Loan Agreement and no event shall have occurred which with the passage of time or the giving of notice or both would become an event of default under this Indenture or the Loan Agreement, the Bond Trustee may be removed at any time by an instrument in writing signed by the Issuer and delivered to the Bond Trustee. The foregoing notwithstanding, the Bond Trustee may not be removed by the Issuer unless written notice of the delivery of such instrument or instruments signed by the Issuer is mailed to the owners of all Bonds Outstanding under this Indenture, which notice indicates the Bond Trustee will be removed and replaced by the successor trustee named in such notice (which successor trustee must be consented to by the Issuer), such removal and replacement to become effective on the 90th day next succeeding the date of such notice, unless the owners of not less than ten percent (10%) in aggregate principal amount of the Bonds then Outstanding under this Indenture shall object in writing to such removal and replacement. Such notice shall be mailed by first class mail postage prepaid to the owners of all Bonds then Outstanding at the address of such owners then shown on the Bond Register.

Section 809. Appointment of Successor Bond Trustee by the Bondholders; Temporary Bond Trustee. In case the Bond Trustee hereunder shall resign or be removed, or be dissolved, or shall be in the process of dissolution or liquidation, or otherwise becomes incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed, with the consent of the Issuer, by the owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing signed by such owners, or by their attorneys in fact, duly authorized; provided, however, that in case of such vacancy the Issuer by an instrument executed and signed by its President, Chair, Vice Chair or other authorized officer of the Issuer, may appoint a temporary Bond Trustee to fill such vacancy until a successor Bond Trustee shall be appointed by the Bondholders in the manner above provided; provided, further, that if no permanent successor Bond Trustee shall have been appointed by the Bondholders within the six calendar months next succeeding the month during which the Issuer appoints such a temporary Bond Trustee, such temporary Bond Trustee shall without any further action on the part of the Issuer or the Bondholders become the permanent successor Bond Trustee. The foregoing notwithstanding, any such temporary Bond Trustee so appointed by the Issuer shall immediately

and without further act be superseded by any successor Bond Trustee so appointed by such Bondholders within the six calendar months next succeeding the month during which such temporary Bond Trustee is appointed.

Section 810. Concerning Any Successor Bond Trustees. Every successor Bond Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the Written Request of the Issuer, or of its successor, execute and deliver an instrument transferring to such successor Bond Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Bond Trustee shall deliver all securities and money held by it as Bond Trustee hereunder to its successors. Should any instrument in writing from the Issuer be required by any successor Bond Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Bond Trustee and the instrument or instruments removing any Bond Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article shall be filed and/or recorded by the successor Bond Trustee in each recording office, if any, where this Indenture shall have been filed and/or recorded.

Section 811. Bond Trustee Protected in Relying Upon Resolution, Etc. The resolutions, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Bond Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Bond Trustee for the release of property and the withdrawal of money hereunder.

Section 812. Bond Trustee as Paying Agent and Registrar. The Bond Trustee is hereby designated and agrees to act as principal Paying Agent and Bond Registrar for and in respect to the Bonds.

Section 813. Successor Bond Trustee as Trustee of Funds, Paying Agent and Bond Registrar. In the event of a change in the office of Bond Trustee, the predecessor Bond Trustee which has resigned or been removed shall cease to be trustee of the Debt Service Fund, Optional Redemption Fund, Construction Fund, Costs of Issuance Fund, and any other funds provided hereunder and Bond Registrar and Paying Agent for principal of, premium, if any, and interest on the Bonds, and the successor Bond Trustee shall become such Bond Trustee, Bond Registrar and Paying Agent unless a separate Paying Agent or Agents are appointed by the Issuer in connection with the appointment of any successor Bond Trustee.

Section 814. Required Bond Trustee Reports. The Bond Trustee shall deliver a report to the Issuer, the Borrower and the State of Tennessee thirty days following the end of each calendar quarter (March 31, June 30, September 30 and December 31) detailing the following information for the prior calendar quarter, or more frequently with respect to any shorter period: a statement of all funds (including investments thereof) held by such Bond Trustee and the Issuer pursuant to the

provisions hereof; a statement of all payments made by the Borrower pursuant to the Loan Agreement collected in connection herewith.

Section 815. List of Bondholders. The Bond Trustee, in its capacity as Bond Registrar, shall keep on file at its office the Bond Register. At reasonable times and under reasonable regulations established by the Bond Registrar, said Bond Register may be inspected and copied by the Borrower, the Issuer or the authorized representative of any Holder or Holders of ten percent or more in principal amount of the Bonds Outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Bond Registrar.

## ARTICLE IX

### SUPPLEMENTAL INDENTURES

Section 901. Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Bond Trustee may, without the consent of, or notice to, any of the Bondholders, enter into a Supplemental Indenture or Supplemental Indentures, as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Indenture;
- (b) to grant to or confer upon the Bond Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders and the Bond Trustee, or either of them;
- (c) to assign and pledge under this Indenture additional revenues, properties or collateral;
- (d) to evidence the appointment of a separate co-trustee or the succession of a new trustee hereunder;
- (e) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification of this Indenture under the Trust Indenture Act of 1939, as then amended, or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any state of the United States of America;
- (f) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the exchange of Bonds from registered form to coupon form and vice versa;
- (g) to make any other change that, in the judgment of the Bond Trustee, does not materially adversely affect the rights of any Bondholders.

Section 902. Supplemental Indentures Requiring Consent of Bondholders. In addition to Supplemental Indentures covered by Section 901 hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Holders of not less than a majority in aggregate principal amount of the Bonds which are Outstanding hereunder at the time of the execution of

such Supplemental Indenture, or, in the case that less than all of the several series of Bonds Outstanding are affected thereby, the Holders of not less than a majority in aggregate principal amount of the Bonds of each series so affected which are Outstanding at the time of such execution, shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Bond Trustee of such Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that if such modification, alteration, amendment or addition will, by its terms, not take effect so long as any Bonds remain Outstanding, the consent of the Holders of such Bonds shall not be required; provided, further, that nothing in this Section contained shall permit, or be construed as permitting, a Supplemental Indenture to effect: (a) an extension of the stated maturity or reduction in the principal amount of, or reduction in the rate or extension of the time of paying of interest on, or reduction of any premium payable on the redemption of, any Bonds, without the consent of the Holders of such Bonds; (b) a reduction in the amount or extension of the time of any payment required to be made to or from the Debt Service Fund or any interest or Sinking Fund Redemption applicable to any Bonds without consent of the Holders of such Bonds; (c) the creation of any Lien prior to or on a parity with the lien of this Indenture, without the consent of the Holders of all the Bonds at the time Outstanding; (d) a reduction in the aforesaid aggregate principal amount of Bonds the Holders of which are required to consent to any such Supplemental Indenture or any action permitted by Section 709 hereof, without the consent of the Holders of all the Bonds at the time Outstanding which would be affected by the action to be taken; or (e) a modification of the rights, duties or immunities of the Bond Trustee, without the written consent of the Bond Trustee. Holders of Bonds issued at the time of the execution of any amendatory Supplemental Indenture or thereafter may be deemed to have consented to any amendment described in such amendatory Supplemental Indenture if so provided by the Supplemental Indenture authorizing the issuance thereof.

If at any time the Issuer shall request the Bond Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Bond Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such Supplemental Indenture to be sent to each Holder of Bonds affected thereby as shown on the Bond Register. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the principal corporate trust office of the Bond Trustee for inspection by all Bondholders. The Bond Trustee shall not, however, be subject to any liability to any Bondholder by reason of its failure to give such notice to such Bondholder or a defect in the notice given to such Bondholder, and any such failure or defect as to any Bondholder shall not affect the validity of such Supplemental Indenture when consented to and approved as provided in this Section. If the Holders of the requisite principal amount of Bonds which are Outstanding hereunder at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Bond Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such Supplemental Indenture as in

this Section permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

Section 903. Supplemental Indentures Generally. Anything herein to the contrary notwithstanding, so long as the Borrower is not in default under the Loan Agreement, a Supplemental Indenture under this Article IX which adversely affects the rights of the Borrower under the Loan Agreement shall not become effective unless and until the Borrower shall have consented in writing to the execution and delivery of such Supplemental Indenture. In this regard, the Bond Trustee shall cause notice of the proposed execution and delivery of any such Supplemental Indenture to which the Borrower has not already consented, together with a copy of the proposed Supplemental Indenture and a written consent form to be signed by the Borrower, to be mailed by certified or registered mail to the Borrower at least thirty days prior to the proposed date of execution and delivery of any such Supplemental Indenture.

Before the Issuer and the Bond Trustee enter into any supplement to this Indenture, the Issuer or the Bond Trustee may request that the Borrower deliver to the Bond Trustee and the Issuer an Opinion of Bond Counsel to the effect that (i) such supplement is authorized or permitted by the Act and is authorized under this Indenture, (ii) such supplement to this Indenture will, upon the execution and delivery thereof, be valid, binding and enforceable in accordance with its terms, and (iii) such supplement will not adversely affect the exclusion from gross income of the interest on any Bond for purposes of federal income taxation of the Holder of any Bond.

## ARTICLE X

### AMENDMENTS TO THE LOAN AGREEMENT

Section 1001. Amendments, Etc. Not Requiring Consent. The Issuer, the Borrower and the Bond Trustee may, without the consent of or notice to the Holders of the Bonds, consent to any amendment, change or modification of the Loan Agreement as may be required or permitted (i) by the provisions of this Indenture or the Loan Agreement, (ii) for the purpose of curing any ambiguity or formal defect or omission, or (iii) in connection with any other change therein which, in the judgment of the Bond Trustee, is not to the prejudice of the Bond Trustee or, in the case of an amendment to the Loan Agreement, the Holders of the Outstanding Bonds.

Section 1002. Amendments, Etc. Requiring Consent of Bondholders. (a) Except for the amendments, changes or modifications as provided in Section 1001 hereof, neither the Issuer nor the Bond Trustee shall consent to any other amendment, change or modification of the Loan Agreement without the written approval or consent, given and procured as in this Section provided, of the Holders of not less than a majority in aggregate principal amount of the Bonds which are Outstanding hereunder at the time of execution of any such amendment, change or modification, or in case less than all of the of the Bonds then Outstanding are affected thereby, the Holders of not less than a majority in aggregate principal amount of the Bonds so affected which are Outstanding hereunder at the time of execution of any such amendment, change or modification; provided, however, that if such amendment, change or modification will, by its terms, not take effect so long as any Bonds remain Outstanding, the consent of the Holders of such Bonds shall not be required. If at any time the Issuer and the Borrower shall request the consent of the Bond Trustee to any such proposed amendment, change or modification of the

Loan Agreement, the Bond Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be in the same manner as provided by Section 902 hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal corporate trust office of the Bond Trustee for inspection by all Bondholders. The Bond Trustee shall not, however, be subject to any liability to any Bondholder by reason of its failure to give such notice to such Bondholder or a defect in the notice given to such Bondholder, and any such failure or defect as to any Bondholder shall not affect the validity of such amendment, change or modification when consented to and approved as provided in this Section. If the Holders of not less than a majority in aggregate principal amount of the Bonds Outstanding hereunder at the time of the execution of any such amendment, change or modification of the Loan Agreement (or, in either case, the Holders of not less than a majority in aggregate principal amount of the Bonds so affected then Outstanding, as the case may be) shall have consented to and approved the execution thereof as herein provided, no Holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Borrower, the Bond Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

Section 1003. No Amendment May Alter Borrower Payments. Under no circumstances shall any amendment to the Loan Agreement alter the amount or delay the time of payments required to be made by the Borrower thereunder on account of the principal, premium, if any, and interest on the Bonds without the consent of the Holders of all the Outstanding Bonds.

Section 1004. Bond Counsel Opinion. Before the Issuer and Bond Trustee consent to any amendment to the Loan Agreement, the Issuer or the Bond Trustee may request that the Borrower deliver to the Bond Trustee and the Issuer an Opinion of Bond Counsel to the effect that such amendment is authorized or permitted by the Act and this Indenture, and that such amendment will, upon the execution and delivery thereof, be valid, binding and enforceable in accordance with its terms.

## ARTICLE XI

### SATISFACTION OF THIS INDENTURE

Section 1101. Defeasance. If the Issuer shall pay or provide for the payment of the entire indebtedness on all Bonds Outstanding in any one or more of the following ways:

(a) by paying or causing to be paid the principal of (including redemption premium, if any) and interest on all Bonds Outstanding, as and when the same become due and payable;

(b) by depositing with the Bond Trustee, in trust, at or before maturity, money in an amount sufficient to pay or redeem (when redeemable) all Bonds Outstanding (including the payment of premium, if any, and interest payable on such Bonds to the maturity or Redemption Date thereof), provided that such money, if



invested, shall be invested in Escrow Obligations in an amount, without consideration of any income or increment to accrue thereon, sufficient to pay or redeem (when redeemable) and discharge the indebtedness on all Bonds Outstanding at or before their respective maturity dates; it being understood that the investment income on such Escrow Obligations may be used by or for the benefit of the Borrower for any other purpose under the Act provided that the Bond Trustee shall be permitted to rely upon a verification report acceptable to the Bond Trustee and the Issuer as conclusive evidence of the sufficiency of the amount of such deposit;

(c) addition to that by the terms hereof required as a condition of such action by the Bond Trustee

(d) by depositing with the Bond Trustee, in trust, Escrow Obligations in such amount as the Bond Trustee shall determine will, together with the income or increment to accrue thereon, without consideration of any reinvestment thereof, and with any money so deposited which is to remain uninvested, be fully sufficient to pay or redeem (when redeemable) and discharge the indebtedness on all Bonds Outstanding at or before their respective maturity dates, provided that the Bond Trustee shall be permitted to rely upon an independent certified public accountant's or financial analyst's verification report acceptable to the Bond Trustee and the Issuer as conclusive evidence of the sufficiency of the amount of such deposit;

and if the Issuer shall pay or cause to be paid all other sums payable hereunder by the Issuer, this Indenture and the estate and rights granted hereunder shall cease, determine, and become null and void, and thereupon the Bond Trustee shall, upon Written Request of the Issuer, and upon receipt by the Bond Trustee of a Borrower Officer's Certificate and an Opinion of Counsel, each stating that in the opinion of the signers all conditions precedent to the satisfaction and discharge of this Indenture have been complied with, forthwith execute proper instruments acknowledging satisfaction of and discharging this Indenture and the lien hereof. The satisfaction and discharge of this Indenture shall be without prejudice to the rights of the Bond Trustee to charge and be reimbursed by the Issuer and the Borrower for any expenditures which it may thereafter incur in connection herewith.

Any money, funds, securities, or other property remaining on deposit in the Debt Service Fund, Optional Redemption Fund, Construction Fund, Costs of Issuance Fund, or in any other fund or investment under this Indenture (other than said Escrow Obligations or other money deposited in trust as above provided) may be deposited with the Bond Trustee pursuant to paragraph (b) or (d) of this Section, upon the Written Request of the Borrower, and, upon the full satisfaction of this Indenture, shall forthwith be transferred, paid over and distributed to the Borrower.

The Issuer or the Borrower may at any time surrender to the Bond Trustee for cancellation by it any Bonds previously authenticated and delivered, which the Issuer or the Borrower may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

Section 1102. Liability of Issuer Not Discharged. Upon the deposit with the Bond Trustee, in trust, at or before maturity, of money or Escrow Obligations in the necessary amount to pay or redeem all Outstanding Bonds (whether upon or prior to their maturity or the Redemption Date of such Bonds) and compliance with the other payment requirements of Section 1101 hereof, provided that, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article V herein provided, or irrevocable instructions to redeem such Bonds shall have been given and provisions satisfactory to the Bond Trustee shall have been made for the giving of such notice, this Indenture may be discharged in accordance with the provisions hereof but the liability of the Issuer upon the Bonds shall continue provided that the Holders thereof shall thereafter be entitled to payment only out of the money or the Escrow Obligations deposited with the Bond Trustee as aforesaid.

Section 1103. Provision for Payment of all Bonds or any Portion Thereof. If the Issuer shall pay or provide for the payment of the entire indebtedness on all Bonds, or any portion thereof, in any one or more of the following ways:

(a) by paying or causing to be paid the principal of (including premium, if any) and interest on all Bonds Outstanding or any such portion thereof, as and when the same shall become due and payable;

(b) by depositing with the Bond Trustee, in trust, at or before maturity, money in an amount sufficient to pay or redeem (when redeemable) all Bonds Outstanding or any such portion thereof (including the payment of premium, if any, and interest payable on such Bonds to the maturity or Redemption Date thereof), provided that such money, if invested, shall be invested in Escrow Obligations in an amount, without consideration of any income or increment to accrue thereon, sufficient to pay or redeem (when redeemable) and discharge the indebtedness on all Bonds Outstanding or any such portion thereof at or before their respective maturity dates; it being understood that the investment income on such Escrow Obligations may be used by or for the benefit of the Borrower for any other purpose under the Act provided that the Bond Trustee shall be permitted to rely upon an independent certified public accountant's or financial analyst's verification report acceptable to the Bond Trustee and the Issuer as conclusive evidence of the sufficiency of the amount of such deposit;

(c) by delivering to the Bond Trustee, for cancellation by it, all Bonds Outstanding or any such portion thereof; or

(d) by depositing with the Bond Trustee, in trust, Escrow Obligations in such amount as the Bond Trustee shall determine will, together with the income or increment to accrue thereon, without consideration of any reinvestment thereof, and with any money so deposited which is to remain uninvested, be fully sufficient to pay or redeem (when redeemable) and discharge the indebtedness on all Bonds or any such portion thereof at or before their respective maturity dates, provided that the Bond Trustee shall be permitted to rely upon an independent certified public accountant's or financial analyst's verification report acceptable to the Bond Trustee and the Issuer as conclusive evidence of the sufficiency of the amount of such deposit;

and if the Issuer shall also pay or cause to be paid all other sums payable hereunder by the Issuer with respect to the Bonds or any such portion thereof, and, if the Bonds or any such portion thereof are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article V of this Indenture provided or provisions satisfactory to the Bond Trustee shall have been made for the giving of such notice, such Bonds shall cease to be entitled to any lien, benefit or security under this Indenture. The liability of the Issuer in respect of such Bonds shall continue but the Holders thereof shall thereafter be entitled to payment (to the exclusion of all other Bondholders) only out of the money or Escrow Obligations deposited with the Bond Trustee as aforesaid.

## **ARTICLE XII**

### **MANNER OF EVIDENCING OWNERSHIP OF BONDS**

Section 1201. Proof of Ownership. Any request, direction, consent or other instrument provided by this Indenture to be signed and executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such request, direction or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture and shall be conclusive in favor of the Bond Trustee and the Issuer, with regard to any action taken by them, or either of them, under such request or other instrument, namely:

(a) the fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments in such jurisdiction, that the person signing such writing acknowledged before him the execution thereof, or by the affidavit of a witness of such execution; and

(b) the ownership of Bonds and the amounts and registration numbers of such Bonds and the date of holding the same shall be proved by the Bond Register.

Any action taken or suffered by the Bond Trustee pursuant to any provision of this Indenture, upon the request or with the assent of any person who at the time is the Holder of any Bond or Bonds, shall be conclusive and binding upon all future Holders of the same Bond or Bonds.

## **ARTICLE XIII**

### **MISCELLANEOUS**

Section 1301. Limitation of Rights; Borrower as Third-Party Beneficiary. With the exception of rights expressly conferred by this Section, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person other than the parties hereto, the Holders of the Bonds and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and

the Holders of the Bonds as herein provided. Notwithstanding the foregoing, to the extent that this Indenture specifically grants certain rights to the Borrower, the Borrower may enforce such rights as a third-party beneficiary.

Section 1302. Unclaimed Money. Any money deposited with the Bond Trustee by the Issuer in order to redeem or pay any Bond in accordance with the provisions of this Indenture which remain unclaimed by the Holders of the Bond for four years after the redemption or maturity date, as the case may be, shall, if the Issuer is not at the time, to the knowledge of the Bond Trustee, in default with respect to any of the terms and conditions of this Indenture or the Bonds, be paid by the Bond Trustee to the Borrower upon its written request therefor; and thereafter the Holders of the Bond shall be entitled to look only to the Borrower for payment thereof. Investment income on any such unclaimed money received by the Bond Trustee shall be deposited as provided in Section 404 hereof until the final maturity or Redemption Date of the Bonds. Any such income generated after such date shall be deemed to be unclaimed money of the type referred to in the first sentence of this Section and shall be disposed of in accordance with such sentence. The Issuer hereby covenants and agrees to indemnify and save the Bond Trustee harmless from any and all loss, costs, liability and expense suffered or incurred by the Bond Trustee by reason of having returned any such money to the Issuer as herein provided.

Section 1303. Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or Sections in this Indenture contained, shall not affect the remaining portions of this Indenture, or any part thereof.

Section 1304. Notices. Except as otherwise provided in this Indenture, it shall be sufficient service of any notice, request, complaint, demand or other paper on the following parties if the same shall be duly mailed by registered or certified mail and addressed as follows:

To the Issuer:

Economic Development Growth Engine  
Industrial Development Board of the  
City of Memphis and County of Shelby, Tennessee  
100 Peabody Place, Suite 1100  
Memphis, Tennessee 38103  
Attention: President

With a copy to:

Farris Bobango Branan PLC

999 S. Shady Grove Road, Suite 500  
Memphis, Tennessee 38120  
Attention: Stephen L. Anderson, Esq.

To the Bond Trustee:

Regions Bank  
Corporate Trust Services  
150 Fourth Avenue North, Suite 1500  
Nashville, Tennessee 37219  
Attention: Corporate Trust Services

To the Borrower:

City of Memphis, Tennessee  
125 North Main Street, Room 368  
Memphis, Tennessee 38103  
Attention: Chief Financial Officer/Director of Finance

With a copy to:

City of Memphis, Tennessee  
125 North Main Street, Room 336  
Memphis, Tennessee 38103  
Attention: Chief Legal Officer/City Attorney

Section 1305. Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1306. Applicable Law. This Indenture shall be governed exclusively by the applicable laws of the State of Tennessee.

Section 1307. Immunity of Officers, Employees and Members of Issuer. No recourse shall be had for the payment of the principal of or premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this Indenture contained against any past, present or future officer, director, member, employee or agent of the Issuer, or of any successor public corporation, as such, either directly or through the Issuer or any successor public corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, directors, members, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture and the issuance of such Bonds. Notwithstanding any other provision of this Indenture, the Issuer shall not be liable to any person for any failure of the Issuer to take action under this Indenture unless the Issuer (a) is requested in writing by an appropriate person to take such action, (b) is assured of payment of, or reimbursement for, any reasonable expenses in connection with such action, and (c) is afforded,

under the existing circumstances, a reasonable period to take such action and reasonable indemnity for taking such action.

Section 1308. Holidays. If the date for making any payment or the date for performance of any act or the exercising of any right, as provided in this Indenture, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Indenture and, in the case of payment of principal, premium, if any, or interest, without additional interest.

[Signature Page Follows]

IN WITNESS WHEREOF, THE ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE has caused these presents to be signed in its name and on its behalf by its President and, to evidence its acceptance of the trusts hereby created, Regions Bank has caused these presents to be signed in its name and on its behalf by one of its authorized signatories, all as of the day and year first above written.

**ECONOMIC DEVELOPMENT  
GROWTH ENGINE INDUSTRIAL  
DEVELOPMENT BOARD OF THE CITY  
OF MEMPHIS AND COUNTY OF  
SHELBY, TENNESSEE**

By: \_\_\_\_\_  
[NAME]  
Chair

**REGIONS BANK, as Bond Trustee**

By: \_\_\_\_\_  
[NAME]  
Authorized Signatory

[Signature Page to Trust Indenture]

**EXHIBIT A**

**FORM OF BOND**

No. 2021 R-\_\_

\$ \_\_\_\_\_

As provided in the Indenture referred to herein, until the termination of the system of Book-Entry-Only transfers through The Depository Trust Company (together with any successor securities depository appointed pursuant to the Indenture, "DTC") and notwithstanding any other provision of the Indenture to the contrary, a portion of the principal amount of this bond may be paid or redeemed without surrender hereof to the Paying Agent. DTC or a nominee, transferee or assignee of DTC as owner of this bond may not rely upon the principal amount indicated hereon as the principal amount hereof outstanding and unpaid. The principal amount hereof outstanding and unpaid shall for all purposes be the amount determined in the manner provided in the Indenture and indicated on the books of the Bond Trustee.

**UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE BOND TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUIRED BY AN AUTHORIZED REPRESENTATIVE OF DTC AND ANY PAYMENT IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSONS IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.**

**UNITED STATES OF AMERICA  
STATE OF TENNESSEE  
ECONOMIC DEVELOPMENT GROWTH ENGINE  
INDUSTRIAL DEVELOPMENT BOARD OF THE  
CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE  
ECONOMIC DEVELOPMENT BONDS (CITY OF MEMPHIS PROJECT), SERIES  
2021**

| <u>Dated Date</u> | <u>Maturity Date</u> | <u>Interest Rate</u> | <u>CUSIP NO.</u> |
|-------------------|----------------------|----------------------|------------------|
| _____             | _____                | _____ %              | _____            |

REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM: \_\_\_\_\_ DOLLARS



The ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE (the "Issuer"), a public nonprofit corporation created under Sections 7-53-101 *et seq.*, Tennessee Code Annotated, as amended (the "Act"), for value received, hereby promises to pay in lawful money of the United States of America to Regions Bank, or registered assigns, on the maturity date specified above, unless this Bond shall be redeemed and shall have previously been called for redemption and payment of the redemption price made or provided for, but solely from (i) amounts payable under the Loan Agreement dated as of \_\_\_\_\_, 20\_\_, by and between the City of Memphis, Tennessee (the "Borrower") and the Issuer (the "Loan Agreement"); and (ii) other funds held under the Trust Indenture dated as of \_\_\_\_\_, 2021 (the "Indenture"), by and between the Issuer and Regions Bank, as bond trustee (the "Bond Trustee"), specified therefor and not otherwise, upon surrender hereof, the principal sum set forth above and to pay interest (computed on the basis of a 360-day year of twelve 30-day months) on such principal amount in like manner, but solely from amounts payable under the Loan Agreement and other funds held under the Indenture specified therefor, from the Interest Payment Date (hereinafter defined) next preceding the date of authentication to which interest shall have been paid, unless such date of authentication is an Interest Payment Date, in which case from such Interest Payment Date if interest has been paid to such date, provided that such interest shall be payable from the dated date specified above if the date of authentication is prior to the first Interest Payment Date, at the rate per annum specified above, payable on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1 beginning with \_\_\_\_\_ 1, 20\_\_ (each such date being an "Interest Payment Date"), until payment of such principal amount, or provision therefor, shall have been made upon redemption or at maturity. The principal on this Bond and the premium, if any, payable upon redemption, are payable at the designated corporate trust office of Regions Bank, as bond trustee under the Indenture. Interest payments hereon shall be made on each Interest Payment Date to the registered owners hereof appearing on the registration books of the Issuer (the "Bond Register") maintained by the Bond Trustee, as bond registrar, as of the close of business of the Bond Trustee on the 15th day (whether or not a business day) of the calendar month next preceding each \_\_\_\_\_ 1 and \_\_\_\_\_ 1 (the "Record Date") and shall be paid (i) by check or draft of the Bond Trustee mailed on the Interest Payment Date to such registered owner at such owner's address as it appears on the Bond Register or at such other address furnished to the Bond Trustee in writing by such registered owner or (ii) in the case of an interest payment on the Bonds (as hereinafter defined) to any such registered owner of \$1,000,000 or more in aggregate principal amount of Bonds as of the close of business of the Bond Trustee on the Record Date for a particular Interest Payment Date, by wire transfer to such registered owner upon written request from such registered owner, which written request contains the wire transfer address (which shall be in the continental United States) to which such registered owner wishes to have such wire directed and which written request is received not less than 15 days prior to such Record Date (it being understood that such request may refer to multiple interest payments).

The Bonds, including this Bond, are issued pursuant to and in full compliance with the Constitution and laws of the State of Tennessee, particularly the Act, and pursuant to a resolution adopted and approved by the Issuer, which resolution authorized the execution and delivery of the Indenture. The Bonds and the interest payable thereon do not give rise to a pecuniary liability of the Issuer, the Borrower, the County of Shelby or the State of Tennessee or any political subdivision thereof (except to the extent that the Borrower is obligated under the Loan

Agreement) or a charge against the general credit or taxing powers of the Issuer, the Borrower, the County of Shelby, the State of Tennessee or any political subdivision thereof and such Bonds and the interest payable thereon do not now and shall never constitute a debt of the Issuer, the Borrower, the County of Shelby, the State of Tennessee or any political subdivision thereof within the meaning of any constitutional or statutory provision whatsoever. None of the Borrower, the County of Shelby nor the State of Tennessee nor any political subdivision thereof shall in any event be liable for the payment of the principal of, premium, if any, or interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the Issuer (except to the extent that the Borrower is obligated under the Loan Agreement). No breach by the Issuer of any such pledge, mortgage, obligation or agreement may impose any liability, pecuniary or otherwise, upon the Borrower, the County of Shelby or the State of Tennessee or any political subdivision thereof or any charge upon its general credit or its taxing power. The Issuer has no taxing power.

The Bonds, including this Bond, and the interest payable hereon and thereon, are limited obligations of the Issuer and are payable solely from and to the extent of (i) amounts payable under the Loan Agreement, including Non-Property Tax Revenues (as defined in the Indenture) of the Borrower pledged to the payment of the Bonds (other than fees and expenses of the Issuer and the Issuer's right to indemnification in certain circumstances), and (ii) moneys on deposit in any fund held under the Indenture.

This Bond is one of an authorized series of Bonds (hereinafter defined) in the aggregate principal amount of \$ \_\_\_\_\_ designated Economic Development Bonds (City of Memphis Project), Series 2021 (the "Bonds"), issued under the Indenture for the purpose of loaning funds to the Borrower, which will be used to (i) pay Costs of the Project, and (ii) pay costs associated and incurred in connection with the issuance of the Bonds, all as permitted under the Act.

The Bonds are all issued under and equally and ratably secured solely by and entitled to the security of the Indenture, duly executed and delivered by the Issuer to the Bond Trustee, and all of the right, title and interest of the Issuer in and to the Loan Agreement (excluding the right of the Issuer to receive payment of its fees and expenses, the Issuer's right to indemnification in certain circumstances and the Issuer's right to approve, execute and deliver supplements and amendments to the Loan Agreement), are assigned by the Issuer to the Bond Trustee as security for the Bonds. Reference is made to the Indenture, to the Loan Agreement and to all amendments thereto for the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer, the Bond Trustee and the rights of the holders of the Bonds, and to all the provisions of which the holder hereof by the acceptance of this Bond assents.

This Bond is registered on the Bond Register and may be transferred by the registered owner hereof at the written request of such registered owner in person or by his duly authorized attorney, but only in the manner, subject to the limitations and upon the payment of the charges provided in the Indenture and upon surrender and cancellation of this Bond. Upon such transfer, a new fully registered bond or bonds, without coupons, of the same maturity and of authorized denominations for the same aggregate principal amount, shall be issued to the transferee in exchange therefor. Except as otherwise provided in the Indenture, the Issuer, the Bond Trustee and any paying agent may deem and treat the person in whose name this Bond is registered as

the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal, redemption premium, if any, and interest due hereon and for all other purposes, and neither the Issuer nor the Bond Trustee nor any paying agent shall be affected by any notice to the contrary. The Issuer and the Bond Trustee shall not be required to register the transfer of or exchange any Bond after notice calling such Bond or portion thereof for redemption has been given as provided in the Indenture or during the 15-day period next preceding the first mailing of such notice of redemption.

The Bonds are issuable only as registered Bonds, in denominations of \$5,000 and integral multiples thereof.

[The Bonds maturing on \_\_\_\_\_ 1, \_\_\_\_ and \_\_\_\_\_ 1, \_\_\_\_ are subject to mandatory Sinking Fund Redemption, prior to maturity, in part, on \_\_\_\_\_ 1 of the respective years and in the respective principal amounts set forth below, at a redemption price equal to the principal amount of Bonds, plus accrued interest to the date of redemption.

| % Series ____ Bonds Maturing<br>1, xxxx | % Series ____ Bonds Maturing<br>1, xxxx |
|---|---|
| <u>Year</u>                             | <u>Year</u>                             |
| <u>Principal<br/>Amount</u>             | <u>Principal<br/>Amount</u>             |

Payment or redemption of Bonds through the mandatory Sinking Fund Redemption shall be without premium. In the event the Bonds maturing on a specific date as aforesaid have been fully paid and sufficient money is on deposit in the Debt Service Fund to redeem Bonds maturing on that specific maturity date, then such money on deposit in the Debt Service Fund shall be applied to retirement of Bonds maturing on the next succeeding maturity date in the order above set forth. The Bonds shall be redeemed by the Bond Trustee pursuant to the provisions of this paragraph without any notice from or direction by the Issuer or the Borrower.

The principal amount of any Bonds of a maturity entitled to mandatory Sinking Fund Redemption purchased with money in the Debt Service Fund in accordance with the Indenture, as applicable, will be credited against and in satisfaction of the mandatory Sinking Fund Redemption of the Bonds of such maturity payable on the November 1 next succeeding the date such Bonds were so purchased. In addition, the principal amount of Bonds of a maturity entitled to mandatory Sinking Fund Redemption that are (A) redeemed at the option of the Issuer, (B) purchased by the Borrower or the Issuer and delivered to the Bond Trustee for cancellation or (C) defeased in accordance with the Indenture shall be applied in satisfaction, in whole or in part, of one or more Sinking Fund Redemptions as the Borrower, in its discretion, may direct in a Written Request to the Bond Trustee.

The Bonds maturing on or after \_\_\_\_\_ 1, \_\_\_\_ are subject to redemption prior to maturity upon the Written Request of the Borrower at any time on or after \_\_\_\_\_ 1, \_\_\_\_ out of amounts deposited in the Optional Redemption Fund, in whole or in part from time to time in any order of maturity determined by the Borrower, on any date, at a redemption price equal to one hundred percent (100%) of the principal amount of Bonds to be redeemed, plus accrued interest thereon to the date of redemption.

If less than all of the Outstanding Bonds of a maturity are to be redeemed, the Bonds of such maturity to be redeemed shall be selected as provided in the Indenture.

In lieu of redeeming Bonds other than by Sinking Fund Redemption, the Borrower may use such money otherwise available under the Indenture for redemption of Bonds to purchase Bonds in the open market at a price not exceeding the redemption price then applicable under the Indenture, plus accrued interest to the date of purchase, and direct the Bond Trustee to apply such money to the payment of the purchase price of the Bonds so purchased. The Bonds so purchased shall be delivered to the Bond Trustee for cancellation and the Issuer shall receive credit for any such Bonds so purchased in the same manner as if such Bonds had been redeemed.

In the event any of the Bonds are called for redemption as aforesaid, notice thereof identifying the Bonds to be redeemed will be given by mailing a copy of such notice of redemption to the registered owners of the Bonds not less than thirty or more than sixty days prior to the Redemption Date to the address shown on the Bond Register as of the close of business of the \_\_\_\_ business day prior to the giving of such notice.

Failure to give any notice of redemption by mailing or a defect in such notice or the mailing as to any Bond shall not affect the validity of any proceedings for redemption as to any other Bond with respect to which notice was properly given. Failure of any registered owner to receive any mailed notice of redemption shall not affect the sufficiency or validity of the proceedings for the redemption of the related Bonds.

Except for a mandatory Sinking Fund Redemption pursuant to the Indenture, any notice of redemption may state that it is conditioned upon the receipt by the Bond Trustee of sufficient moneys to pay the redemption price, plus interest accrued and unpaid to the Redemption Date, or upon satisfaction of any other condition, or that it may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before payment of such redemption price and accrued interest if any such condition so specified is not satisfied or if any other such event occurs. Notice of such rescission shall be given to affected registered owners of Bonds as promptly as practicable upon the failure of such condition or the occurrence of such other event, and shall be given in the same manner as the notice of redemption was given.

If a notice of redemption is given in accordance with the provisions of the Indenture, subject to rescission of any conditional notice, the Bonds, or portions thereof, thus called shall not bear interest after the applicable Redemption Date, shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

The Issuer may also pay or provide for the payment of the entire indebtedness on all the Bonds or any portion thereof by: (a) paying or causing to be paid the principal of, and interest on, all Bonds Outstanding, as and when the same become due and payable; (b) depositing with the Bond Trustee, in trust, at or before maturity, money in an amount sufficient to pay or redeem (when redeemable) all Bonds Outstanding (including the payment of premium, if any, and interest payable on such Bonds to the maturity or Redemption Date thereof), provided that such money, if invested, shall be invested in Escrow Obligations in an amount, without consideration of any income or increment to accrue thereon, sufficient to pay or redeem (when redeemable)

and discharge the indebtedness on all Bonds Outstanding at or before their respective maturity dates; it being understood that the investment income on such Escrow Obligations may be used by or for the benefit of the Borrower for any other purpose under the Act provided that the Bond Trustee shall be permitted to rely upon an independent certified public accountant's or financial analyst's verification report acceptable to the Bond Trustee and the Issuer as conclusive evidence of the sufficiency of the amount of such deposit; (c) by delivering to the Bond Trustee, for cancellation by it, all Bonds Outstanding, or (d) by depositing with the Bond Trustee, in trust, Escrow Obligations in such amount as the Bond Trustee shall determine will, together with the income or increment to accrue thereon, without consideration of any reinvestment thereof, and with any money so deposited which is to remain uninvested, be fully sufficient to pay or redeem (when redeemable) and discharge the indebtedness on all Bonds Outstanding at or before their respective maturity dates, provided that the Bond Trustee shall be permitted to rely upon an independent certified public accountant's or financial analyst's verification report acceptable to the Bond Trustee and the Issuer as conclusive evidence of the sufficiency of the amount of such deposit. Upon such deposit, such Bonds Outstanding thereof shall cease to be entitled to any lien, benefit or security under the Indenture. The liability of the Issuer shall continue but the holders thereof shall thereafter be entitled to payment (to the exclusion of all other Bondholders) only out of the moneys or Escrow Obligations deposited with the Bond Trustee.]<sup>1</sup>

The owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. ***In no event may the principal of any Bonds be declared to be immediately due and payable upon the occurrence of any Event of Default under the Indenture.*** Modifications or alterations of the Indenture, or of any supplements thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the Act and under the Indenture precedent to and in the issuance of this Bond, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Bond have been duly authorized by resolution of the Issuer duly adopted.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in the Indenture contained, against any past, present or future officer, director, member, employee or agent of the Issuer, or any incorporator, officer, director, member, trustee, employee or agent of any successor public corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporators, officers, directors, trustees, members, employees or agents, as such, is hereby expressly waived and released as a condition of and consideration for the execution of the Indenture and the issuance of any of the Bonds.

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<sup>1</sup> Confirm provisions.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication hereon shall have been duly executed by the Bond Trustee by manual signature.

IN WITNESS WHEREOF, as provided by the Act, the ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE has caused this Bond to be executed in its name and on its behalf by the signatures of its President and Secretary, all as of the dated date specified above.

ECONOMIC DEVELOPMENT GROWTH  
ENGINE INDUSTRIAL DEVELOPMENT  
BOARD OF THE CITY OF MEMPHIS  
AND COUNTY OF SHELBY, TENNESSEE

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the within-mentioned Indenture.

Authentication Date: \_\_\_\_\_, 20\_\_.

REGIONS BANK, as Bond Trustee

By: \_\_\_\_\_  
Authorized Officer



**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

\_\_\_\_\_  
(Name and Address of Assignee)  
the within Bond and does hereby irrevocably constitute and appoint  
\_\_\_\_\_, Attorney, to transfer the said Bond on  
the Bond Register thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever. Furthermore, such signature must be guaranteed by a member firm of a Medallion Program acceptable to the Bond Trustee.

**EXHIBIT B**

**FORM OF PROJECT COST REQUISITION**

**REQUISITION # \_\_\_\_\_**

Regions Bank  
Corporate Trust Services  
150 Fourth Avenue North, Suite 1500  
Nashville, Tennessee 37219  
Attention: Corporate Trust Services

Re: Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee Economic Development Bonds (City of Memphis Project), Series 2021

Ladies and Gentlemen:

In connection with the Construction Fund established under a Trust Indenture dated as of \_\_\_\_\_, 2021 (the "Indenture") by and between the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee and Regions Bank, as Trustee, as may be amended and supplemented to the date hereof, the undersigned Authorized Officer of the City of Memphis, Tennessee (the "Borrower") hereby requests disbursement from the Construction Fund to each of the following payees in the respective amounts and for the respective purposes set forth below.

**[INSERT THE NAME OF EACH PAYEE, THE STATED PURPOSE(S) IN TERMS SUFFICIENT FOR IDENTIFICATION, AND THE RESPECTIVE STATED DOLLAR AMOUNT TO BE PAID TO EACH PAYEE].**

As required by Section 303 of the Indenture, the undersigned does hereby certify as follows:

1. The above obligations in the stated amounts have been incurred by or on behalf of the Borrower and are presently due and payable and constitute Costs of the Project within the meaning of the Indenture and that each item thereof is a proper charge against the Construction Fund and has not been paid or reimbursed, as the case may be, from the proceeds of the Bonds.
2. This requisition contains no item representing payment on account of any retained percentage which the Borrower is at the date of such requisition entitled to retain, unless the Borrower has waived such retention right
3. There is no outstanding indebtedness known to the Borrower, after due inquiry, for work, materials or supplies which, if unpaid, could be the basis for a vendor's or mechanic's or similar lien on the Project or any part of it, other than indebtedness to be paid pursuant to the requisition or from amounts withheld to secure completion, and no notice of any lien or claim affecting the right of any Person to receive a payment requested in this requisition has been filed with or served upon the Borrower.

4. The withdrawal and use of the Construction Fund money for the purpose intended will not cause any representations or certifications of the Borrower made herein or in the Loan Agreement to be untrue.

5. The Borrower has copies of all invoices and statements with respect to the amounts to be paid pursuant to this requisition.

6. As to any payment to be made under a construction contract:

(i) the Borrower has obtained written waiver by the construction manager or general contractor under such contract of mechanics' and vendors' liens for all work and material described in the requisition performed or furnished by such construction manager or general contractor; and

(ii) either (a) a lien search report dated within two business days of the date of the requisition reflects no liens, stop notices or other evidence of nonpayment of any mechanic, materialman or other person; or (b) waivers of mechanics' and vendors' liens for all work and material performed or furnished to the Project from all others (other than the construction manager or general contractor); and

(iii) the contractor is entitled to payment in the amount shown in this requisition.

Capitalized terms used but not defined herein have the meaning set forth in the Indenture.

**CITY OF MEMPHIS, TENNESSEE**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Officer

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## OFFICIAL STATEMENT

relating to

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### ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE

### ECONOMIC DEVELOPMENT BONDS (CITY OF MEMPHIS PROJECT), SERIES 2021

## INTRODUCTION

### General

The purpose of this Official Statement, which includes the cover page and the appendices attached hereto, is to provide certain information in connection with the issuance and sale by the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (the "Issuer") of its \$\_[ ]\* Economic Development Bonds (City of Memphis Project), Series 2021 (the "Series 2021 Bonds"), pursuant to, among other things, that certain Trust Indenture dated as of [ ], 2021 (the "Indenture"), between the Issuer and Regions Bank, as bond trustee (the "Bond Trustee"). The proceeds of the Series 2021 Bonds will be loaned by the Issuer to the City pursuant to that certain Loan Agreement to be dated as of [ ], 2021, between the City and the Issuer (the "Loan Agreement"). See "SECURITY AND SOURCES OF PAYMENT" herein and "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

*This introduction is not a summary of this Official Statement and is intended only for quick reference. It is only a brief description of and guide to, and is qualified in its entirety by reference to, the more complete and detailed information contained in the entire Official Statement, including the cover page and the appendices attached hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement and of the documents summarized or described herein, if necessary. The offering of the Series 2021 Bonds to potential investors is made only by means of the entire Official Statement, including the appendices attached hereto. No person is authorized to detach this Introduction from this Official Statement or to otherwise use it without the entire Official Statement, including the appendices attached hereto.*

All capitalized terms used herein and not otherwise expressly defined herein shall have the respective meanings set forth in "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND

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\* Preliminary, subject to change.

SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

**The Issuer**

The Issuer is a public nonprofit corporation organized under the laws of the State of Tennessee (the "State") created under the provisions of Sections 7-53-101, *et seq.*, of the Tennessee Code Annotated (as the same may from time to time be amended, the "Act"). The Issuer's purpose is to streamline and expand economic development programs within the City and Shelby County, Tennessee (the "County"). The Issuer also manages The Industrial Development Board of Memphis and Shelby County, The Port of Memphis, The Depot Redevelopment Corporation of Memphis and Shelby County, Foreign Trade Zone 77, the Regional Economic Development Plan for Memphis and Shelby County, and the Greater Memphis Alliance for a Competitive Workforce. In addition, the Issuer acts as the economic development agency for the City and the County. See "THE ISSUER" herein.

**The City**

The City of Memphis, Tennessee (the "City"), is a municipal corporation organized under the laws of the State of Tennessee (the "State"). The City is located on the east bank of the Mississippi River in the southwest corner of the State. The City is the State's largest city not having a metropolitan form of government and is the county seat of the County. For information regarding the economics, demographics and governance of the City, see "THE CITY" herein.

**Authority for Issuance**

The Series 2021 Bonds are being issued in accordance with the provisions of the Act, the Indenture, and resolutions adopted and approved by the Issuer and the City, authorizing, among other things, the execution and delivery of the Indenture and the Loan Agreement and the issuance and sale of the Series 2021 Bonds. See "THE SERIES 2021 BONDS – Authority for Issuance" herein.

**Purpose of the Series 2021 Bonds**

The proceeds of the Series 2021 Bonds will be loaned to the City and will be used to: (a) pay the Costs of the Project (as defined herein), **including interest on the Series 2021 Bonds during construction of the Project and for two (2) years after the estimated date of completion of the Project**, and (b) pay certain expenses incurred in connection with the issuance of the Series 2021 Bonds, all as permitted under the Act. See "PLAN OF FINANCING" and "ESTIMATED SOURCES AND USES OF FUNDS" herein.

**The Project**

The City proposes to use the proceeds of the Series 2021 Bonds to finance certain capital improvement projects within the City consisting of improvements to the AutoZone Park stadium, the FedEx Forum arena, the Historic Melrose development and multifamily housing facilities to be occupied by persons of low or moderate income, elderly, or handicapped persons (collectively, the "Project").

## **Description of the Series 2021 Bonds**

The Series 2021 Bonds will bear interest and mature on the dates set forth on the inside front cover page of this Official Statement. Interest on the Series 2021 Bonds is payable semiannually on June 1 and December 1 of each year, commencing [ ] 1, 20[ ]. Principal of the Series 2021 Bonds is payable on December 1 of each year, commencing December 1, 20[ ]. Payments of principal of and premium, if any, and interest on the Series 2021 Bonds will be made to purchasers of beneficial interests in the Series 2021 Bonds by DTC Participants (as provided herein).

The Series 2021 Bonds will be issued only in fully registered form, without coupons, in authorized denominations of \$5,000 or any integral multiple thereof equal to the principal amounts shown on the inside front cover page of this Official Statement and initially will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), which will act as securities depository for the Series 2021 Bonds. Purchases of beneficial ownership interests in the Series 2021 Bonds will be made in book-entry form only and purchasers will not receive physical delivery of certificates representing their beneficial ownership interests in the Series 2021 Bonds unless the book-entry only system is discontinued. See "BOOK-ENTRY ONLY SYSTEM" herein.

The Series 2021 Bonds [are] subject to redemption prior to maturity as more fully described herein. See "THE SERIES 2021 BONDS - Redemption Provisions" herein.

For a more complete description of the Series 2021 Bonds, see "THE SERIES 2021 BONDS" herein.

## **Security and Sources of Payment**

The Series 2021 Bonds are limited obligations of the Issuer payable from Non-Property Tax Revenues (as defined herein) to be received by the City and paid to the Bond Trustee in accordance with the provisions of the Loan Agreement. Pursuant to the Loan Agreement, the City has covenanted and agreed to appropriate and pay from Non-Property Tax Revenues money sufficient , together with other money on deposit in the Debt Service Fund, if any, to pay the principal of and premium, if any, and interest on the Series 2021 Bonds when due. The City's payments and prepayments payable to the Issuer under the Loan Agreement (excluding the Unassigned Rights) have been assigned by the Issuer to the Bond Trustee as part of the Trust Estate (as defined herein) to secure the Series 2021 Bonds. Pursuant to the Indenture, the Trust Estate is pledged to the payment of the principal of, premium, if any, and interest on the Series 2021 Bonds and may be pledged to additional series of Bonds.

PAYMENTS OF NON-PROPERTY TAX REVENUES BY THE CITY PURSUANT TO THE LOAN AGREEMENT ARE SUBJECT TO ANNUAL APPROPRIATION BY THE CITY. NO ASSURANCE CAN BE GIVEN THAT THE CITY COUNCIL OF THE CITY WILL APPROPRIATE SUCH FUNDS. See "CERTAIN INVESTMENT CONSIDERATIONS" herein.

THE SERIES 2021 BONDS AND THE INTEREST THEREON DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF



INCLUDING, WITHOUT LIMITATION, THE CITY AND THE COUNTY, AND THE SERIES 2021 BONDS AND THE INTEREST THEREON DO NOT NOW AND SHALL NEVER CONSTITUTE A DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING, WITHOUT LIMITATION, THE CITY AND THE COUNTY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF INCLUDING, WITHOUT LIMITATION, THE CITY AND THE COUNTY, SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE SERIES 2021 BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, MORTGAGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER THAT MAY BE UNDERTAKEN BY THE ISSUER. NO BREACH BY THE ISSUER OF ANY SUCH PLEDGE, MORTGAGE, OBLIGATION OR AGREEMENT SHALL IMPOSE ANY LIABILITY, PECUNIARY OR OTHERWISE, UPON THE STATE OR ANY POLITICAL SUBDIVISION THEREOF INCLUDING, WITHOUT LIMITATION, THE CITY AND THE COUNTY, OR ANY CHARGE UPON THEIR GENERAL CREDIT OR TAXING POWER.

See "SECURITY AND SOURCES OF PAYMENT" and "CERTAIN INVESTMENT CONSIDERATIONS" herein and "APPENDIX A DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

#### **Trustee, Paying Agent and Registrar**

Regions Bank, Nashville, Tennessee, will serve as trustee, paying agent and registrar for the Series 2021 Bonds (the "Paying Agent and Registrar").

#### **Continuing Disclosure**

The Issuer has determined that no financial or operating data concerning the Issuer is material to any decision to purchase, hold, or sell the Series 2021 Bonds, and the Issuer will not provide any such information. The City will undertake all responsibility for providing continuing disclosure with respect to the Series 2021 Bonds, and the Issuer will have no liability to the holders of the Series 2021 Bonds or any other person with respect to the obligations undertaken by the City under the Disclosure Agreement (as defined herein).

In order to assist the Underwriters (as defined herein) in complying with Rule 15c2-12(b)(5) of the Securities and Exchange Commission (the "SEC") promulgated pursuant to the Securities Exchange Act of 1934, as in effect on the date hereof (the "Rule"), simultaneously with the issuance of the Series 2021 Bonds, the City will enter into a Continuing Disclosure Agreement (the "Disclosure Agreement") with Digital Assurance Certification, L.L.C. ("DAC") for the benefit of the Beneficial Owners (as defined herein), under which the City will provide continuing disclosure with respect to the Series 2021 Bonds. The City has designated DAC as the initial disclosure dissemination agent in the Disclosure Agreement. The annual continuing disclosure report and notices of certain enumerated events (as described in the Disclosure Agreement) will be filed by DAC, on behalf of the City, with the repository designated by the SEC, presently the Municipal Securities Rulemaking Board (the "MSRB"), through the Electronic Municipal Market Access system ("EMMA") in an electronic format prescribed by the

MSRB. See "CONTINUING DISCLOSURE" herein and "APPENDIX B - FORM OF CONTINUING DISCLOSURE AGREEMENT" attached hereto.

**Other Information**

This Official Statement speaks only as of its date, and the information contained herein is subject to change.

This Official Statement and the appendices attached hereto contain brief descriptions of, among other matters, the Issuer, the City, the Series 2021 Bonds, the security and sources of payment for the Series 2021 Bonds, the Indenture, the Loan Agreement and the Disclosure Agreement. Such descriptions and information do not purport to be comprehensive or definitive. The summaries of various constitutional provisions, statutes, the Indenture, the Loan Agreement, the Series 2021 Bonds, the Disclosure Agreement and other documents are intended as summaries only and are qualified in their entirety by reference to such documents. References herein to the Series 2021 Bonds are qualified in their entirety to the form thereof included in the Indenture. Copies of the Indenture, the Loan Agreement, the Disclosure Agreement and other relevant documents and information are available, upon written request and payment of a charge for copying, mailing and handling, from Mr. André D. Walker, Deputy Chief Financial Officer of the City, 125 North Main Street, Room 368, Memphis, Tennessee 38103, (901) 636-6324.

**THE ISSUER**

The Issuer was created by a Joint Resolution of the Memphis City Council (the "City Council") and Shelby County Commission in 2011 and meets the definition of an Industrial Development Board within the meaning of the Act. The Issuer's purpose is to streamline and expand economic development programs within the City and the County. The Issuer also manages The Industrial Development Board of Memphis and Shelby County, The Port of Memphis, The Depot Redevelopment Corporation of Memphis and Shelby County, Foreign Trade Zone 77, the Regional Economic Development Plan for Memphis and Shelby County, and the Greater Memphis Alliance for a Competitive Workforce.

Pursuant to the Act, directors serve without compensation, except that they shall be reimbursed for their actual expenses in and about the performance of their duties. The eleven member board of directors is comprised of eight members jointly nominated by the City and the County, one jointly appointed member that serves as board chair and one non-voting member from both the City Council and the Shelby County Commission.

The present members of the board of directors of the Issuer and their respective offices are as follows:

| <b>Name</b>        | <b>Office</b> |
|--------------------|---------------|
| Al Bright, Jr.     | Chairman      |
| Thomas Dyer        | Vice Chairman |
| Larry Jackson      | Treasurer     |
| Dr. Florence Jones | Secretary     |
| Gerre Currie       | Board Member  |

|                   |  |
|-------------------|--|
| Natasha Donerson  | Board Member   |
| Mark J. Halperin  | Board Member   |
| Johnny B. Moore   | Board Member   |
| Cary Vaughn       | Board Member   |
| Mickell M. Lowery | Shelby County Commissioner, Ex-Officio Non-Voting Board Member |
| Edmund Ford, Sr.  | Memphis City Councilman, Ex-Officio Non-Voting Board Member    |

Except for the information contained under the captions "THE ISSUER" and "LITIGATION - The Issuer," the Issuer has not provided any of the information contained in this Official Statement. The Issuer is not responsible for and does not certify as to the accuracy or sufficiency of the disclosures made herein or any other information provided by the City or any other person. While the Issuer has no reason to believe that such information is incomplete or inaccurate, the Issuer has not independently investigated or confirmed the accuracy or completeness thereof. The Issuer makes no representation or warranty whatsoever concerning the Project or the creditworthiness of the City and no such representation or warranty is to be inferred from the issuance of the Series 2021 Bonds or the other transactions described or contemplated herein. The Issuer's role is limited to the issuance of the Series 2021 Bonds.

Neither the members of the board of directors of the Issuer nor any person executing the Series 2021 Bonds are liable personally on the Series 2021 Bonds by reason of the issuance thereof.

The Issuer has no taxing power, nor does it have the power to pledge the general credit or taxing power of the City, the County, the State or any political subdivision thereof.

## **THE CITY**

The City is located on the east bank of the Mississippi River in the southwest corner of the State. The City is the State's largest city not having a metropolitan form of government and is the county seat of the County. The City currently occupies a land area of approximately 315 square miles and has an estimated population of 651,073, according to the 2020 Comprehensive Annual Financial Report of the City (the "2020 Audited Financial Statements").

The City was incorporated as a city in 1826. The City operated under a commission form of government from 1909 until January 1, 1968. At that time, a mayor-council form of government was established. The City Council is composed of thirteen representative citizens who are elected for four-year terms. Six council members are elected at large in multi-member districts, the territorial boundaries of which are determined by dividing the City in half with each multi-member district having three council member numbered positions. Single member districts, numbered 1-7, elect the remaining seven council members. The City Council elects its own chairperson, exercises legislative powers, approves budgets and establishes the tax rate. The Mayor is elected to a four-year term. The Mayor carries out the policies of the City and, with City Council approval, appoints City board members, officers and division directors. The Mayor may veto an action of the City Council, but a simple majority can override any veto.

The current fiscal year of the City is the 12-month period beginning on July 1 and ending on June 30 (a "Fiscal Year").

In addition, certain financial and statistical information relating to the City is set forth in the 2020 Audited Financial Statements, which are available through EMMA.

### PLAN OF FINANCING

The proceeds of the Series 2021 Bonds will be loaned to the City and, together with other available funds, will be used to: (a) pay the Costs of the Project [, **including interest on the Series 2021 Bonds during construction of the Project and for two (2) years after the estimated date of completion of the Project**], and (b) pay certain expenses incurred in connection with the issuance of the Series 2021 Bonds, all as permitted under the Act. As provided herein, the Project consists of improvements to the AutoZone Park stadium, the FedEx Forum arena, the Historic Melrose development and multifamily housing facilities to be occupied by persons of low or moderate income, elderly, or handicapped persons. See "ESTIMATED SOURCES AND USES OF FUNDS" below.

### ESTIMATED SOURCES AND USES OF FUNDS

The proceeds of the Series 2021 Bonds are expected to be applied as follows:

**Sources:**

|  |    |
|--|----|
| Par Amount of Series 2021 Bonds              | \$ |
| [Net] Original Issue Discount / Bond Premium |    |
| Total Sources:                               | \$ |

**Uses:**

|  |    |
|--|----|
| Deposit to [ <b>Capitalized Interest Account</b> ] | \$ |
| Deposit to Construction Fund                       |    |
| Costs of Issuance <sup>(1)</sup>                   |    |
| Total Uses:  | \$ |

<sup>(1)</sup> Includes, without limitation, the Underwriters' discount, legal and advisory fees, printing costs and other costs associated with the issuance of the Series 2021 Bonds.

### THE SERIES 2021 BONDS

**Authority for Issuance**

The Series 2021 Bonds are being issued by the Issuer pursuant to, among other things, the Act and the Indenture. See "APPENDIX A - DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

## General Description of the Series 2021 Bonds

The Series 2021 Bonds will be dated their date of delivery, bear interest and, subject to redemptions as described below, mature on the dates set forth on the inside front cover page of this Official Statement. Interest on the Series 2021 Bonds is payable semiannually on June 1 and December 1 of each year, commencing [\_\_\_\_\_] 1, 20[\_\_\_], until paid in full (each such date, an "Interest Payment Date"), to the registered owners in whose names the Series 2021 Bonds are registered on the books of registry kept and maintained by the Paying and Registration Agent as of the close of business on the fifteenth (15th) day of the calendar month next preceding the Interest Payment Date. Interest on the Series 2021 Bonds will be calculated on the basis of a 360-day year consisting of twelve 30-day months. Principal on the Series 2021 Bonds is payable on December 1 of each year, commencing December 1, 20[\_\_\_]\*. For a discussion of applicable redemption provisions, see "THE SERIES 2021 BONDS – Redemption Provisions" herein.

The Series 2021 Bonds will be issued only in fully registered form, without coupons, in authorized denominations of \$5,000 or any integral multiple thereof and initially will be registered in the name of Cede & Co., as nominee of DTC, which will act as securities depository for the Series 2021 Bonds. Purchases of beneficial ownership interests in the Series 2021 Bonds will be made in book-entry form only and purchasers will not receive physical delivery of certificates representing the beneficial ownership interests in the Series 2021 Bonds unless the book-entry only system is discontinued. Transfers of ownership interests in the Series 2021 Bonds will be accomplished by book entries made by DTC and, in turn, by the DTC Participants who act on behalf of the indirect participants of DTC and the Beneficial Owners (as defined herein) of the Series 2021 Bonds.

Unless the City and the Paying and Registration Agent agree otherwise, so long as DTC or its nominee is the registered owner of the Series 2021 Bonds at such securities depository, payments of principal, premium, if any, and interest on the Series 2021 Bonds will be made by wire transfer to DTC or its nominee, Cede & Co., as registered owner of the Series 2021 Bonds, which will in turn remit such payments to the DTC Participants for subsequent disbursement to the Beneficial Owners of the Series 2021 Bonds. Transfers of such payments to DTC Participants will be the responsibility of DTC. Transfers of such payments to Beneficial Owners of the Series 2021 Bonds by DTC Participants will be the responsibility of such participants and other nominees of such Beneficial Owners. If the book-entry only system is discontinued, the Series 2021 Bonds will be delivered as described in the Bond Resolution, the Beneficial Owners or their nominees will become the registered owners of the Series 2021 Bonds and interest on the Series 2021 Bonds will be payable and ownership of the Series 2021 Bonds may be transferred as described in the Indenture. See "BOOK-ENTRY ONLY SYSTEM" herein.

## Redemption Provisions

Optional Redemption\*. [TBD]

[Mandatory Sinking Fund Redemption. TBD] Selection of Bonds to Be Redeemed. If less than all the Series 2021 Bonds are to be redeemed, the particular Series 2021 Bonds or portions

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\* Preliminary, subject to change.

thereof to be redeemed shall be selected using the procedures established by the Securities Depository or if none, by the Bond Trustee by lot, which shall be deemed to include pro rata redemption of Series 2021 Bonds within each stated maturity and mandatory Sinking Fund Redemption payments, and which may provide for the selection for redemption of portions (equal to Authorized Denominations) of the principal of Series 2021 Bonds; provided that after any partial redemption of the Series 2021 Bonds, all Series 2021 Bonds that remain Outstanding shall be in Authorized Denominations. No portion of a Series 2021 Bond may be redeemed that would result in a Series 2021 Bond having a principal amount that is less than the minimum Authorized Denomination..

Notice of Redemption. Any notice of redemption shall state the following: (a) the name of the Series 2021 Bonds; (b) the CUSIP number of the Series 2021 Bonds to be redeemed; (c) the original date of the Series 2021 Bonds; (d) the interest rate and maturity date of the Series 2021 Bonds to be redeemed; (e) the date of the redemption notice; (f) the Redemption Date; (g) the redemption price; and (h) the address and telephone number of the principal office of the Bond Trustee. Such notice shall further state that on the Redemption Date for such Series 2021 Bonds there shall become due and payable upon each Series 2021 Bond to be redeemed the redemption price thereof, or the redemption price of the specified portion of the principal amount thereof in the case of a Series 2021 Bond to be redeemed in part only, with interest accrued and unpaid to such date and that, from and after such date, interest thereon shall cease to accrue and be payable. The redemption notice shall be given by mailing a copy of such notice of redemption by first class mail, postage prepaid, not less than **[thirty]** or more than sixty days prior to the Redemption Date, to the registered owners of the Series 2021 Bonds to be redeemed to the address shown on the registration books kept by the Bond Trustee to evidence the registration and transfer of Series 2021 Bonds (the "Bond Register") not less than **[thirty]** or more than sixty days prior to the Redemption Date.

Any notice of optional redemption may state that it is conditioned upon the receipt by the Bond Trustee of sufficient moneys to pay the redemption price, plus interest accrued and unpaid to the Redemption Date, or upon satisfaction of any other condition, or that it may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before payment of such redemption price and accrued interest if any such condition so specified is not satisfied or if any other such event occurs. Notice of such rescission shall be given by the Bond Trustee to affected registered owners of Series 2021 Bonds as promptly as practicable upon the failure of such condition or the occurrence of such other event and shall be given in the same manner as the notice of redemption was given.

Failure to give any notice of redemption by mailing or a defect in such notice or the mailing as to any Series 2021 Bond shall not affect the validity of any proceedings for redemption as to any other Series 2021 Bond with respect to which notice was properly given. Failure of any registered owner to receive any mailed notice of redemption shall not affect the sufficiency or validity of the proceedings for the redemption of the related Series 2021 Bonds.

If a notice of redemption is given in accordance with the provisions of the Indenture, subject to rescission of any conditional notice, the Series 2021 Bonds, or portions thereof, thus called shall not bear interest after the applicable Redemption Date, shall no longer be protected by the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture.

*Purchase in Lieu of Optional Redemption and Cancellation.* In lieu of redeeming Series 2021 Bonds pursuant to the Indenture, the City may use such money otherwise available under the Indenture for redemption of Series 2021 Bonds to purchase Series 2021 Bonds in the open market at a price not exceeding the redemption price then applicable under the Indenture, plus accrued interest to the date of purchase, and direct the Bond Trustee to apply such money to the payment of the purchase price of the Series 2021 Bonds so purchased. The Series 2021 Bonds so purchased shall be delivered to the Bond Trustee for cancellation and the Issuer shall receive credit for any such Series 2021 Bonds so purchased in the same manner as if such Series 2021 Bonds had been redeemed.

### **Registration Provisions**

The Issuer shall cause the Bond Register to be kept by the Bond Trustee at its designated corporate trust office.

The principal of, premium, if any, and interest on the Series 2021 Bonds shall be payable in any currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts. Such principal and premium, if any, shall be payable upon presentment at the designated corporate trust office of the Bond Trustee, or its successor as Bond Trustee, or at the office of any alternate Paying Agent, if any, named in any such Series 2021 Bond. Payment of the interest on any Series 2021 Bond due on any Interest Payment Date shall be made to the person appearing on the Bond Register as the registered owner thereof (a "Holder") as of the close of business of the Bond Trustee on the Record Date for such interest payment and shall be paid: (i) by check or draft of the Bond Trustee mailed on the Interest Payment Date to such registered owner at such owner's address as it appears on the Bond Register or at such other address as is furnished to the Bond Trustee in writing by such owner; or (ii) in the case of an interest payment on Series 2021 Bonds, to any registered owner of \$1,000,000 or more in aggregate principal amount of Series 2021 Bonds of such series as of the close of business of the Bond Trustee on the Record Date for a particular Interest Payment Date, by wire transfer to such registered owner upon written request from such registered owner, which request shall contain the wire transfer address (which shall be in the continental United States) to which such registered owner wishes to have such wire directed, provided such written request is received not less than fifteen days prior to such Record Date (it being understood that such request may refer to multiple interest payments).

### **Transfer and Exchange**

Upon surrender for transfer of any Series 2021 Bond at the designated corporate trust office of the Bond Trustee, the Issuer shall execute and the Bond Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of the same series and maturity and of authorized denomination for the aggregate principal amount which the registered owner is entitled to receive. Any Series 2021 Bond may be exchanged at the office of the Bond Trustee for a like aggregate principal amount of Series 2021 Bond of the same maturity of other authorized denominations. The execution by the Issuer of any Series 2021 Bond shall constitute full and due authorization of such Bond and the Bond Trustee shall thereby be authorized to authenticate, date and deliver such Bond.

All Series 2021 Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Bond Trustee, duly executed by the registered owner or by such owner's duly authorized attorney.

No service charge shall be imposed for any exchange or transfer of Series 2021 Bonds. The Issuer and the Bond Trustee may, however, require payment by the person requesting an exchange or transfer of Series 2021 Bonds of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto, except in the case of the issuance of a Series 2021 Bond for the unredeemed portion of a Series 2021 Bond surrendered for redemption.

The Issuer and the Bond Trustee shall not be required to register the transfer of or exchange any Series 2021 Bond after notice calling such Series 2021 Bond or portion thereof for redemption has been given or during the fifteen-day period next preceding the first mailing of such notice of redemption.

New Series 2021 Bonds delivered upon any transfer or exchange shall be valid obligations of the Issuer, evidencing the same debt as the Series 2021 Bonds surrendered, shall be secured by the Indenture and shall be entitled to all of the security and benefits of the Indenture to the same extent as the Series 2021 Bond surrendered.

The Issuer and the Bond Trustee may treat the registered owner of any Series 2021 Bond as the absolute owner thereof for all purposes, whether or not such Series 2021 Bond shall be overdue, and shall not be bound by any notice to the contrary. All payments of or on account of the principal of and premium, if any, and interest on any such Series 2021 Bond as herein provided shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed as provided in the Indenture. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2021 Bond to the extent of the sum or sums so paid.

Any Series 2021 Bond surrendered for the purpose of payment, retirement, exchange, transfer or replacement shall be cancelled upon surrender thereof to the Bond Trustee or any Paying Agent. If the Issuer or the City shall acquire any of the Series 2021 Bonds, the Issuer or the City shall deliver such Series 2021 Bonds to the Bond Trustee for cancellation and the Bond Trustee shall cancel the same. Any Series 2021 Bonds cancelled by any Paying Agent other than the Bond Trustee shall be promptly transmitted by such Paying Agent to the Bond Trustee. Certification of Series 2021 Bonds cancelled by the Bond Trustee and Series 2021 Bonds cancelled by a Paying Agent other than the Bond Trustee which are transmitted to the Bond Trustee shall be made to the Issuer and to the City. Cancelled Series 2021 Bonds may be destroyed by the Bond Trustee unless instructions to the contrary are received from the Issuer or the City.

### **BOOK-ENTRY ONLY SYSTEM**

The information in this section concerning DTC and DTC's book-entry system has been obtained from DTC and the Issuer does not make any representation or warranty or take any responsibility for the accuracy or completeness of such information.



DTC will act as securities depository for the Series 2021 Bonds. The Series 2021 Bonds will be issued as fully-registered securities registered in the name of Cede & Co., DTC's partnership nominee, or such other name as may be requested by an authorized representative of DTC. One fully-registered Series 2021 Bond certificate will be issued for each maturity of each series of the Series 2021 Bonds as set forth on the inside front cover page of this Official Statement, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for U.S. and non-U.S. equity issues, corporate and municipal debt issues and money market instruments that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between accounts of Direct Participants. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants" and, together with the Direct Participants, the "DTC Participants"). The DTC Rules applicable to its Participants are on file with the SEC. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Series 2021 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2021 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2021 Bond (a "Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2021 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2021 Bonds, except in the event that use of the book-entry system for the Series 2021 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2021 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2021 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial

Owners of the Series 2021 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2021 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Series 2021 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2021 Bonds, such as redemptions, tenders, defaults, and proposed amendments to the security documents. For example, Beneficial Owners of Series 2021 Bonds may wish to ascertain that the nominee holding the Series 2021 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Series 2021 Bonds within a series and maturity of the Series 2021 Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such series or maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2021 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Series 2021 Bonds are credited on the record date, as identified in a listing attached to the Omnibus Proxy.

Principal, premium, if any, and interest payments on the Series 2021 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer or the Paying Agent and Registrar on the payment date in accordance with their respective holdings shown on DTC's records. Payments by Direct Participants or Indirect Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Direct Participant or Indirect Participant and not of DTC, the Paying Agent and Registrar or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, premium, if any, and interest on the Series 2021 Bonds, as applicable, to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer and/or the Paying Agent and Registrar, disbursement of such payments to Direct Participants will be the responsibility of DTC and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct Participants and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Series 2021 Bonds at any time by giving reasonable notice to the Issuer or the Paying Agent and Registrar.

Under such circumstances, in the event that a successor depository is not obtained, Series 2021 Bonds certificates are required to be printed and delivered.

The Issuer may decide to discontinue use of the system of book-entry only transfers through DTC (or a successor securities depository). In that event, Series 2021 Bonds certificates will be printed and delivered to the Holders of the Series 2021 Bonds.

THE ABOVE INFORMATION CONCERNING DTC AND DTC'S BOOK-ENTRY SYSTEM HAS BEEN OBTAINED FROM SOURCES THAT THE ISSUER AND THE UNDERWRITERS BELIEVE TO BE RELIABLE, BUT THE ISSUER AND THE UNDERWRITERS TAKE NO RESPONSIBILITY FOR THE ACCURACY THEREOF. NEITHER THE ISSUER NOR THE PAYING AGENT AND REGISTRAR WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DIRECT PARTICIPANTS, INDIRECT PARTICIPANTS, BENEFICIAL OWNERS OR OTHER NOMINEES OF SUCH BENEFICIAL OWNERS FOR (A) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT; (B) DISTRIBUTION OF CERTIFICATES REPRESENTING AN OWNERSHIP INTEREST OR OTHER CONFIRMATION OF BENEFICIAL OWNERSHIP INTERESTS IN THE SERIES 2021 BONDS; (C) THE PAYMENT BY DTC OR BY ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL AMOUNT OR REDEMPTION OR PURCHASE PRICE OF, OR INTEREST ON, ANY SERIES 2021 BONDS; (D) THE DELIVERY OF ANY NOTICE BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT; (E) THE ELECTION OF THE DIRECT PARTICIPANTS, THE INDIRECT PARTICIPANTS OR THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE SERIES 2021 BONDS; OR (F) ANY CONSENT GIVEN OR ANY OTHER ACTION TAKEN BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT.

So long as Cede & Co. is the registered owner of the Series 2021 Bonds, as nominee for DTC, references herein to the registered owners of the Series 2021 Bonds shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Series 2021 Bonds.

## ANNUAL DEBT SERVICE REQUIREMENTS

The following table presents the principal and interest payment requirements with respect to the Series 2021 Bonds, which constitute the only series of Bonds issued under the Indenture.

### LONG-TERM DEBT SCHEDULE (In Thousands of Dollars)

| <u>Fiscal Year<br/>Ending<br/>June 30</u> | <u>Series 2021 Bonds<sup>(1)</sup></u> |                 | <u>Total Debt<br/>Service</u> |
|---|--|-----------------|-------------------------------|
|   | <u>Principal</u>                       | <u>Interest</u> |                               |
| 2022                                      |  |                 |                               |
| 2023                                      |  |                 |                               |
| 2024                                      |  |                 |                               |
| 2025                                      |  |                 |                               |
| 2026                                      |  |                 |                               |
| 2027                                      |  |                 |                               |
| 2028                                      |  |                 |                               |
| 2029                                      |  |                 |                               |
| 2030                                      |  |                 |                               |
| 2031                                      |  |                 |                               |
| 2032                                      |  |                 |                               |
| 2033                                      |  |                 |                               |
| 2034                                      |  |                 |                               |
| 2035                                      |  |                 |                               |
| 2036                                      |  |                 |                               |
| 2037                                      |  |                 |                               |
| 2038                                      |  |                 |                               |
| 2039                                      |  |                 |                               |
| 2040                                      |  |                 |                               |
| 2041                                      |  |                 |                               |
| 2042                                      |  |                 |                               |
| 2043                                      |  |                 |                               |
| 2044                                      |  |                 |                               |
| 2045                                      |  |                 |                               |
| 2046                                      |  |                 |                               |
| <b>Total</b>                              |  |                 |                               |

<sup>(1)</sup> Amounts may not add due to rounding.

Source: City of Memphis, Tennessee.

## **SECURITY AND SOURCES OF PAYMENT**

### **General**

The Series 2021 Bonds are limited obligations of the Issuer secured by an assignment and pledge of the Trust Estate, consisting primarily of the payments and prepayments required to be made by the City under and pursuant to the Loan Agreement from Non-Property Tax Revenues to be received by the City and paid to the Bond Trustee in accordance with the provisions of the Loan Agreement. Pursuant to the Loan Agreement, the City has covenanted and agreed to appropriate and pay from Non-Property Tax Revenues money sufficient to pay the principal of, premium, if any, and interest on the Series 2021 Bonds when due. Pursuant to the Indenture, all of the payments and prepayments by the City under the Loan Agreement (excluding the Unassigned Rights) have been pledged to the payment of principal of and premium, if any, and interest on the Series 2021 Bonds.

PAYMENTS OF NON-PROPERTY TAX REVENUES BY THE CITY PURSUANT TO THE LOAN AGREEMENT ARE SUBJECT TO ANNUAL APPROPRIATION BY THE CITY. NO ASSURANCE CAN BE GIVEN THAT THE CITY COUNCIL OF THE CITY WILL APPROPRIATE SUCH FUNDS.

See "CERTAIN INVESTMENT CONSIDERATIONS" herein and "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

### **Trust Estate**

Pursuant to the Indenture, the Issuer has conveyed, granted, assigned, transferred, pledged, set over and confirmed and granted a security interest to the Bond Trustee in the Trust Estate to secure the Series 2021 Bonds. The "Trust Estate," as defined in the Indenture, consists of the following:

(a) All right, title and interest of the Issuer in and to the Loan Agreement and all amounts payable to the Issuer under the Loan Agreement and all security therefor (excluding Unassigned Rights);

(b) All right, title and interest of the Issuer in and to the funds, accounts and subaccounts established pursuant to the Indenture and the assets thereof and income and earnings thereon for the benefit of the Holders of the Outstanding Bonds;

(c) Any and all other property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, conveyed, pledged, assigned or transferred as and for additional security under the Indenture by the Issuer or the City or by anyone on their behalf to the Bond Trustee, including without limitation funds of the City held by the Bond Trustee as security for any of the Bonds.

## **Priority of Right, Lien and Privilege under the Indenture**

The Series 2021 Bonds and any other Bonds rank and have a right of payment from the Trust Estate equal to each other.

## **Non-Property Tax Revenues**

In accordance with the provisions of the Loan Agreement, the City has covenanted and agreed to timely budget and appropriate from its Non-Property Tax Revenues monies to pay to the Bond Trustee an amount which, together with money on deposit in the Debt Service Fund, if any, is sufficient to pay the principal of and premium, if any, and interest on Series 2021 Bonds when due. As provided above, payments of Non-Property Tax Revenues by the City pursuant to the Loan Agreement are subject to annual appropriation by the City. No assurance can be given that the City Council of the City will appropriate such funds. See "CERTAIN INVESTMENT CONSIDERATIONS" herein.

"Non-Property Tax Revenues" means all legally available revenues of the City, a portion of which shall be appropriated and paid by the City which may be applied to the payments required under the Loan Agreement to be paid by the City and which shall not include *ad valorem* property tax revenues. The Non-Property Tax Revenues include, but are not limited to, the following categories of revenue within the City's General Fund: Local Taxes; State Taxes; Licenses and Permits; Fines and Forfeitures; Charges for Services; Use of Money and Property; Federal and State Grants; Intergovernmental Revenue; and Other Revenue.

Local Taxes. This category consists of all locally collected taxes and fees with the exception of current *ad valorem* taxes, prior *ad valorem* taxes, revenue generated from the sale of prior *ad valorem* taxes and special assessment taxes. Local taxes include, among other things, payments in lieu of taxes or tax equivalent payments ("PILOT Payments"), local sales tax, and beer sales tax.

State Taxes. This category consists of the City's share of the State income tax, sales tax, telecommunications sales tax, state-shared beer tax, alcoholic beverage tax and special petroleum product tax.

Licenses and Permits. This category consists of revenues from businesses and occupations that must be licensed before doing business within the jurisdiction of the City or that benefit from an activity licensed by the City. Major license sources are motor vehicle licenses and liquor licenses. Major permits are those related to construction and security alarms.

Fines and Forfeitures. This category consists of money derived from the imposition of penalties for the commission of statutory offenses or violation of rules or regulations, or money derived from the confiscation of deposits held as performance guarantees.

Charges for Services. This category consists of fees charged by various departments and agencies of the City to the user of the service. These fees cover a wide range of services.

Use of Money and Property. This category consists of revenues from the use of money and property and includes interest earned on investments and payments received from the lease or rental of government property.

Federal and State Grants. This category consists of money received from the State of Tennessee or the U.S. Government to fund various public safety programs and other initiatives the purpose of which is to enhance the lives of citizens.

Intergovernmental Revenue. This category consists of revenues from: (i) the Memphis-Shelby County Airport Authority (MSCAA) for the provision of fire and emergency services, and; (ii) the Memphis Area Transit Authority (MATA) for the reimbursement of funds provided by the City to subsidize MATA's daily operations

Other Revenue. This category consists of revenues derived from sources not included in any of the above categories. It includes auctions and a variety of miscellaneous revenues.

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### Historical Collection of Non-Property Tax Revenues

The following table presents the historical amounts of Non-Property Tax Revenues collected during the periods listed below.

#### Historical Collection of Non-Property Tax Revenues<sup>(1)</sup>

for the City of Memphis, Tennessee  
Fiscal Years Ended June 30

|  | 2016          | 2017          | 2018          | 2019          | 2020          | Months<br>Ended<br>December<br>31, 2019 <sup>(2)</sup> | Months<br>Ended<br>December<br>31, 2020 <sup>(2)</sup> |
|--|---------------|---------------|---------------|---------------|---------------|--|--|
| Local Taxes <sup>(3)</sup>               | \$175,634,945 | \$174,848,191 | \$178,483,334 | \$183,542,789 | \$188,781,123 | \$83,986,736   | \$92,589,287   |
| State Taxes (local share) <sup>(4)</sup> | 69,327,565    | 65,028,258    | 67,289,715    | 63,329,251    | 67,369,483    | 38,742,403   | 32,634,023   |
| Licenses and Permits <sup>(4)</sup>      | 13,171,978    | 13,393,208    | 13,387,637    | 13,674,185    | 12,278,029    | 6,564,746  | 7,155,275  |
| Fines and Forfeitures <sup>(4)</sup>     | 11,993,027    | 10,640,143    | 10,570,487    | 11,068,169    | 11,750,599    | 4,767,905  | 3,299,632  |
| Charges for Services <sup>(4)</sup>      | 34,757,606    | 33,941,462    | 34,193,231    | 36,063,588    | 34,004,243    | 1,307,005  | 1,055,235  |
| Use of Money or Property                 | 890,741       | 792,824       | 2,068,677     | 4,594,900     | 3,716,788     | 1,728,315  | 2,606  |
| Federal and State Grants                 | -             | 1,457,582     | 1,870,410     | 11,503,937    | 23,539,195    |  | 46,460,709   |
| Intergovernmental Revenue                | 5,995,725     | 9,409,377     | 8,660,514     | 9,965,561     | 10,760,231    | 6,000  | 6,700,000  |
| Other Revenue                            | 10,712,437    | 11,397,397    | 16,761,197    | 17,831,810    | 17,236,012    | 2,187,399  | 2,514,874  |
| Total Non-Tax Revenues                   | \$322,484,022 | \$320,908,443 | \$333,285,202 | \$351,574,190 | \$369,435,701 | \$145,984,508  | \$192,435,083  |

<sup>(1)</sup> Totals may not add due to rounding.

<sup>(2)</sup> Amounts are unaudited.

<sup>(3)</sup> For purposes of this table, the "Local Taxes" excludes ad valorem property taxes and may also exclude certain non-ad valorem revenues which may be restricted or otherwise unavailable.

<sup>(4)</sup> For purposes of this table, the "State Taxes," "Licenses and Permits," "Fines and Forfeitures" and "Charges for Services" categories only include revenues which are not restricted or otherwise available and which, therefore, are included within the definition of Non-Property Tax Revenues.

Source: City of Memphis, Tennessee.



### ***Contingent Obligations***

As of the date of this Official Statement, the City has the following outstanding contingent obligations payable from Non-Property Tax Revenues (collectively, the "Contingent Obligations").

*Sports Authority Senior Lien Bonds.* The Memphis and Shelby County Sports Authority, Inc. (the "Sports Authority") issued certain senior lien bonds (the "Sports Authority Senior Lien Bonds"), the proceeds of which were used to finance and refinance the acquisition, construction and equipping of a multi-purpose arena that is the home of the National Basketball Association's franchise known as the Memphis Grizzlies (the "FedExForum"). Pursuant to an interlocal agreement by and among the City and the County and the Sports Authority (the "Interlocal Agreement"), in the event the revenues pledged to the support of the Sports Authority Senior Lien Bonds prove to be insufficient to pay debt service on the Sports Authority Senior Lien Bonds in any bond year (ending on October 31), the County and the City have covenanted to timely appropriate from legally available non-ad valorem tax revenues, not later than October 31 of the Fiscal Year ending June 30 following the date of such deficit, sufficient money to replenish draws from the debt service reserve fund relating to the Sports Authority Senior Lien Bonds (the "Senior Lien Bonds Reserve Fund") used to make scheduled debt service on the Sports Authority Senior Lien Bonds in the prior bond year.

Principal and interest on the Sports Authority Senior Lien Bonds are payable from (a) seat rental fees derived from the FedExForum, (b) certain sales tax rebate revenues to the City and to the County, (c) City hotel/motel tax revenues derived from certain hotel/motel taxes imposed by the City, (d) County hotel/motel tax revenues derived from certain hotel/motel taxes imposed by the County, (e) certain payments in lieu of taxes from MLGW, and (f) certain car rental taxes collected in the County.

The obligation of the County and the City to replenish draws on the Senior Lien Bonds Reserve Fund is apportioned on an equal basis (*i.e.*, 50% by the City and 50% by the County) but is not a joint obligation. The Interlocal Agreement provides that the maximum amount of the County's or City's respective replenishment obligation relating to the Sports Authority Senior Lien Bonds is the debt service payments on not to exceed one-half of a maximum of \$230,000,000 in principal amount of Sports Authority Senior Lien Bonds. The Sports Authority initially issued \$202,290,000 in aggregate principal amount of Sports Authority Senior Lien Bonds (leaving \$27,710,000 of authorized but unissued Sports Authority Senior Lien Bonds for which the City and County would have a replenishment obligation under the Interlocal Agreement). As of **[June 2, 2021]**, the Sports Authority Senior Lien Bonds were outstanding in an aggregate principal amount of **[\$118,235,000]** and the maximum annual contingent obligation of the City to replenish draws from the Senior Lien Bonds Reserve Fund was **[\$7,262,500]**. The obligation to replenish the Senior Lien Bonds Reserve Fund is not a general obligation of the City but rather is required to be paid solely from Non-Property Tax Revenues appropriated by the City for such payments. The final maturity of the Sports Authority Senior Lien Bonds is November 1, 2028.

As of the date of this Official Statement, the City has not been called upon to make a payment under the Interlocal Agreement. **HOWEVER, THE CITY CAN OFFER NO ASSURANCE AS TO WHETHER THERE WILL BE FUTURE CALLS ON THE CITY TO**

MAKE A PAYMENT UNDER THE INTERLOCAL AGREEMENT. No feasibility report with respect to the FedExForum was prepared.

Series 2017 EDGE Bonds. Pursuant to a Trust Indenture dated as of June 1, 2017 (the "EDGE Indenture"), the Issuer (also known as "EDGE") issued its \$36,215,000 TDZ Revenue Refunding Bonds, Series 2017A (Federally Taxable) (the "Series 2017A EDGE Bonds"), its \$87,725,000 TDZ Revenue Refunding Bonds, Series 2017B (the "Series 2017B EDGE Bonds"), and its \$34,300,000 TDZ Revenue Refunding Bonds, Series 2017C (Federally Taxable) (the "Series 2017C EDGE Bonds" and, together with the Series 2017A EDGE Bonds and the Series 2017B EDGE Bonds, the "Series 2017 EDGE Bonds"). The Series 2017B EDGE Bonds and the Series 2017C EDGE Bonds are hereinafter referred to, collectively, as the "Series 2017 EDGE Non-Property Tax Revenue Supported Bonds." The proceeds of the Series 2017 EDGE Bonds were used by EDGE to fund a loan to the City under a loan agreement, dated June 1, 2017 (the "EDGE Loan Agreement"), the proceeds of which loan, together with certain other funds of the City, were used to: (a) refund and defease certain prior obligations of the City incurred in connection with the financing of a portion of the costs associated with the redevelopment of the Pyramid Arena, the acquisition and renovation of certain properties in the center city area of the City adjacent to the Pyramid Arena and the acquisition of the interest of the County in the Renasant Convention Center; and (b) pay certain costs of issuance related to the Series 2017 EDGE Bonds. The Series 2017 EDGE Bonds are payable primarily from distributions of state and local sales and use taxes in a tourist development zone which includes the Pyramid Arena, the Pinch District of the City and the Renasant Convention Center (the "TDZ Revenues"). The Series 2017A EDGE Bonds, and any other senior bonds subsequently issued under the EDGE Indenture, are payable solely from TDZ Revenues and have a right of payment from the TDZ Revenues superior to that of the Subordinated EDGE Bonds (as defined herein).

Pursuant to the EDGE Loan Agreement, in the event the TDZ Revenues prove to be insufficient to pay debt service on the Series 2017 EDGE Non-Property Tax Revenue Supported Bonds and any other subordinate bonds subsequently issued under the EDGE Indenture (the "Subordinated EDGE Bonds"), the City has covenanted and agreed to appropriate from legally available non-ad valorem tax revenues, on or prior to the time required in the EDGE Loan Agreement, sufficient money to pay the principal of, premium, if any, and interest payable on the Subordinated EDGE Bonds. As of **[June 2, 2021]**, the Subordinated EDGE Bonds were outstanding in an aggregate principal amount of **[\$122,025,000]**. The City's obligation to pay the principal of, premium, if any, and interest on the Subordinated EDGE Bonds in the event the TDZ Revenues are insufficient is not a general obligation of the City but, rather, is required to be paid solely from Non-Property Tax Revenues appropriated by the City for such payments. The final maturity of the Series 2017 Non-Property Tax Revenue Supported Bonds is November 1, 2030.

As of the date of this Official Statement, the City has not been called upon to make any payment of Non-Property Tax Revenues under the EDGE Loan Agreement. **HOWEVER, THE CITY CAN OFFER NO ASSURANCE AS TO WHETHER THERE WILL BE ANY FUTURE CALL ON THE CITY TO MAKE A PAYMENT FROM ITS NON-PROPERTY TAX REVENUES UNDER THE EDGE LOAN AGREEMENT.**

**[Pending Contingent Obligations - Series 2021 Liberty Park EDGE Bonds.** The City anticipates that EDGE will issue [up to \$\_\_] million of revenue bonds (the "Series 2021

Liberty Park EDGE Bonds") to fund a portion of the costs of the Memphis Fairgrounds – Liberty Park redevelopment in the City, including the costs of financing the construction of a 230,000 square-foot sports and events center, site preparation for a proposed private development and various campus improvements. The Series 2021 Liberty Park EDGE Bonds are anticipated to be paid primarily from the proceeds of incremental state and local sales taxes ("Liberty Park TDZ Revenues") collected within a Tourism Development Zone approved by the State and encompassing the Fairgrounds – Liberty Park development. In the event of a shortfall in the Liberty Park TDZ Revenues, the Series 2021 Liberty Park EDGE Bonds would be payable from appropriations of the City's Non-Property Tax Revenues, and the City has covenanted and agreed, pursuant to a loan agreement executed in connection with the Series 2021 Liberty Park EDGE Bonds, to appropriate from Non-Property Tax Revenues sufficient money to pay the principal of, premium, if any, and interest payable on the Series 2021 Liberty Park EDGE Bonds when due. The City's obligation to pay the principal of, premium, if any, and interest on the Series 2021 Liberty Park EDGE Bonds in the event the Liberty Park TDZ Revenues are insufficient is not a general obligation of the City but, rather, is required to be paid solely from Non-Property Tax Revenues appropriated by the City for such payments. The final maturity of the Series 2021 Liberty Park EDGE Bonds is anticipated to be \_\_\_\_\_, 20\_\_\_. The Series 2021 Liberty Park EDGE Bonds are anticipated to be issued on or about \_\_\_\_\_, 2021.]

*Additional Contingent Obligations.* The City expects to fund, from time to time, special projects related to economic development which largely will be payable from specific dedicated revenues. To the extent the City elects to fund all or a portion of such projects, the City may incur additional debt which may be supported by Non-Property Tax Revenues.

For more information regarding the Contingent Obligations, see Note V.C to the 2020 Audited Financial Statements, which is available through EMMA.

### ***Unconditional Obligations***

As of the date of this Official Statement, the City has the following outstanding non-contingent obligations payable from Non-Property Tax Revenues (collectively, the "Unconditional Obligations").

*Port Commission Electrolux Bonds.* The Memphis and Shelby County Port Commission (the "Port Commission"), the State, the County, the City, and the Memphis and Shelby County Industrial Development Board entered into a Site Location and Development Agreement dated December 15, 2010 (the "Development Agreement"), whereby each committed to support the development of a new appliance manufacturing and assembly facility, warehouse and distribution facility and regional headquarters facility for Electrolux Home Products, Inc. (the "Electrolux Development") located in the City and the County, within the Port Commission's boundaries and jurisdiction. The City and the County agreed to match funds of the State to subsidize or assist in the Electrolux Development.

The Port Commission issued its \$40,795,000 Development Revenue Bonds, Series 2011 (the "Port Commission Electrolux Bonds") on September 7, 2011. The Port Commission Electrolux Bonds are secured, in part, by all of the Port Commission's right, title and interest in an

interlocal agreement by and among the Port Commission, the County and the City under which the City and the County covenanted to timely appropriate from legally available non-ad valorem tax revenues sufficient money to pay scheduled debt service on the Port Commission Electrolux Bonds.

The obligation of the City and the County to support the payment of debt service on the Port Commission Electrolux Bonds is apportioned on an equal basis (i.e., 50% by the City and 50% by the County). The maximum amount of the City's or the County's respective support obligation under the Development Agreement is equal to the debt service payments on not to exceed \$22,000,000 of the principal amount of the Port Commission Electrolux Bonds. As of [June 2, 2021], the Port Commission Electrolux Bonds were outstanding in an aggregate principal amount of \$[29,740,000], the City's portion of which is \$[14,870,000], and the maximum annual debt service due on the Port Commission Electrolux Bonds and payable by the City is \$[1,401,075]. The obligation of the City and the County to support the payment of debt service on the Port Commission Electrolux Bonds is not a general obligation of the County or the City. The obligation of the City is required to be paid solely from Non-Property Tax Revenues appropriated by the City for such payments.

The Electrolux Development was completed and the facility commenced operations, including the production of appliances, in June 2013. **[Electrolux Home Products, Inc., announced that it expects to close the Electrolux Development in 2021.]** The City's obligations with respect to the Port Commission Electrolux Bonds will continue after closure of the Electrolux Development.

Stadium Project Bonds. Pursuant to an Indenture of Trust, dated as of March 1, 2014, the Memphis Center City Revenue Finance Corporation (the "Corporation") issued its \$17,925,000 Sports Facility Revenue Bonds, Series 2014A (Stadium Project) and its \$5,720,000 Sports Facility Revenue Bonds, Series 2014B (Stadium Project) (Federally Taxable) (collectively, the "Stadium Project Bonds"). The proceeds of the Stadium Project Bonds were used to, among other things, provide funds for the purpose of (a) acquiring the Memphis Redbirds Baseball Foundation's interest in and to a AAA minor league baseball stadium and related facilities, known as AutoZone Park (the "Stadium") and certain real property owned by the City on and adjacent to which the Stadium is located (the "Site") in connection with the sale of the Memphis Redbirds franchise and the lease of the Stadium to an affiliate of the St. Louis Cardinals and (b) making a capital contribution for certain improvements to the Stadium and the Site. The Stadium Project Bonds are secured by an assignment and pledge of, among other things, rents payable by the lessee of the Stadium, certain sales tax rebates and other payments to the Corporation (collectively, the "Other Payments") and amounts payable by the City (the "Lease Payments") to the Corporation pursuant to that certain Sublease Agreement, dated as of March 1, 2014, between the Corporation and the City (the "Financing Lease"). The City covenanted and agreed to timely appropriate from legally available non-ad valorem tax revenues sufficient money to pay the Lease Payments after taking into account the credits against such Lease Payments, including the Other Payments. As of [June 2, 2021], the Stadium Project Bonds were outstanding in the aggregate principal amount of \$[15,290,000] and the maximum annual debt service due and payable is \$[2,487,754]. The obligation of the City to make the Lease Payments is not a general obligation of the City but rather is required to be paid solely from Non-Property Tax Revenues appropriated by the City for such

payments after taking into account the credits against such Lease Payments, including the Other Payments.

During Fiscal Year 2021, the City made a payment under the Financing Lease in the amount of \$1,391,177. Such amount represented 67.5% of the Stadium Project Bond debt service for the year, which was higher than the City's historical payments of 3% to 14% of annual debt service on the Stadium Project Bonds. Due to the COVID-19 pandemic, the 2020 Minor League Baseball season was cancelled, resulting in a significant decrease in revenues available to pay debt service on the Stadium Project Bonds. The City was required under the Financing Lease to cover the shortage in revenues.

2015 QECB Bonds. Pursuant to an Indenture of Trust, dated as of February 18, 2015, the Corporation issued its \$8,316,000 Memphis Center City Revenue Finance Corporation, Qualified Energy Conservation Bonds, Series 2015A (Federally Taxable) (the "Series 2015A QECB Bonds"). In addition, pursuant to an Indenture of Trust, dated as of April 29, 2015, the Corporation issued its \$2,015,300 Memphis Center City Revenue Finance Corporation, Qualified Energy Conservation Bonds, Series 2015B (Federally Taxable) (the "Series 2015B QECB Bonds") and \$340,700 Memphis Center City Revenue Finance Corporation, Qualified Energy Conservation Bonds, Series 2015C (Federally Taxable) (the "Series 2015C QECB Bonds" and together with the Series 2015A QECB Bonds and the Series 2015B QECB Bonds, the "2015 QECB Bonds"). The proceeds of the 2015 QECB Bonds were used to, among other things, provide funds for loans to certain developers under the City's Green Communities Program, which was established to finance loans and grants to eligible participants for energy conservation installations and improvements to designated facilities. The 2015 QECB Bonds are secured by amounts payable by the City (the "2015 QECB Payments") pursuant to certain lease agreements between the Corporation and the City. The City covenanted and agreed to timely appropriate from legally available non-ad valorem tax revenues sufficient money to pay the 2015 QECB Payments after taking into account indirect subsidy payments received from the U.S. Treasury on account of the 2015 QECB Bonds being qualified energy conservation bonds under Section 54D of the Internal Revenue Code of 1986, as amended (the "2015 Subsidy Payments"). As of **[June 2, 2021]**, the QECB Bonds were outstanding in the aggregate principal amount of **[\$4,033,200]** and the maximum annual debt service due and payable was **[\$1,218,578]**. The obligation of the City to make the 2015 QECB Payments is not a general obligation of the City but rather is required to be paid solely from Non-Property Tax Revenues appropriated by the City for such payments after taking into account the 2015 Subsidy Payments.

Additional Unconditional Obligations. The City expects to fund, from time to time, special projects related to economic development which largely will be payable from specific dedicated revenues. To the extent the City elects to fund all or a portion of such projects, the City may incur additional debt which may be supported by Non-Property Tax Revenues.

For more information regarding the Unconditional Obligations see Note IV.G to the 2020 Audited Financial Statements, which is available through EMMA.

### ***General Fund Obligations***

From time to time, the City has issued and will issue debt backed by the full faith and credit of the City and payable from moneys deposited in the City's General Fund, which include the Non-Property Tax Revenues, including its general improvement bonds and its general obligation commercial paper (together, the "General Fund Obligations"). The amount of General Fund Obligations that may be issued or outstanding at any time is not limited; however, general obligation commercial paper is currently authorized to be issued in an aggregate principal amount outstanding at any time of not to exceed \$150,000,000. As of **[June 2, 2021]**, the City had approximately \$**[150,000,000]** in aggregate principal amount of General Fund Obligations issued and outstanding.

Other than the Contingent Obligations, the Unconditional Obligations and the General Fund Obligations, the City has not committed to pay any other debt obligations from the Non-Property Tax Revenues. However, the City also regularly funds various operating expenses of the City from the Non-Property Tax Revenues and is not prohibited from paying or agreeing to pay other obligations of the City, including, without limitation, the City's pension and other-post employment benefit obligations, from the Non-Property Tax Revenues. The City is currently in compliance with the provisions of the Tennessee "Public Employee Defined Benefit Financial Security Act of 2014" (the "Public Employee Defined Benefit Act") requiring all municipalities to eliminate the unfunded accrued liability of public defined benefit pension plans by no later than June 15, 2020. For more information regarding operating expenses of the City payable from the Non-Property Tax Revenues, including the City's pension and other-post employment benefit obligations, see the 2020 Audited Financial Statements, which are available through EMMA. See also "SECURITY AND SOURCES OF PAYMENT – Revenues, Expenditures and Changes in Fund Balance for the City's General Fund" herein.

### ***Revenues, Expenditures and Changes in Fund Balance for the City's General Fund***

The following table provides an audited statement of the revenues, expenditures and changes in fund balance for the City's General Fund for Fiscal Years 2016 through 2020.

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**GENERAL FUND<sup>(1)(2)</sup>**  
**REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE**  
**Fiscal Years Ended June 30**  
**(In Thousands of Dollars)**

|  | <u>2016</u>        | <u>2017</u>        | <u>2018</u>        | <u>2019</u>        | <u>2020</u>        |
|--|--------------------|--------------------|--------------------|--------------------|--------------------|
| <b>Revenues and Other Sources</b>              |                    |                    |                    |                    |                    |
| Local Taxes <sup>(3)</sup>                     | \$ 439,805         | \$ 442,433         | \$ 462,251         | \$ 457,743         | \$ 462,046         |
| State Taxes (local share)                      | 69,328             | 65,028             | 67,290             | 63,329             | 67,370             |
| Licenses and Permits                           | 13,171             | 13,393             | 13,388             | 13,674             | 12,278             |
| Fines and Forfeitures                          | 16,570             | 14,519             | 14,551             | 14,824             | 11,751             |
| Charges for Services                           | 34,757             | 33,942             | 34,193             | 36,064             | 34,004             |
| Investment Income                              | 997                | 892                | 2,342              | 5,281              | 4,237              |
| Federal Grants and Entitlements <sup>(4)</sup> | 524                | 2,017              | 5,682              | 17,279             | 29,907             |
| State Grants <sup>(4)</sup>                    | 1,283              | 2,049              | 1,618              | 1,261              | -                  |
| Intergovernmental Revenues                     | 5,996              | 9,409              | 8,661              | 9,966              | 10,760             |
| Other  | 10,549             | 9,726              | 16,761             | 12,694             | 18,310             |
| <b>Total Revenues</b>                          | <b>\$ 592,980</b>  | <b>\$ 593,408</b>  | <b>\$ 626,737</b>  | <b>\$ 632,115</b>  | <b>\$ 650,663</b>  |
| <b>Expenditures and Other Uses</b>             |                    |                    |                    |                    |                    |
| General Government                             | \$ 139,897         | \$ 153,065         | \$ 168,662         | \$ 167,539         | \$ 188,788         |
| Public Safety                                  | 405,704            | 432,578            | 441,500            | 454,167            | 470,721            |
| Community Services                             | 53,996             | 54,243             | 58,283             | 60,794             | 62,259             |
| Transportation & Environment                   | 14,612             | 14,162             | 19,433             | 17,002             | 13,076             |
| Lease Payment                                  | -                  | 975                | 990                | 843                | 115                |
| <b>Total Expenditures</b>                      | <b>\$ 614,209</b>  | <b>\$ 655,023</b>  | <b>\$ 688,868</b>  | <b>\$ 700,345</b>  | <b>\$ 734,959</b>  |
| <b>Revenues Over (Under) Expenditures</b>      | <b>\$ (21,229)</b> | <b>\$ (61,615)</b> | <b>\$ (62,131)</b> | <b>\$ (68,230)</b> | <b>\$ (84,296)</b> |
| <b>Other Financing Sources (Uses)</b>          |                    |                    |                    |                    |                    |
| Sale of capital assets                         | \$ -               | \$ 1,792           | \$ 60              | \$ 5,493           | \$ 19              |
| Transfers In                                   | 59,358             | 69,807             | 79,653             | 80,815             | 85,673             |
| Transfers Out                                  | (18,775)           | (7,974)            | (23,764)           | (23,287)           | (7,865)            |
| Refunding bonds/issuance of debt               | -                  | -                  | -                  | -                  | 302                |
| Capital Leases                                 | 3                  | -                  | -                  | -                  | -                  |
| Special Items                                  | (6,250)            | -                  | -                  | -                  | -                  |
| <b>Total Other Financing Sources (Uses)</b>    | <b>\$ 34,336</b>   | <b>\$ 63,625</b>   | <b>\$ 55,949</b>   | <b>\$ 63,021</b>   | <b>\$ 78,129</b>   |
| <b>Net Change in Fund Balances</b>             | <b>\$ 13,107</b>   | <b>\$ 2,010</b>    | <b>\$ (6,182)</b>  | <b>\$ (5,209)</b>  | <b>\$ (6,167)</b>  |
| <b>Fund Balances - Beginning of Year</b>       | <b>132,266</b>     | <b>145,373</b>     | <b>147,383</b>     | <b>141,201</b>     | <b>135,992</b>     |
| <b>Fund Balances - End of Year</b>             | <b>\$ 145,373</b>  | <b>\$ 147,383</b>  | <b>\$ 141,201</b>  | <b>\$ 135,992</b>  | <b>\$ 129,825</b>  |

<sup>(1)</sup> Numbers include the Life Insurance Fund and the Park Special Services Fund and the revenues in such funds are restricted.

<sup>(2)</sup> Totals may not add due to rounding.

<sup>(3)</sup> For purposes of this table, "Local Taxes" includes ad valorem property taxes and may also include certain non-ad valorem revenues which may be restricted or otherwise unavailable. See "SECURITY AND SOURCES OF PAYMENT – Non-Property Tax Revenues – Historical Collection of Non-Property Tax Revenues" herein.

<sup>(4)</sup> For purposes of this table, the "Federal Grants and Entitlements" and "State Grants," categories include revenues which are restricted or may otherwise be unavailable. See "SECURITY AND SOURCES OF PAYMENT – Non-Property Tax Revenues – Historical Collection of Non-Property Tax Revenues" herein.

Source: City of Memphis, Tennessee.

### ***Issuance of Additional Obligations Payable from Non-Property Tax Revenues***

The City may incur additional debt which may be supported by Non-Property Tax Revenues. See "CERTAIN INVESTMENT CONSIDERATIONS" herein.

### ***Recently Adopted and Pending Legislation***

*The IMPROVE Act.* The Improving Manufacturing, Public Roads and Opportunities for a Vibrant Economy Act (the "IMPROVE Act"), the primary purpose of which is to raise taxes to fund transportation and road projects, has been adopted by the Tennessee General Assembly and was executed into law by the Governor on April 26, 2017. The IMPROVE Act eliminated the Hall income tax, which is a tax on income derived from dividends on stock and interest on bonds, for tax years beginning on or after January 1, 2022. The rate at which the Hall income tax is reduced in the tax years prior to January 1, 2022, is determined through the State's annual budgeting process. Because three-eighths of the proceeds derived from the Hall income tax is distributed to local governments, elimination of the Hall income tax will eliminate a source of income for the City.

*Internet Sales Tax.* In light of a 2018 decision by the U.S. Supreme Court that a physical presence is no longer required in order for a person to have a substantial nexus subjecting the person to taxation by a state, the Tennessee General Assembly enacted House Bill 667, which provides that the Tennessee Department of Revenue is no longer prohibited from collecting internet sales and use taxes from certain persons having no physical presence in the State but who sell to consumers located in the State. To implement the State's new authorization to collect internet sales and use taxes, the Tennessee General Assembly adopted Senate Bill 0082 and its companion, House Bill 0733 (together, the "Internet Sales Tax Law"). Effective January 1, 2020, the Internet Sales Tax Law requires a dealer with no physical presence in the State to collect and remit sales tax if, in the previous 12-month period, the dealer's gross revenues from sales in the State exceed \$100,000 or the dealer made 200 or more separate sales transactions in the State. The Internet Sales Tax Law further provides that proceeds of such internet sales taxes must be distributed among counties in proportions reflecting the amount of such sales taxes collected for each county. Because the City will share in the sales taxes distributed to the County, the sales taxes authorized under the Internet Sales Tax Law should result in an increase in sales tax revenue for the City.

*Increased Share of Sales Tax.* Senate Bill 1158 and its companion, House Bill 1007 (together, the "Increased Sales Tax Share Bill"), if adopted, would decrease the amount of state sales and use tax revenues deposited to the State's General Fund from 29.0141% to 28.5262% and increase the share of such sales and use tax revenues appropriated to municipalities, including the City, from 4.6030% to 5.0909%, thereby increasing the amount of sales tax revenues allocated to the City. The Tennessee General Assembly is **[currently in recess and will not consider the Increased Sales Tax Share Bill until it returns]**.

*Traffic Enforcement Cameras.* Senate Bill 2002 and its companion, House Bill 1656 (together, the "Traffic Camera Bill"), have been introduced for consideration by the Tennessee General Assembly. The Traffic Camera Bill would prohibit the issuance of traffic citations based solely on evidence obtained from unmanned traffic cameras used to monitor traffic signal



violations or speed limits. If adopted, the Traffic Camera Bill will result in a decrease in revenues from traffic fines for the City. The Tennessee General Assembly **[is currently in recess and will not consider the Traffic Camera Bill until it returns]**.

Deannexation Bills. In recent years, various bills have been introduced for consideration by the Tennessee General Assembly which would allow voters residing in an area annexed by a Tennessee city to petition the county election commission to hold an election to deannex the area or which would have a similar impact ("Deannexation Bill"). In light of attempts in recent years to deannex ten areas annexed by the City since 1998, passage of any Deannexation Bill could lead to actual deannexation of some or all of those areas, thereby resulting in a negative impact on the City's property and sales tax revenues. Though the City deannexed the Eads and Riverbottom areas in 2019 and the Southwind-Wyndyke, South Cordova and Rocky Point areas in 2020, those deannexations were implemented at the discretion of the City for the benefit of the entire City and not forced by an election of the residents of only those areas. Though one could be introduced at any time, no Deannexation Bill has yet been introduced to the current Tennessee General Assembly.

### **Flow of Funds Under the Indenture**

Under the Indenture, there has been established with the Bond Trustee a separate fund known as the "Revenue Fund." All payments of Non-Property Tax Revenues made by the City pursuant to the Loan Agreement pledged under the Indenture, as and when received by the Bond Trustee, will be deposited into the Revenue Fund and will be held therein until disbursed as provided in the Indenture. Pursuant to the assignment and pledge of payments under the Loan Agreement set forth in the Indenture, the Issuer will direct the City to make such payments to the Bond Trustee when and as the same become due and payable by the City under the Loan Agreement.

The Bond Trustee will **[on or before November 1 of each Fiscal Year]**, make deposits and payments from all amounts in the Revenue Fund in the amounts and in the order of priority set forth below, in each case to the extent of available funds on deposit therein:

(a) To the Debt Service Fund, an amount which, together with the amount then on deposit in the Debt Service Fund, equals the sum of (i) the principal of Outstanding Bonds payable at maturity or through mandatory Sinking Fund Redemption during the twelve (12) calendar months next succeeding the date of such deposit, plus (ii) the interest on such Outstanding Bonds payable during the twelve (12) calendar months next succeeding the date of such deposit; then

**[(b) To the Expense Fund, the estimated Operating Expenses for the next succeeding twelve (12) calendar months as certified to the Bond Trustee by the City.]**

### **Debt Service Fund**

The Issuer will establish with the Bond Trustee and maintain as long as any Bonds are Outstanding a separate fund known as the "Debt Service Fund." Within the Debt Service Fund there will be established the "Capitalized Interest Account." The Bond Trustee will apply the money on deposit in the Debt Service Fund, first, **[together with the amounts available in the Capitalized Interest Account,]** to the payment of interest on Outstanding Bonds when due, and,

then, to the payment of the principal of Outstanding Bonds when due either at maturity or through mandatory Sinking Fund Redemption.

Money on deposit in the Capitalized Interest Account from Proceeds of the Series 2021 Bonds will be transferred to the Debt Service Fund and used to pay interest on the Series 2021 Bonds on [\_\_\_\_\_].

### **Other Funds**

**Expense Fund.** The Issuer will establish with the Bond Trustee and maintain so long as any Bonds are Outstanding a separate fund to be known as the "Expense Fund." Money in the Expense Fund will be used only for payment of the Operating Expenses or to reimburse the City for Operating Expenses theretofore paid by it for which it has not previously been reimbursed.]

Construction Fund. The Issuer shall establish with the Bond Trustee a separate fund to be known as the "Construction Fund." Any money received by the Bond Trustee from any source for the acquisition, construction, renovation, rehabilitation, remodeling, furnishing or equipping portions of the Project shall be deposited in the Construction Fund unless otherwise specifically excepted in the Indenture. The money in the Construction Fund will be held in trust by the Bond Trustee, will be applied to the payment of Costs of the Project and, pending such application, will be held as trust funds under the Indenture in favor of the Holders of the Outstanding Bonds and for the further security of such Holders until paid out or transferred as provided in the Indenture. All payments from the Construction Fund will be made only upon receipt by the Bond Trustee of a requisition of the City, signed by an Authorized Officer of the City.

The completion date of the Project will be established by the filing with the Bond Trustee of an Officer's Certificate of the City to the effect that the moneys, if any, on deposit in the Construction Fund are no longer required by the City for the payment of Costs of the Project. Upon the filing of such Officer's Certificate, any money then remaining in the Construction Fund, shall upon the request of the City be (i) transferred to the Debt Service Fund in the amounts set forth in such request or (ii) applied to the redemption or defeasance of Outstanding Bonds in accordance with the Indenture.

Optional Redemption Fund. The Issuer shall establish with the Bond Trustee and maintain so long as any of the Bonds are Outstanding a separate fund to be known as the "Optional Redemption Fund." In the event of (i) prepayment by or on behalf of the City of amounts payable under the Loan Agreement pledged under the Indenture, including prepayment with condemnation or insurance proceeds, or (ii) deposit with the Bond Trustee by the City or the Issuer of money from any other source for redeeming Bonds, except as otherwise provided in the Indenture, such money shall be deposited into the Optional Redemption Fund. Money on deposit in the Optional Redemption Fund shall be used, first, to make up any deficiencies existing in the Debt Service Fund and, second, for the redemption or purchase of Bonds in accordance with the provisions of the Indenture.

### **Limited Obligations**

The Bonds are limited obligations of the Issuer payable solely from and secured by an assignment and pledge of the Trust Estate.

THE BONDS AND THE INTEREST THEREON DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF INCLUDING, WITHOUT LIMITATION, THE CITY AND THE COUNTY, AND THE BONDS AND THE INTEREST THEREON DO NOT NOW AND SHALL NEVER CONSTITUTE A DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING, WITHOUT LIMITATION, THE CITY AND THE COUNTY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF INCLUDING, WITHOUT LIMITATION, THE CITY AND THE COUNTY, SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, MORTGAGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER THAT MAY BE UNDERTAKEN BY THE ISSUER. NO BREACH BY THE ISSUER OF ANY SUCH PLEDGE, MORTGAGE, OBLIGATION OR AGREEMENT SHALL IMPOSE ANY LIABILITY, PECUNIARY OR OTHERWISE, UPON THE STATE OR ANY POLITICAL SUBDIVISION THEREOF INCLUDING, WITHOUT LIMITATION, THE CITY AND THE COUNTY, OR ANY CHARGE UPON THEIR GENERAL CREDIT OR TAXING POWER. THE ISSUER HAS NO TAXING POWER, AND THE BONDS AND THE INTEREST THEREON DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER.

## **CERTAIN INVESTMENT CONSIDERATIONS**

### **General**

The purchase of the Series 2021 Bonds is subject to a number of investment considerations. The following is a discussion of certain investment considerations, which, among others, could affect the ability of the Issuer to pay principal of, premium, if any, and interest on the Series 2021 Bonds and which could also affect the marketability of, or the market price for, the Series 2021 Bonds. Such discussion is not, and is not intended to be, a comprehensive compilation of all possible investment considerations nor a substitute for an independent evaluation of the information presented in this Official Statement, including the appendices attached hereto. Each prospective purchaser of any Series 2021 Bond should read this Official Statement, including the appendices attached hereto, in its entirety and consult such prospective purchaser's own investment or legal advisor for a more complete explanation of the matters that should be considered when purchasing an investment such as the Series 2021 Bonds.

### **Enforceability of Remedies**

The remedies available to the owners of the Series 2021 Bonds upon an event of default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay.

The enforceability of remedies or rights with respect to the Series 2021 Bonds may be limited by state and federal laws, rulings and decisions affecting remedies and by bankruptcy, insolvency or other laws affecting creditors' rights or remedies heretofore or hereafter enacted. Under existing constitutional and statutory law and judicial decisions, including specifically Title 11 of the United States Code (federal bankruptcy code), certain remedies specified by the Indenture or the Loan Agreement may not be readily available or may be limited.

Under existing law, municipalities must obtain the consent of state government in order to avail themselves of federal bankruptcy protection under Title 11 of the United States Code. However, there is currently no State law granting such consent. The various legal opinions to be delivered concurrently with the delivery of the Series 2021 Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by bankruptcy, reorganization, insolvency, moratorium, or other similar laws affecting the rights of creditors generally or as to the availability of any particular remedy.

### **Early Payment Prior to Maturity**

**[The Series 2021 Bonds are subject to optional redemption prior to maturity, as more fully described herein. See "THE SERIES 2021 BONDS - Redemption Provisions" herein. A prospective investor should consider these redemption rights when making any investment decision. Following redemption, the owners of the Series 2021 Bonds may not be able to reinvest their funds at a comparable interest rate.]**

### **Non-Recourse Obligation**

The Series 2021 Bonds are limited obligations of the Issuer payable solely from and secured by an assignment and pledge of the Trust Estate, which consists primarily of the payments and prepayments to be received by the Issuer from the City under and pursuant to the Loan Agreement (excluding the Unassigned Rights). Holders of Series 2021 Bonds will have no recourse against any other assets of the Issuer. The Project is not pledged to secure the Series 2021 Bonds. Neither the full faith and credit nor the taxing power of the State, the City or any other political subdivision are available to pay debt service on the Series 2021 Bonds. The Issuer has no taxing power. See "SECURITY AND SOURCES OF PAYMENT" and "CERTAIN INVESTMENT CONSIDERATIONS - Considerations Relating to Non-Property Tax Revenues" herein and "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

### **Considerations Relating to Non-Property Tax Revenues**

*Overview.* The receipt of Non-Property Tax Revenues is affected by and subject to conditions which may change in the future to an extent and with effects that cannot be determined at this time. The receipt of Non-Property Tax Revenues is subject to economic factors and other conditions which are impossible to predict.

*No Restriction on Pledge of Non-Property Tax Revenues.* Pursuant to the Loan Agreement, the City has covenanted and agreed to pay with respect to the Series 2021 Bonds, on or prior to the time required by the Loan Agreement, Non-Property Tax Revenues in an amount necessary,

together with other amounts, if any, on deposit or to be deposited to certain accounts under the Indenture to make the deposits required under the Loan Agreement; provided, however, that the provisions of the Loan Agreement shall not preclude the City from pledging Non-Property Tax Revenues to the payment of other indebtedness. In addition to the Series 2021 Bonds, the Outstanding Contingent Obligations and the Outstanding Unconditional Obligations, the Non-Property Tax Revenues also serve as a source of payment for various other obligations of the City, including various operating expenses of the City and other obligations otherwise payable from the General Fund of the City. See "SECURITY AND SOURCES OF PAYMENT" herein and "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

*Sufficiency of Non-Property Tax Revenues.* There can be no assurance that the Non-Property Tax Revenues received by the City will be sufficient to pay principal of, premium, if any, and interest on the Series 2021 Bonds. The City has no obligation to increase any taxes or fees to pay principal of, premium, if any, and interest on the Series 2021 Bonds.

*Pledge of Non-Property Tax Revenues Subject to Appropriations.* The City has further covenanted and agreed to include in its annual budget and appropriate for payment to the Bond Trustee from its Non-Property Tax Revenues payments due with respect to the Series 2021 Bonds in accordance with the terms of the Loan Agreement. NO ASSURANCE CAN BE GIVEN THAT THE CITY COUNCIL WILL APPROPRIATE SUCH FUNDS. See "SECURITY AND SOURCES OF PAYMENT" herein and "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

*Possible Changes to State and Local Law.* The Tennessee General Assembly has the authority to amend the provisions of State law governing certain of the Non-Property Tax Revenues. The Tennessee General Assembly may change the rates and calculation methods from time to time and may decrease or increase non-ad valorem taxes and fees at any time. These changes may affect the amount of Non-Property Tax Revenues generated and made available in any Fiscal Year. Similarly, changes to the tax base and exemptions may affect the amount of Non-Property Tax Revenues available for payment on the Series 2021 Bonds. Any change in the current system of collection and distribution of non-ad valorem taxes and fees within the State, including without limitation the reduction or elimination of any such taxes or fees, or judicial action concerning any such taxes or fees, most likely would impact the amount of Non-Property Tax Revenues for the Fiscal Year in question. There can be no assurance that the current system of collection and distribution of Non-Property Tax Revenues will not be changed by any entity having jurisdiction to do so, including without limitation the State. Any reduction in Non-Property Tax Revenues or any repeal of any of the taxes and fees making up Non-Property Tax Revenues may cause a material reduction in Non-Property Tax Revenues.

See "SECURITY AND SOURCES OF PAYMENT – Non-Property Tax Revenues" herein.

### **Limitations on Remedies**

The occurrence of an event of default under the Indenture or the Loan Agreement will not permit the acceleration of the maturity of, or allow immediate payment for, the entire outstanding

principal balance of any series of the Series 2021 Bonds. Due to the fact that payment of the Series 2021 Bonds is not secured by a mortgage lien or other security interests in the Project or any portion thereof or any other assets of the Issuer or the City, Holders of Series 2021 Bonds will be limited to seeking remedies against the Trust Estate.

### **Secondary Market Prices**

No assurance can be given that a secondary market for any of the Series 2021 Bonds will be available and no assurance can be given that the initial offering prices for the Series 2021 Bonds will continue for any period of time.

The Series 2021 Bonds may not constitute a liquid investment, and there is no assurance that a liquid secondary market will exist for the Series 2021 Bonds in the event an owner thereof determines to solicit purchasers of the Series 2021 Bonds. Even if a liquid secondary market exists, there can be no assurance as to the price for which the Series 2021 Bonds may be sold. Such price may be lower than that paid by the current owner of the Series 2021 Bonds, depending on existing market conditions and other factors.

### **Seismic Risks**

The City is located adjacent to the New Madrid seismic zone, which is the most seismically active and well-studied region in the Central and Eastern United States. The last major earthquakes located within this seismic zone, believed to have ranged between 7.0 and 7.7 in magnitude, occurred in 1811 and 1812. According to the U.S. Geological Survey, there is a 7-10% chance that a repeat of earthquakes of similar scale to the 1811 and 1812 earthquakes will occur within the next 50 years and a 25-40% risk of a still dangerous earthquake in the low-6 magnitude. During the past 25 years, building codes in the City and the County have been gradually upgraded to require stricter seismic construction standards. However, many older buildings, particularly in the downtown area, are masonry structures built long before seismic requirements and are believed to be highly vulnerable to shaking from an earthquake.

In addition to the potential damage to buildings and facilities within the City, due to the importance of the City as a tourist destination and regional hub of commercial, retail and entertainment activity, a major earthquake may cause significant temporary and possibly long-term harm to the City's economy, tax receipts and residential and business real property values.

### **Climate Change**

Numerous scientific studies have detailed changing global weather patterns and the potential for increasing extreme weather events across the world. The City's location in the southern United States and next to the Mississippi River increases its vulnerability to flooding and extreme heat. In addition to flooding and extreme heat, the City faces other threats due to climate change, including both drought and damaging wind that could become more severe and frequent. The City and the County have collaborated to develop a Climate Action Plan, which is intended to measure and lessen the City's contributions to climate change. The Issuer and the City cannot predict the timing, extent or severity of climate change and its impact on the City's operations and finances, including Non-Property Tax Revenues.

## Cyber Security

The City utilizes various computer systems and network technology to perform many of its vital operations. Such operations often include the storage and transmission of sensitive information. As a result, the City may be the target of cyberattacks attempting to gain access to such information. In addition to intentional attacks, information breaches may occur due to unintentional employee error. A successful cyberattack or unintentional breach may require the expenditure of an unknown amount of money or time to resolve, substantially interrupt municipal services and operations and subject the City to legal action. The City has no knowledge of, nor historical record of, any successful cyber security breach or related attack. Attempted cyber security attacks, whether anonymous or targeted, occur on a periodic frequency that is not uncommon to organizations or entities similar to the City. To mitigate against such risks, the City has instituted various policies and procedures to protect its network infrastructure, including a cyber-security training requirement for certain departments, as well as general cyber security training and awareness for all employees. The City also maintains insurance against cyber security incidents. Despite the City's measures to safeguard its network infrastructure, there are no guarantees that such measures will be successful.

## COVID-19

### [TO BE UPDATED]

The worldwide spread of COVID-19, a respiratory illness caused by a novel strain of coronavirus, is a pandemic that has affected the entire world, including the City, and is considered by the World Health Organization to be a Public Health Emergency of International Concern. The Governor of the State issued a state of emergency for the State in March 2020 in response to the COVID-19 pandemic. The spread of COVID-19 has led to quarantine and other "social distancing" measures throughout the United States, including the City. These measures have included (i) the closure, from time to time, of nonessential businesses, (ii) recommendations and warnings to limit nonessential travel and promote telecommuting, (iii) the postponement or cancellation of or reduced capacity at large-scale gatherings such as conventions, concerts and sporting events, (iv) limits on operations and customer capacity at commercial and retail establishments and (v) the closure, from time to time, of school buildings. In response to the pandemic, many of the City's notable tourist attractions have, from time to time, closed or operated at reduced capacity. Similarly, travel to the City and hotel stays within the City have decreased since the onset of the pandemic. The State continues to be under a state of emergency and the Governor of the State may continue to issue executive orders to facilitate continued response to the COVID-19 pandemic. The County and the City may also issue future restrictions in response to the pandemic. **[As of \_\_\_\_\_], 2021, there were approximately [ ] confirmed cases of COVID-19 in the County and [ ] deaths.]**

Multiple vaccines for the virus that causes COVID-19 were developed in late 2020. To date, **[three]** vaccines have been approved for distribution in the United States with **[each of these vaccines having an efficacy rate exceeding 65%]**. Multiple variants of the virus that causes COVID-19 have been documented in the United States and globally, but studies so far suggest that antibodies generated through vaccination with approved vaccines recognize these variants to varying extents. COVID-19 vaccines are currently available to all residents within the State,

including the City, who are over the age of 16. **[It is estimated [by the State of Tennessee Department of Health][by the [City][County] Health Department] that approximately [\_\_%] of the [City's][County's] population has been partially or fully vaccinated.]**

The Issuer and the City are unable to predict: (i) the extent or duration of the COVID-19 outbreak, any recurrence thereof or any other epidemic or pandemic; (ii) the extent or duration of existing or additional quarantines, closures, restrictions or other measures relating to COVID-19 or any other epidemic or pandemic; (iii) whether and to what extent the COVID-19 outbreak or any other epidemic or pandemic may disrupt the local or global economy, manufacturing or the supply chain or whether any such disruption may adversely affect the operations of the City; or (iv) the impact of, or the timing of distribution of, the COVID-19 vaccines. Given the evolving nature of the spread of the virus and the behavior of governments, businesses and individuals in response thereto, the City cannot accurately predict the magnitude of the impact of COVID-19 on the operations and financial condition of the City. The City is proactively taking steps to mitigate the spread of COVID-19 within the City, including but not limited to the above-mentioned distribution of COVID-19 vaccines to eligible residents.

As the pandemic has restricted commercial activity throughout the City, including but not limited to activity related to retail, tourism and entertainment, certain Non-Property Tax Revenues, including City revenues from sales taxes, hotel/motel taxes, licenses and permits, and charges for services, decreased at the onset of the pandemic. Though no assurances can be made as to future revenues, state and local sales tax revenues currently appear to be rebounding. State and local sales tax revenues collected by the City from **[June 2020 through December 2020]** were **[\_\_% higher]** than such sales tax revenues collected by the City during this same period in **[2019]**. The latest state and local sales tax revenue numbers available for the month of **[\_\_\_\_\_ 2021]** show a year-over-year increase of **[\_\_%]**. Though not a major source of City revenue, hotel/motel taxes (including the bed tax) for the City from **[June 2020 through December 2020]** were **[\_\_% lower]** than such revenues collected by the City during the same period in **[2019]**. City revenues from fines and forfeitures from **[June 2020 through December 2020]** were **[\_\_% lower]** than the amount collected by the City during the same period in **[2019]**, due to the initial suspension of court in response to COVID-19. Court has since resumed. The year-over-year revenue comparisons presented above include amounts that are unadjusted and unaudited. See "SECURITY AND SOURCES OF PAYMENT – Non-Property Tax Revenues – Historical Collection of Non-Property Tax Revenues" herein for more information on the collection of Non-Property Tax Revenues for the **[six-month period ended December 31, 2020 (unaudited)]**. Though no future assurances may be made, the City has not experienced, to date, any significant delays in the collection of Non-Property Tax Revenues as a result of the COVID-19 pandemic.

As provided herein, the City is liable, both contingently and unconditionally, for the payment of certain obligations incurred to finance or incentivize capital improvements within the City, including certain of the City's sports, entertainment and tourist venues. These obligations are generally primarily payable from revenues of certain sales and tourism-related taxes and fees, which revenues have been and are expected to continue to be significantly affected by the restriction of commercial and social activity resulting from the pandemic. As the revenues from these taxes and fees decrease, it becomes more likely that the City may be required to use its Non-Property Tax Revenues to support these payment obligations. See "SECURITY AND SOURCES OF PAYMENT – Non-Property Tax Revenues, – Contingent Obligations and – Unconditional



Obligations" herein for a description of these contingent and unconditional obligations, the payment streams therefor and the City's obligations in connection therewith.

To date, the City has received approximately **[\$113.6 million]** in CARES Act funds. The City has used these funds to cover unbudgeted City costs caused by COVID-19 as well as to provide economic relief for organizations, businesses and individuals within the City. Per the American Rescue Plan Act of 2021 (the "Rescue Plan"), the City anticipates receiving approximately \$168 million in additional federal aid, with half of this aid being received during Fiscal Year 2021 and the remaining half being received a year after the first distribution. Funds from the Rescue Plan may be used by the City to **[(i) respond to the health or economic impacts of COVID-19 within the City, including assistance to households, small businesses, nonprofits and impacted industries such as hospitality, travel and tourism, (ii) provide premium pay for essential workers, (iii) cover lost revenue in providing services and (iv) make investments in certain utility infrastructure]**. It is unknown at this time whether the City will receive additional funds from either the State or the federal government.

Though no guarantees can be offered, the Issuer and the City expect to be able to make timely debt service payments on the Series 2021 Bonds if unexpected changes to Non-Property Tax Revenues occur.

COVID-19 developments, and the responses of governments, businesses and individuals thereto, are rapidly changing and cannot be predicted with any assurance.

## **TAX MATTERS**

**[TO BE COMPLETED BY CO-BOND COUNSEL].**

## **LITIGATION**

### **The Issuer**

There is no known pending or, to the knowledge of the Issuer, threatened litigation against the Issuer which restrains or enjoins the issuance or delivery of the Series 2021 Bonds, the execution, delivery or performance of the Indenture or the Loan Agreement, or the use of the proceeds of the Series 2021 Bonds or which questions or contests the validity of the Series 2021 Bonds, the Indenture or the Loan Agreement or the proceedings and authority under which they are to be issued, executed and delivered. Neither the creation, organization, nor existence of the Issuer, nor the title of the present board members or other officials of the Issuer to their respective offices, is being currently contested or questioned to the knowledge of the Issuer.

### **The City**

A discussion of litigation in which the City is involved which could potentially have a material impact on the City is set forth below.

*PILOT Payments Litigation.* The County has filed two lawsuits against the City, claiming that approximately \$55 million of electric and gas payments in lieu of taxes made by MLGW and collected by the City should have been paid to the County instead. Many of the County's claims were rejected by the Court in a prior suit between the City and the County. The City also disputes the County's interpretation and application of applicable law and has interposed several defenses, including sovereign immunity. As a result, the City believes that the amounts due to the County under these lawsuits, if any, will be significantly less than initially claimed by the County. In any event, the City does not expect that any such amounts will materially affect the financial condition of the City.

*BellSouth Litigation.* AT&T (formerly known as BellSouth Telecommunications, Inc.) sued the City in 2000 to recover alleged excessive telecommunications franchise fees. Tennessee courts have ruled that approximately \$35,000,000 (with interest since 2000), is payable by the City to BellSouth (the "BellSouth Payment"), net of any City right-of way costs properly allocable to BellSouth (the "ROW Compensation"). To the extent the ROW Compensation due from BellSouth is greater than the BellSouth Payment, BellSouth will have to pay the difference. To the extent the ROW Compensation is less than the BellSouth Payment, the City will have to refund the difference to BellSouth. The City has performed a cost allocation study to determine the amount of the ROW Compensation. The City believes that the ROW Compensation from BellSouth will be significant, and that any amounts ultimately due to BellSouth will not materially affect the financial condition of the City.

*City Pension Litigation.* In order to comply with the Public Employee Defined Benefit Act's requirements to improve the financial security and actuarial soundness of the City's Retirement Plans, the City Council adopted Ordinance No. 5573 (the "Pension Ordinance") on December 16, 2014.

On November 12, 2015, seven (7) of the non-vested employees who were to be transferred to the 2016 Plan on July 1, 2016, filed an action in Tennessee state court on behalf of themselves and others who are similarly situated, claiming the Pension Ordinance is invalid because it violates Tennessee law as interpreted by the Tennessee Supreme Court. Specifically, Plaintiffs claim that the transfer of certain non-vested employees to the 2016 Plan, which is a hybrid plan consisting of a market based cash balance plan and a 401(a) defined contribution plan, was not reasonable or necessary to protect or enhance the actuarial soundness of the City's defined benefit pension plan and therefore the transfer of non-vested employees to the 2016 Plan will violate their rights. On June 20, 2016, the trial court denied Plaintiffs' application for a temporary injunction pending a trial on the merits. The City intends to vigorously defend this lawsuit, since the adoption of the Pension Ordinance was adopted upon the express finding of the City's governing body that the creation of the 2016 Plan will protect and enhance the actuarial soundness and ensure the long-term viability of the City Retirement System and the immutable rights of vested participants. Moreover, the Pension Ordinance is one of a series of actions taken by the City to satisfy the State's stated policy of improving the financial security of public defined benefit pension plans by requiring that the unfunded accrued liability of such plans be eliminated no later than June 15, 2020.

*City Employee Other Post-Employment Benefits (OPEB) Plan Litigation.* On November 12, 2015, four participants in the OPEB Plan filed a putative class action in Tennessee State Court

for themselves and others similarly situated seeking to enjoin the City's changes to the OPEB Plan. Although the suit is still pending, the trial judge has denied Plaintiffs' request for a temporary injunction and has denied Plaintiffs' request to certify the case as a class action. The Court concluded that Plaintiffs are unlikely to succeed on the merits of their claims, since they have not shown any contractual vested rights to lifetime health insurance subsidies. The City Council adopted an amendment to the Hybrid Pension Plan on December 15, 2020, which gives the non-vested fire and police employees, who were transferred to the 2016 Plan, the irrevocable option to transfer from the 2016 Plan to the 1978 Defined Benefit Plan. Any employees who elect to return to the 1978 Defined Benefit Plan will have no further claims in the lawsuit. In any event, the City believes that it will successfully defend this action.

Other Litigation. The City is a defendant in various other lawsuits arising in the ordinary course of operations. Although the outcome of these lawsuits is not presently determinable, it is the opinion of the administration of the City and the Chief Legal Officer/City Attorney that the ultimate disposition of these matters will not materially affect the financial condition of the City. Under the Tennessee Governmental Tort Liability Act, §§ 29-20-101 through 29-20-408 of the Tennessee Code Annotated (the "Governmental Tort Act"), all governmental entities in Tennessee are immune from suit for any injury which may result from the activities of such governmental entities when engaged in the exercise and discharge of any function, except within the limits provided in the Governmental Tort Act. Pursuant to the Governmental Tort Act, there are limits for liability for governmental entities for bodily injury or death of any one person in any one accident, occurrence or act, unless and to the extent insurance is provided. The City is self-insured within these limits and all such claims are budgeted and paid from annual operating revenues of the City.

## CONTINUING DISCLOSURE

The Issuer has determined that no financial or operating data concerning the Issuer is material to any decision to purchase, hold or sell the Series 2021 Bonds and the Issuer will not provide any such information. The City will undertake all responsibility for providing continuing disclosure with respect to the Series 2021 Bonds and the Issuer will have no liability to the Holders of the Series 2021 Bonds or any other person with respect to the obligations undertaken by the City under the Disclosure Agreement.

In order to assist the Underwriter in complying with Rule, simultaneously with the issuance of the Series 2021 Bonds, the City will enter into the Disclosure Agreement for the benefit of the Holders of the Series 2021 Bonds, substantially in the form attached hereto as "APPENDIX B - FORM OF CONTINUING DISCLOSURE AGREEMENT." The City, as an "obligated person" under the Rule, will undertake in the Disclosure Agreement to provide: (a) certain financial information and operating data relating to the Series 2021 Bonds in each year (the "Annual Report"); and (b) notice of the occurrence of certain enumerated events (each a "Listed Event Notice"). The Annual Report and each Listed Event Notice, if applicable, will be filed by DAC, on behalf of the City, on EMMA, a service of the MSRB. The specific nature and timing of filing the Annual Report and each Listed Event Notice, and other details of

the City's undertakings, are more fully described in "APPENDIX B - FORM OF CONTINUING DISCLOSURE AGREEMENT" attached hereto:

The following disclosure is being provided by the City for the sole purpose of assisting the Underwriter in complying with the Rule:

The City previously entered into continuing disclosure undertakings with its underwriters, as an "obligated person" under the Rule (the "Undertakings"). In the period beginning five years prior to the date of this Official Statement to the dated date of this Official Statement (the "Compliance Period"), the City has, on several instances during the Compliance Period, failed to comply, in all material respects, with certain provisions of the Undertakings, including: (a) failing to provide certain required annual financial information in its annual filings; and (b) failing to file or timely file certain notices, including event notices relating to rating changes, notices of defeasance and notices of failures to submit required annual financial information before the date specified in the Undertakings. Pursuant to the hereinafter defined Order, the City posted on EMMA that certain Corrective and Voluntary Notice Regarding Certain Annual Financial Information in the Annual Filings and Notices, dated as of May 12, 2017 (the "Corrective Notice"), in order to update and provide notice of all past continuing disclosure delinquencies described above.

The following disclosure is being provided by the City for the sole purpose of complying with the hereinafter defined Order:

In March 2014, the SEC announced its Municipal Continuing Disclosure Cooperation (MCDC) Initiative, a voluntary self-reporting program, intended to address potentially widespread violations by municipal issuers and underwriters of the federal securities laws relating to continuing disclosure compliance reporting in municipal bond offering documents. The MCDC Initiative offered favorable settlement terms to issuers that self-report securities law violations, relating to material misstatements or omissions in bond documents about compliance with an issuer's prior undertakings as to continuing disclosure. After a review of its compliance record, as noted above, in November 2014, the City determined to self-report to the SEC by submitting an MCDC Questionnaire. On February 22, 2016, following discussion with the SEC staff, the City filed an Offer of Settlement.

On August 24, 2016, the SEC entered an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing Remedial Sanctions and A Cease-and-Desist Order (the "Order"). The Order contains no monetary penalties, but orders the City to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act of 1933 and orders the City to comply with the following undertakings:

(a) Establish appropriate written policies and procedures and periodic training regarding continuing disclosure obligations to effect compliance with the federal securities laws, including the designation of an individual or officer responsible for ensuring compliance with such policies and procedures and responsible for implementing and maintaining a record (including attendance) of such training;

(b) Comply with existing continuing disclosure undertakings, including updating past delinquent filings if the City is not currently in compliance with its continuing disclosure obligations;

(c) Disclose in a clear and conspicuous fashion the terms of the settlement in any final official statement for an offering by the City within five years from the date of the Order;

(d) Certify, in writing, compliance with the undertakings set forth above; and

(e) Cooperate with any subsequent investigation by the SEC regarding the false statements or material omissions, including the roles of individuals or other parties involved.

The City has undertaken all measures necessary to comply with the Order. Since the date of the Order, the City believes that it has complied, in all material respects, with its Undertakings, except that the City did not timely file certain annual financial information relating to the City's sewer collection and treatment fund for the Fiscal Year ended June 30, 2017, which failure was disclosed in a notice filed on EMMA by the City on December 27, 2017.

## **LEGAL MATTERS**

Certain legal matters incident to the authorization, issuance, validity, sale and delivery of the Series 2021 Bonds are subject to the approving opinions of Carpenter Law, PLLC, Memphis, Tennessee, and Butler Snow LLP, Memphis Tennessee, as Co-Bond Counsel, whose approving opinion, in substantially the form attached hereto as "APPENDIX C - FORM OF OPINIONS OF CO-BOND COUNSEL," will be delivered concurrently with the issuance of the Series 2021 Bonds. No representation is made to the Holders of the Series 2021 Bonds that Co-Bond Counsel has verified the accuracy, completeness or fairness of the statements in this Official Statement and Co-Bond Counsel assumes no responsibility to the Holders of the Series 2021 Bonds except for the matters that will be set forth in their approving opinion.

Certain legal matters will be passed upon for the Issuer by Farris Bobango, PLC, Memphis, Tennessee. Certain legal matters will be passed upon for the City by Jennifer Sink, Chief Legal Officer / City Attorney. In addition, certain legal matters will be passed upon for the City by Bass Berry & Sims PLC, Nashville, Tennessee, and Bruce Turner, PLLC, Memphis, Tennessee, Co-Disclosure Counsel to the City. Certain legal matters will be passed upon for the Underwriters by their counsel, Ahmad Zafferese, Memphis, Tennessee.

The legal opinions to be delivered concurrently with the delivery of the Series 2021 Bonds express the professional judgment of the attorneys rendering the opinions regarding the legal issues expressly addressed therein. By rendering legal opinions, the attorneys providing such opinions do not become insurers or guarantors of the result indicated by that expression of professional judgment with respect to the transaction on which the opinions are rendered or of the future performance of parties to the transaction. Furthermore, the rendering of an opinion does not guarantee the outcome of any legal dispute that may arise out of the transaction.

## CO-FINANCIAL ADVISORS

ComCap Partners, Memphis, Tennessee, and PFM Financial Advisors LLC, Memphis, Tennessee, serve as Co-Financial Advisors to the City for the Series 2021 Bonds. The Co-Financial Advisors assisted in matters related to the planning, structuring and issuance of the Series 2021 Bonds and provided other advice. The Co-Financial Advisors did not engage in any underwriting activities with regard to the issuance and sale of the Series 2021 Bonds.

## RATINGS

Moody's Investors Service, Inc. ("Moody's") and S&P Global Ratings ("S&P," and together with Moody's, the "Rating Agencies") have assigned ratings of ["\_\_\_" (\_\_\_\_ outlook)] and ["\_\_\_" (\_\_\_\_ outlook)] respectively, to the Series 2021 Bonds.

The ratings, including any related outlook with respect to potential changes in such ratings, reflect only the respective views of the Rating Agencies, and an explanation of the significance of such ratings may be obtained from the Rating Agencies furnishing the ratings. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies, and assumptions of its own. There is no assurance that such ratings will remain unchanged for any given period of time or that they will not be revised downward or withdrawn entirely by the rating agency furnishing the same, if, in its judgment, circumstances so warrant. Any such downward revision or withdrawal of such ratings or other actions by the Rating Agencies, or any of them, may have an adverse effect on the liquidity or market price of the affected Series 2021 Bonds. Neither the Issuer nor the City has undertaken any responsibility to oppose any such revision, suspension or withdrawal.

## UNDERWRITING

Loop Capital Markets LLC (the "Representative"), on behalf of itself and the other underwriters listed on the cover page of this Official Statement (collectively, the "Underwriters"), has agreed jointly and severally, pursuant to a Bond Purchase Agreement between the Representative and the City (the "Bond Purchase Agreement") to purchase the Series 2021 Bonds at an aggregate purchase price of \$\_\_\_\_\_, representing the principal amount of the Series 2021 Bonds of \$\_\_\_\_\_, [plus][minus] a bond [premium][discount] of \$\_\_\_\_\_ and minus an underwriters' discount of \$\_\_\_\_\_. The Bond Purchase Agreement provides that the Underwriters' obligations are subject to certain conditions precedent but that the Underwriters will be obligated to purchase all of the Series 2021 Bonds if any Series 2021 Bonds are purchased.

The Underwriters reserve the right to join with dealers and other underwriters in offering the Series 2021 Bonds to the public. The Series 2021 Bonds may be offered and sold to certain dealers (including dealers depositing such Series 2021 Bonds into investment trusts) at prices lower than the public offering prices. Public offering prices may be changed from time to time by the Underwriters.

**[The Underwriters have provided the following information for inclusion in this Official Statement.]**

## **FORWARD-LOOKING STATEMENTS**

Any statements made in this Official Statement, including in the appendices attached hereto, involving estimates or matters of opinion, whether or not so expressly stated as such, are set forth as estimates or matters of opinion and not as representations of fact. No representation is made that any of the estimates or matters of opinion will be realized.

The statements contained in this Official Statement, including in the appendices attached hereto, that are not purely historical, are forward-looking statements. Readers should not place undue reliance on forward-looking statements. All forward-looking statements included in this Official Statement are based on information available on the date hereof and neither the Issuer nor the City assumes any obligation to update any such forward-looking statement. It is important to note that actual results could differ materially from those in such forward-looking statements.

The forward-looking statements herein are necessarily based on various assumptions and estimates and are inherently subject to various risks and uncertainties, including without limitation: risks and uncertainties relating to the possible invalidity of the underlying assumptions and estimates; possible changes or developments in social, economic, business, industry, market, legal and regulatory circumstances and conditions; and actions taken or omitted to be taken by third parties, including customers, suppliers, business partners, competitors and legislative, judicial and other governmental authorities and officials. Assumptions related to the foregoing involve judgments with respect to, among other things, future economic, competitive and market conditions and future business decisions, all of which are difficult or impossible to predict accurately and many of which are beyond the control of the Issuer or the City. Any of such assumptions could be inaccurate. Therefore, there can be no assurance that the forward-looking statements included in this Official Statement, including in the appendices attached hereto, will prove to be accurate.

## **MISCELLANEOUS**

The references, excerpts and summaries of all documents referred to in this Official Statement do not purport to be complete statements of the provisions of such documents and reference is directed to all such documents for full and complete statements of all matters of fact relating to the Series 2021 Bonds, the security for and the sources for repayment for the Series 2021 Bonds and the rights and obligations of the Holders. Copies of such documents may be obtained in the manner specified under the heading "INTRODUCTION - Other Information" herein.

The information in this Official Statement, including the appendices attached hereto, has been compiled from official and other sources deemed by the City to be reliable and, while not guaranteed as to completeness or accuracy, is believed by the City to be correct as of the date of this Official Statement.

Use of the words "shall" or "will" in this Official Statement or in summaries of documents to describe future events or continuing obligations is not intended as a representation that such event or obligation will occur but only that the document contemplates or requires such event to occur or obligation to be fulfilled.

Neither this Official Statement nor any statement which may have been made orally or in writing is to be construed as a contract with the owners of the Series 2021 Bonds.

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**AUTHORIZATION OF AND CERTIFICATION  
CONCERNING OFFICIAL STATEMENT**

The execution and delivery of this Official Statement, and its distribution and use by the Underwriters in connection with the original public offer, sale and distribution of the Series 2021 Bonds by the Underwriters, have been duly authorized and approved by the Issuer and the City.

**ECONOMIC DEVELOPMENT GROWTH  
ENGINE INDUSTRIAL DEVELOPMENT  
BOARD OF THE CITY OF MEMPHIS AND  
COUNTY OF SHELBY, TENNESSEE**

By: \_\_\_\_\_  
Reid Dulberger, President

**CITY OF MEMPHIS, TENNESSEE**

By: \_\_\_\_\_  
Jim Strickland, Mayor

**APPENDIX A**

**DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF  
CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT**

**APPENDIX B**

**FORM OF CONTINUING DISCLOSURE AGREEMENT**

**APPENDIX C**

**FORM OF OPINIONS OF CO-BOND COUNSEL**

30437045.1



**ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE**

**President**

Reid Dulberger

**Board Members**

Al Bright, Jr., Chairman  
Thomas Dyer, Vice Chairman  
Larry Jackson, Treasurer  
Dr. Florence Jones, Secretary  
Gerre Currie  
Natasha Donerson

City Councilman Edmund Ford, Sr.\*  
Mark J. Halperin  
County Commissioner Mickell M. Lowery\*  
Johnny B. Moore  
Cary Vaughn

**CITY OF MEMPHIS, TENNESSEE  
ELECTED OFFICIALS**

**Mayor**

Jim Strickland

**City Council**

Frank Colvett, Jr., Chairman  
Jamita Swearengen, Vice Chair  
J. Ford Canale  
Chase Carlisle  
Michalyn Easter-Thomas  
Edmund Ford, Sr.  
Cheyenne Johnson  
Martavious Jones  
Rhonda Logan  
Worth Morgan  
Patrice Robinson  
JB Smiley, Jr.  
Dr. Jeff Warren

**CONSULTANTS TO THE ISSUER AND THE CITY**

**Co-Bond Counsel to the City**

Carpenter Law, PLLC  
Memphis, Tennessee

Butler Snow LLP  
Memphis, Tennessee

**General Counsel to the Issuer**

Farris Bobango PLC  
Memphis, Tennessee

**Co-Disclosure Counsel to the City**

Bruce Turner, PLLC  
Memphis, Tennessee

Bass Berry & Sims PLC  
Nashville, Tennessee

**Co-Financial Advisors to the City**

ComCap Partners  
Memphis, Tennessee

PFM Financial Advisors, LLC  
Memphis, Tennessee

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\* Ex officio non-voting Board member.

**MATURITIES, PRINCIPAL AMOUNTS, INTEREST RATES,  
PRICES OR YIELDS AND CUSIPS†**

\$[\_\_\_\_\_]\*

**Economic Development Growth Engine Industrial Development Board  
of the City of Memphis and County of Shelby, Tennessee**

**Economic Development Bonds (City of Memphis Project), Series 2021**

| <b>Maturity<br/>(December 1)*</b> | <b>Principal<br/>Amount*</b> | <b>Interest<br/>Rate</b> | <b>Price</b> | <b>Yield</b> | <b>Initial CUSIP<br/>No.†</b> |
|-----------------------------------|------------------------------|--------------------------|--------------|--------------|-------------------------------|
| [2027                             | \$                           |                          |              |              |                               |
| 2027                              |                              |                          |              |              |                               |
| 2028                              |                              |                          |              |              |                               |
| 2029                              |                              |                          |              |              |                               |
| 2030                              |                              |                          |              |              |                               |
| 2031                              |                              |                          |              |              |                               |
| 2032                              |                              |                          |              |              |                               |
| 2033                              |                              |                          |              |              |                               |
| 2034                              |                              |                          |              |              |                               |
| 2035                              |                              |                          |              |              |                               |
| 2036                              |                              |                          |              |              |                               |
| 2037                              |                              |                          |              |              |                               |
| 2038                              |                              |                          |              |              |                               |
| 2039                              |                              |                          |              |              |                               |
| 2040                              |                              |                          |              |              |                               |
| 2041                              |                              |                          |              |              |                               |
| 2042                              |                              |                          |              |              |                               |
| 2043                              |                              |                          |              |              |                               |
| 2044                              |                              |                          |              |              |                               |
| 2045                              |                              |                          |              |              |                               |
| 2046]                             |                              |                          |              |              |                               |

\$[\_\_\_\_\_] - \_\_\_\_% Term Bond, Due December 1, 20[\_\_\_\_],  
Price \_\_\_\_ Yield \_\_\_\_%, Initial CUSIP No. \_\_\_\_\_

† Copyright, American Bankers Association (the "ABA"). Initial CUSIP data herein are provided by CUSIP Global Services, which is managed on behalf of the ABA by S&P Global Market Intelligence, a division of S&P Global Inc. The CUSIP numbers listed above are being provided solely for the convenience of purchasers of the Series 2021 Bonds only at the time of issuance of the Series 2021 Bonds, and neither the Issuer nor the City make any representation with respect to such numbers nor undertake any responsibility for their accuracy now or at any time in the future. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2021 Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such maturity or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the Series 2021 Bonds.

\* Preliminary, subject to change.

ISSUER. NO BREACH BY THE ISSUER OF ANY SUCH PLEDGE, MORTGAGE, OBLIGATION OR AGREEMENT SHALL IMPOSE ANY LIABILITY, PECUNIARY OR OTHERWISE, UPON THE STATE OR ANY POLITICAL SUBDIVISION THEREOF INCLUDING, WITHOUT LIMITATION, THE CITY AND THE COUNTY, OR ANY CHARGE UPON THEIR GENERAL CREDIT OR TAXING POWER. THE ISSUER HAS NO TAXING POWER, AND THE BONDS AND THE INTEREST THEREON DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER.

**Redemption:**

The Series 2021 Bonds [are] subject to redemption prior to maturity, as described herein. See "THE SERIES 2021 BONDS – Redemption Provisions" herein.

*The Series 2021 Bonds are being offered when, as, and if issued by the City and received by the Underwriters (as defined herein) subject to prior sale and to withdrawal or modification of the offer without notice and subject to the approving opinions of Carpenter Law, PLLC, Memphis, Tennessee, and Butler Snow LLP, Memphis, Tennessee, as Co-Bond Counsel to the City. Certain legal matters will be passed upon for the City by Jennifer Sink, Chief Legal Officer / City Attorney. Certain legal matters will be passed upon for the City by Bass, Berry & Sims PLC, Nashville, Tennessee, and Bruce Turner, PLLC, Memphis, Tennessee, as Co-Disclosure Counsel. Certain legal matters will be passed upon for the Underwriters by Ahmad Zafferese, Memphis, Tennessee, as Underwriters' Counsel. ComCap Partners, Memphis, Tennessee, and PFM Financial Advisors LLC, Memphis, Tennessee, are serving as Co-Financial Advisors to the City for the issuance of the Series 2021 Bonds. The Series 2021 Bonds are expected to be delivered through the book-entry only system of DTC on or about \_\_\_\_\_, 2021.*

**Loop Capital**

**Piper Sandler & Co.**

**Rice Financial Products Company**

Dated: \_\_\_\_\_, 2021



to the Loan Agreement, the City has covenanted and agreed to appropriate and pay from Non-Property Tax Revenues money sufficient, together with other money on deposit in the Debt Service Fund, if any, to pay the principal of and premium, if any, and interest on the Series 2021 Bonds when due. The City's payments and prepayments payable to the Issuer under the Loan Agreement (excluding Unassigned Rights as defined herein) have been assigned by the Issuer to the Bond Trustee as part of the Trust Estate (as defined herein) to secure the Series 2021 Bonds. Pursuant to the Indenture, the Trust Estate is pledged to the payment of the principal of, premium, if any, and interest on the Series 2021 Bonds and may be pledged to additional series of Bonds. See "SECURITY AND SOURCES OF PAYMENT" and "CERTAIN INVESTMENT CONSIDERATIONS" herein and "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

PAYMENTS OF NON-PROPERTY TAX REVENUES BY THE CITY PURSUANT TO THE LOAN AGREEMENT ARE SUBJECT TO ANNUAL APPROPRIATION BY THE CITY. NO ASSURANCE CAN BE GIVEN THAT THE CITY COUNCIL OF THE CITY WILL APPROPRIATE SUCH FUNDS.

THE SERIES 2021 BONDS AND THE INTEREST THEREON DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF INCLUDING, WITHOUT LIMITATION, THE CITY AND SHELBY COUNTY (THE "COUNTY"), AND THE SERIES 2021 BONDS AND THE INTEREST THEREON DO NOT NOW AND SHALL NEVER CONSTITUTE A DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING, WITHOUT LIMITATION, THE CITY AND THE COUNTY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF INCLUDING, WITHOUT LIMITATION, THE CITY AND THE COUNTY, SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE SERIES 2021 BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, MORTGAGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER THAT MAY BE UNDERTAKEN BY THE

(the "Loan") to the City of Memphis, Tennessee (the "City") pursuant to the Loan Agreement dated as of [\_\_\_\_], 2021 (the "Loan Agreement"), between the Issuer and the City. The City will use the proceeds of the Loan, together with other money, to: (a) pay the Costs of the Project (as defined herein) [, including interest on the Series 2021 Bonds during construction of the Project and for two (2) years after the estimated date of completion of the Project], and (b) pay certain expenses incurred in connection with the issuance of the Series 2021 Bonds, all as permitted under the provisions of Sections 7-53-101, *et seq.*, of the Tennessee Code Annotated (as the same may from time to time be amended, the "Act"). See "PLAN OF FINANCING" and "ESTIMATED SOURCES AND USES OF FUNDS" herein.

**Book-Entry Only System:** The Series 2021 Bonds will be dated their date of delivery and will be issued only in fully registered form, without coupons, in authorized denominations of \$5,000 or any integral multiple thereof equal to the principal amounts shown on the inside front cover page of this Official Statement relating to the respective series of the Series 2021 Bonds. The Series 2021 Bonds initially will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), which will act as securities depository for the Series 2021 Bonds. Purchases of beneficial ownership interests in the Series 2021 Bonds will be made in book-entry form only and purchasers will not receive physical delivery of certificates representing their beneficial ownership interests in the Series 2021 Bonds unless the book-entry only system is discontinued. See "THE SERIES 2021 BONDS" and "BOOK-ENTRY ONLY SYSTEM" herein.

**Payment Dates:** The Series 2021 Bonds will bear interest and mature on the dates set forth on the inside front cover page of this Official Statement. Interest on the Series 2021 Bonds is payable semiannually on June 1 and December 1 of each year, commencing [\_\_\_\_] 1, 20[\_\_\_\_]. Principal of the Series 2021 Bonds is payable on December 1 of each year, commencing December 1, 20[\_\_\_\_]\*. Payments of principal of and interest on the Series 2021 Bonds will be made to purchasers of beneficial interests in the Series 2021 Bonds by DTC Participants (as defined herein). See "THE SERIES 2021 BONDS" herein.

**Security:** The Series 2021 Bonds are limited obligations of the Issuer payable from Non-Property Tax Revenues (as defined herein) to be received by the City and paid to the Bond Trustee in accordance with the provisions of the Loan Agreement. Pursuant

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\* Preliminary, subject to change.

This Preliminary Official Statement and any information contained herein are subject to completion and amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of, the Series 2017 Bonds in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

**DAC Bond®**

**PRELIMINARY OFFICIAL STATEMENT DATED [\_\_\_\_\_] , 2021**

**NEW ISSUE - BOOK-ENTRY ONLY**

**RATINGS: See "RATINGS" herein.**

*This cover page contains limited information for quick reference only. It is not a summary of the matters relating to the Series 2021 Bonds (as defined herein). Potential investors must read the entire Official Statement (including the cover page and all appendices attached hereto) to obtain information essential to the making of an informed investment decision.*

**[\$\_\_\_\_\_]\***

**ECONOMIC DEVELOPMENT GROWTH ENGINE  
INDUSTRIAL DEVELOPMENT BOARD OF THE  
CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE**

**ECONOMIC DEVELOPMENT BONDS  
(CITY OF MEMPHIS PROJECT), SERIES 2021**

**Dated: Date of Delivery** Due: December 1, as shown on the inside front cover page

**Tax Treatment:** *[To Be Inserted by Co-Bond Counsel]. For a more complete description, see "TAX MATTERS" herein.*

**Authority for Issuance:** This Official Statement relates to the issuance and sale by the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (the "Issuer") of the Issuer's **[\$\_\_\_\_\_]\*** Economic Development Bonds (City of Memphis Project), Series 2021 (the "Series 2021 Bonds"). The Series 2021 Bonds are being issued by the Issuer pursuant to, among other things, that certain Trust Indenture dated as of [\_\_\_\_\_] , 2021 (the "Indenture"), between the Issuer and Regions Bank, as bond trustee (the "Bond Trustee"). See "SECURITY AND SOURCES OF PAYMENT" herein and "APPENDIX A - DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

**Terminology:** All capitalized terms used in this Official Statement and not otherwise defined herein will have the meanings ascribed to such terms in the Indenture. See "APPENDIX A - DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

**Purpose:** Pursuant to the Indenture, the proceeds of the Series 2021 Bonds will be used to, among other things, provide funds to make a loan

This Official Statement does not constitute a contract among the Issuer, the City or the Underwriters and any one or more owners of the Series 2021 Bonds, nor does it constitute an offer to sell or the solicitation of an offer to buy the Series 2021 Bonds in any jurisdiction to any person to whom it is unlawful to make such an offer in such jurisdiction.

No dealer, salesman or any other person has been authorized by the Issuer, the City or the Underwriters to give any information or to make any representations, other than those contained in this Official Statement, in connection with the offering of the Series 2021 Bonds, and if given or made, such information or representations must not be relied upon as having been authorized by the Issuer, the City or any other person. The information and expressions of opinion in this Official Statement are subject to change without notice, and this Official Statement speaks only as of its date. Neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create the implication that there has been no change in the matters described herein since the date hereof. Except as otherwise indicated, the information contained in this Official Statement, including in the appendices attached hereto, has been obtained from representatives of the Issuer, the City and from public documents, records and other sources considered to be reliable.

THIS PRELIMINARY OFFICIAL STATEMENT IS IN A FORM DEEMED FINAL BY THE ISSUER FOR PURPOSES OF RULE 15c2-12 ISSUED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, EXCEPT FOR CERTAIN INFORMATION PERMITTED TO BE OMITTED PURSUANT TO RULE 15c2-12(b)(1).

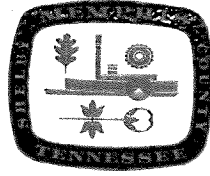
IN CONNECTION WITH THE OFFERING OF THE SERIES 2021 BONDS, THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2021 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

THE SERIES 2021 BONDS HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR HAS THE INDENTURE BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE SERIES 2021 BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF THE SECURITIES LAWS OF THE STATES, IF ANY, IN WHICH THE SERIES 2021 BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN CERTAIN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE SERIES 2021 BONDS OR THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

In making an investment decision, investors must rely on their own examination of the Issuer, the City and the terms of the offering, including the merits and risks involved. The Series 2021 Bonds have not been recommended by any federal or state securities commission or regulatory authority. Any representation to the contrary may be a criminal offense.

The order and placement of information in this Official Statement, including the appendices attached hereto, are not an indication of relevance, materiality or relative importance and this Official Statement, including the appendices attached hereto, must be read in its entirety. The captions and headings in this Official Statement are for convenience only and in no way define, limit or describe the scope or intent, or affect the meaning or construction, of any provision or section in this Official Statement.

References to website addresses presented herein, if any, are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such websites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for any purpose, including for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission.



## Memphis City Council Summary Sheet

**1. Description of the Item (Resolution, Ordinance, etc.)**

Resolution authorizing a borrowing by the City from the NMAPBA requesting the issuance of public improvement Capital Appreciation Bonds of not to exceed \$175,000,000 aggregate principal amount.

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

The Finance Division is the initiating party of this resolution.

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

There is no change to an existing ordinance or resolution.

**4. State whether this will impact specific council districts or super districts.**

This does not impact specific council districts or super districts.

**5. State whether this requires a new contract, or amends an existing contract, if applicable.**

This does not require a new contract, or amends an existing contract.

**6. State whether this requires an expenditure of funds/requires a budget amendment**

The resolution does require an expenditure of funds.

**7. If applicable, please list the MWBE goal and any additional information needed**

## RESOLUTION

**RESOLUTION OF THE COUNCIL OF THE CITY OF MEMPHIS, TENNESSEE, AUTHORIZING A BORROWING BY THE CITY OF MEMPHIS, TENNESSEE FROM THE NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY OF MEMPHIS AND SHELBY COUNTY, TENNESSEE, REQUESTING THE ISSUANCE OF PUBLIC IMPROVEMENT CAPITAL APPRECIATION BONDS OF NOT TO EXCEED ONE HUNDRED SEVENTY-FIVE MILLION DOLLARS (\$175,000,000) AGGREGATE PRINCIPAL AMOUNT OF THE NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY OF MEMPHIS AND SHELBY COUNTY, TENNESSEE LOCAL GOVERNMENT PUBLIC IMPROVEMENT CAPITAL APPRECIATION BONDS (CITY OF MEMPHIS PROJECT), SERIES 2021 TO FUND A PORTION OF THE CITY OF MEMPHIS PROJECT; AND AUTHORIZING ALL NECESSARY ACTIONS AND OTHERWISE PROVIDING WITH RESPECT TO THE FOREGOING.**

**WHEREAS**, the New Memphis Arena Public Building Authority of Memphis and Shelby County, Tennessee (the “**Issuer**”) is authorized pursuant to Tennessee Code Annotated Section 12-10-101 *et seq.*, as amended (the “**Act**”), to issue its bonds and take other actions to finance a portion of one or more projects undertaken by the City of Memphis, Tennessee (the “**City**”) relating to the construction of certain improvements upon and/or for the operation and maintenance of property owned by or leased to the City; and

**WHEREAS**, the City proposes to finance the costs of various public works projects of the City involving an investment of public funds in the estimated amount of two hundred million dollars (\$200,000,000) designed to (i) invest in the current phase of various public infrastructure, public improvements, and public facilities improvement projects of the City (collectively the “**Project**”), (ii) fund any capitalized interest fund, and (iii) the extent permitted to pay certain costs of issuance; and

**WHEREAS**, the City has requested the Issuer to assist the City in defraying the costs of the Project by issuing its tax-exempt bonds, in an amount not to exceed one hundred seventy-five million dollars (\$175,000,000), such bonds to be issued as current interest bonds, convertible capital appreciation bonds and/or capital appreciation bonds, as determined by the Mayor and the Chief Financial Officer of the City and the Issuer, to be designated (i) the New Memphis Arena Public Building Authority of Memphis and Shelby County, Tennessee Local Government Public Improvement Capital Appreciation Bonds (City of Memphis Project), Series 2021, (ii) the New Memphis Arena Public Building Authority of Memphis and Shelby County, Tennessee Local Government Public Improvement Convertible Capital Appreciation Bonds (City of Memphis Project), Series 2021, and/or (iii) the New Memphis Arena Public Building Authority of Memphis and Shelby County, Tennessee Local Government Public Improvement Capital Appreciation Bonds (City of Memphis Project), Series 2021, as applicable (the “**Series 2021 Bonds**”), or such other designation as determined by the Issuer or the City, and loan the proceeds of the Series 2021 Bonds to the City for the purposes of financing the Project; and

**WHEREAS**, the City will utilize the proceeds of the Series 2021 Bonds for purposes of (i) financing the costs of various public works of the City, including, if necessary and to the extent

determined by the Mayor and the Chief Financial Officer of the City and the Issuer, interest on the Series 2021 Bonds during construction of the Project and for two years after the estimated date of completion of the Project; (ii) paying certain expenses incurred in connection with the issuance of the Series 2021 Bonds; and (iii) reimbursing eligible expenditures advanced by the City from the proceeds of the Series 2021 Bonds, if necessary, all as permitted under the Act.

**WHEREAS**, the Series 2021 Bonds and interest thereon shall not be deemed to constitute a debt or a pledge of the full faith and credit of the State or any political subdivision thereof (except to the extent that the City is obligated under the Loan Agreement (defined herein). Neither the State nor any political subdivision thereof (except to the extent that the City is obligated under the Loan Agreement), shall be obligated to pay the principal of premium, if any, or interest on the Series 2021 Bonds or other costs incident thereto except from the revenues and receipts pledged therefor. The Issuer has no taxing power; and

**WHEREAS**, the City finds that the financing as herein described will further the purposes of the Act.

**WHEREAS**, the entry of the City into the Loan Agreement (defined herein) for the purposes described herein and therein complies with the provisions of the Debt Management Policy of the City.

**NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Memphis, Tennessee (the “Council”) as follows:**

1. The Issuer is hereby requested to issue, sell and deliver, at one time or from time to time, the Series 2021 Bonds in an aggregate principal amount not-to-exceed one hundred seventy-five million dollars (\$175,000,000), and loan the proceeds of the Series 2021 Bonds to the City pursuant to a loan agreement, by and between the Issuer and the City (the “**Loan Agreement**”), for the purposes of (i) financing the costs of various public works projects of the City, including, if necessary, interest on the Series 2021 Bonds during construction of the Project and for two years after the estimated date of completion of the Project; (ii) paying certain costs of issuance and expenses incurred in connection with the issuance of the Series 2021 Bonds, and (iii) reimbursing eligible expenditures advanced by the City from the proceeds of the Series 2021 Bonds, if necessary, all as permitted under the Act.
2. The Mayor is authorized to execute and deliver the Loan Agreement by and between the City and the Issuer in substantially the form of the Loan Agreement thereof heretofore presented to this Council, with such changes as shall be approved by the Mayor upon consultation with counsel, execution to be conclusive evidence of such consultation and approval.
3. The Trust Indenture by and between the Issuer and Regions Bank, Nashville, Tennessee, as bond trustee, pursuant to which the Issuer will issue the Series 2021 Bonds and pursuant to which the Issuer will authorize and provide for all matters with respect to the Series 2021 Bonds (the “**Trust Indenture**”), is hereby approved in substantially the form thereof heretofore presented to this Council, with such changes as shall be approved by the parties thereto.
4. The Mayor is hereby authorized to execute, approve, or agree to and deliver the Bond Purchase Agreement by and between the Issuer and BofA Securities, Inc., as lead managing underwriter and any other underwriters selected by the Chief Financial Officer of the City



(individually and collectively, the “**Underwriters**”), pursuant to which the Issuer will agree to sell the Series 2021 Bonds to the Underwriters and the Underwriters will agree to purchase the Series 2021 Bonds (the “**Bond Purchase Agreement**”), in substantially the form thereof heretofore presented to this Council, with such changes as shall be approved by the Mayor upon consultation with counsel, the execution to be conclusive evidence of such consultation and approval.

5. A Preliminary Official Statement is hereby authorized to be distributed in connection with the offering of the Series 2021 Bonds (the “**Preliminary Official Statement**”), in substantially the form thereof heretofore presented to this Council, with such changes as shall be approved by the Issuer, the Mayor, Chief Financial Officer or Comptroller of the City, or any of them or their designees (individually or collectively, “**Authorized Officers**”) upon consultation with counsel, its distribution to be conclusive evidence of such approval and consultation, and the Authorized Officers are authorized to deem the Preliminary Official Statement to be “final” (except for permitted omissions) for purposes of Rule 15c2-12 of the Securities and Exchange Commission (“**Rule 15c2-12**”).

6. The Mayor is hereby authorized to execute and deliver a final Official Statement (the “**Final Official Statement**”) in connection with the sale and issuance of the Series 2021 Bonds, in substantially the form of the Preliminary Official Statement, as the same has been completed by the insertion of the maturities, interest rates, and other details of the Series 2021 Bonds and by making such other insertions, changes or corrections as shall be approved by all Authorized Officers upon consultation with counsel, its execution to be conclusive evidence of such approval and consultation.

7. The Mayor is hereby authorized to execute and deliver a Continuing Disclosure Agreement by and between the City and Digital Assurance Certification LLC, as the City's dissemination agent (the “**Continuing Disclosure Agreement**”), to assist the Underwriters in complying with Rule 15c2-12, in substantially the form described in the Preliminary Official Statement, with such changes as shall be approved by the Mayor upon consultation with counsel, its execution to be conclusive evidence of such approval and consultation.

8. The Chief Financial Officer and Comptroller of the City are hereby authorized to execute and deliver any agreement authorized by this resolution to be executed by the Mayor. The Chief Financial Officer is also authorized to amend the budget of the Debt Service Fund to account for any costs incurred in connection with the delivery, execution and recording of the Loan Agreement.

9. All actions heretofore undertaken by the Authorized Officers and other officials, employees, attorneys and agents of the City in furtherance of the intent of this resolution, and of the documents authorized by this resolution, are hereby ratified, confirmed and approved.

10. The Authorized Officers and other appropriate officials of the City are hereby authorized to enter into such agreements, and they and other appropriate employees of the City are hereby authorized to execute such certificates or other documents and take such other actions, as may be necessary or appropriate to carry out the intent of this resolution.

11. This resolution shall become effective upon its adoption.

\$[par amount]  
NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY  
OF MEMPHIS AND SHELBY COUNTY, TENNESSEE

LOCAL GOVERNMENT PUBLIC IMPROVEMENT  
CAPITAL APPRECIATION BONDS  
(CITY OF MEMPHIS PROJECT), SERIES 2021

**BOND PURCHASE AGREEMENT**

[DATE]

New Memphis Arena Public Building Authority  
of Memphis and Shelby County, Tennessee  
[address to be provided]

City of Memphis, Tennessee  
125 N. Main Street  
Memphis, Tennessee, 38103

Ladies and Gentlemen:

BofA Securities, Inc. on behalf of itself and as representative (the “Representative”) of Wells Fargo Securities, LLC, Raymond James & Associates, Inc., Loop Capital Markets, LLC and Siebert Williams Shank & Co., LLC (collectively, with the Representative, the “Underwriters”) hereby offers to enter into this Bond Purchase Agreement (the “Purchase Agreement”) with New Memphis Arena Public Building Authority of Memphis and Shelby County, Tennessee, a public nonprofit corporation and a public instrumentality of the City of Memphis, Tennessee, and Shelby County, Tennessee, organized and existing pursuant to Chapter 10, Title 12, Tennessee Code Annotated (the “Issuer”) and the City of Memphis, Tennessee (the “City”), whereby the Underwriters will purchase and the Issuer will sell the Bonds (as defined and described below). The Underwriters are making this offer subject to the acceptance by the Issuer and the City at or before 5:00 P.M., Central Time, on the date hereof. If the Issuer and the City accept this Purchase Agreement, this Purchase Agreement shall be in full force and effect in accordance with its terms and shall bind both the Issuer, the City and the Underwriters. The Underwriters may withdraw this Purchase Agreement upon written notice delivered by the Representative to the [Chairman of the Board] of the Issuer and Mayor of the City at any time before the Issuer and the City accept this Purchase Agreement. Terms used but not defined in this Purchase Agreement are defined in Indenture (as defined below).

1. PURCHASE AND SALE.

Upon the terms and conditions and in reliance upon the representations, warranties and agreements herein set forth, the Underwriters hereby agree to purchase from the Issuer, and the Issuer hereby agrees to sell and deliver to the Underwriters, all (but not less than all) of the

following bonds: \$[par amount] Local Government Public Improvement Capital Appreciation Bonds (City of Memphis Project), Series 2021 (the “Bonds”), at the purchase price of \$ \_\_\_\_\_, representing the aggregate principal amount of the Bonds less an Underwriter’s discount of \$ \_\_\_\_\_ [plus net original issue premium of \$ \_\_\_\_\_/less net original discount of \$ \_\_\_\_\_]. The Underwriters intend to make an initial bona fide public offering of the Bonds at a price or prices described in Schedule I hereto; provided, however, the Underwriters reserve the right to change such initial public offering prices as the Underwriters deem necessary or desirable, in their sole discretion, in connection with the marketing of the Bonds (but in all cases subject to the requirements of Section 4 hereof), and may offer and sell the Bonds to certain dealers, unit investment trusts and money market funds, certain of which may be sponsored or managed by one or more of the Underwriters at prices lower than the public offering prices or yields greater than the yields set forth therein (but in all cases subject to the requirements of Section 4 hereof).

The Issuer and the City each acknowledge and agree that: (i) the Underwriters are not acting as a municipal advisor within the meaning of Section 15B of the Securities Exchange Act, as amended, (ii) the primary role of the Underwriters, as underwriters, is to purchase securities, for resale to investors, in an arm’s length commercial transaction between the Issuer, the City and the Underwriters and the Underwriters have financial and other interests that differ from those of the Issuer and the City; (iii) the Underwriters are acting solely as principals and are not acting as municipal advisors, financial advisors or fiduciaries to the Issuer or the City and have not assumed any advisory or fiduciary responsibility to the Issuer with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or are currently providing other services to the Issuer or the City on other matters); (iv) the only obligations the Underwriters have to the Issuer and the City with respect to the transaction contemplated hereby expressly are set forth in this Purchase Agreement; and (v) the Issuer and the City has each consulted its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it has deemed appropriate.

## 2. DESCRIPTION AND PURPOSE OF THE BONDS.

The Bonds have been authorized pursuant to Chapter 10 of Title 12, Tennessee Code Annotated, as amended (the “Act”), a resolution [NAME OF THE AUTHORIZING RESOLUTION OF THE ISSUER], adopted by the Members of the Issuer on \_\_\_\_\_, 2021 (the “Issuer Authorizing Resolution”). The Bonds shall be dated [the date of delivery]. The Bonds shall be issued and secured under and pursuant to the Indenture of Trust, dated as of June 1, 2021 (the “Indenture”), by and between the Issuer and Regions Bank, as trustee (the “Trustee”).

The Issuer and the City will enter into a Loan Agreement, dated as of June 1, 2021 (the “Loan Agreement”), under which the Issuer will agree to issue the Bonds and loan the proceeds thereof to the City and the City will agree to make loan repayments in amounts sufficient to pay when due the principal of, redemption premium, if any, and interest on the Bonds. The City will use the proceeds of the Bonds to (i) finance the Costs of various public works projects of the City (collectively the “Project”)[, including interest on the Bonds during construction of the Project and for [two (2) years] after the estimated date of completion of the Project], and (ii) pay certain

expenses incurred in connection with the issuance of Bonds, all as permitted under the provisions of the Act.

The Bonds will be secured under the provisions of the Act, the Indenture and the Loan Agreement. The Bonds shall mature in the years, bear interest, be purchased at the prices and be subject to optional and mandatory redemption at the times and in the amounts, all as set forth in Schedule I attached hereto. The Authorized Denominations, Record Dates, Interest Payment Dates, Sinking Fund Payment Dates, and other details and particulars of the Bonds shall be as described in the Indenture and the Official Statement (as defined below) of the Issuer.

3. DELIVERY OF THE OFFICIAL STATEMENT AND OTHER DOCUMENTS.

(a) The Issuer and the City have approved and delivered or caused to be delivered to the Underwriters copies of the Preliminary Official Statement dated \_\_\_\_\_, 2021, which, including the cover page and all appendices thereto, is herein referred to as the "Preliminary Official Statement." It is acknowledged by the Issuer and the City that the Underwriters may deliver the Preliminary Official Statement and a final Official Statement (as hereinafter defined) electronically over the internet and in printed paper form. The Issuer and the City each deem the Preliminary Official Statement final as of its date and as of the date hereof for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended ("Rule 15c2-12"), except for any information which is permitted to be omitted therefrom in accordance with paragraph (b)(1) of Rule 15c2-12.

(b) Within seven (7) business days from the date hereof, and in any event not later than two (2) business days before the Closing Date, the Issuer and the City shall deliver to the Underwriters a final Official Statement relating to the Bonds dated the date hereof (such Official Statement, including the cover page, and all appendices attached thereto, together with all information previously permitted to have been omitted by Rule 15c2-12 and any amendments or supplements and statements incorporated by reference therein or attached thereto, as have been approved by the Issuer, Bond Counsel, Disclosure Counsel and the Representative, is referred to herein as the "Official Statement") and such additional conformed copies thereof as the Representative may reasonably request in sufficient quantities to comply with Rule 15c2-12, rules of the MSRB and to meet potential customer requests for copies of the Official Statement. The Underwriters agree to file a copy of the Official Statement, including any amendments or supplements thereto prepared by the Issuer, with the MSRB on its Electronic Municipal Markets Access ("EMMA") system. The Official Statement shall be executed by and on behalf of the Issuer by an authorized officer of the Issuer and by and on behalf of the City by an authorized officer of the City. The Official Statement shall be in substantially the same form as the Preliminary Official Statement and, other than information previously permitted to have been omitted by Rule 15c2-12, the Issuer shall only make such other additions, deletions and revisions in the Official Statement which are approved by the Representative. The Issuer and the City each hereby agree to deliver to the Underwriters an electronic copy of the Official Statement in a form that permits the Underwriters to satisfy their obligations under the rules and regulations of the MSRB and the U.S. Securities and Exchange Commission ("SEC") including in a word-searchable pdf format including any amendments thereto. The Issuer hereby ratifies, confirms and consents to and approves the use and distribution by the Underwriters before the date hereof of the Preliminary Official Statement and hereby authorizes and consents to the use by the Underwriters

of the Official Statement and the Indenture in connection with the public offering and sale of the Bonds.

(c) In order to assist the Underwriters in complying with Rule 15c2-12, the City will undertake, pursuant to the Continuing Disclosure Agreement, dated [as of] June \_\_, 2021 (the “Disclosure Agreement”), by and between the City and DAC, as dissemination agent for the Issuer (the “Dissemination Agent”), to provide annual financial information and notices of the occurrence of specified events. A description of the Disclosure Agreement is set forth in, and a form of such agreement is attached as Appendix D to the Preliminary Official Statement and the Official Statement.

#### 4. ESTABLISHMENT OF ISSUE PRICE.

(a) The Representative, on behalf of the Underwriters, agrees to assist the Issuer in establishing the issue price of the Bonds and shall execute and deliver to the Issuer at Closing an “issue price” or similar certificate, substantially in the form attached hereto as Exhibit A, together with the supporting pricing wires or equivalent communications, with such modifications as may be deemed appropriate or necessary, in the reasonable judgment of the Representative, the Issuer and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds.

(b) [Except for the maturities set forth in Schedule A to Exhibit A attached hereto,] the Issuer represents that it will treat the first price at which 10% of each maturity of the Bonds (the “10% Test”) is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% Test). [If, as of the date hereof, the 10% Test has not been satisfied as to any maturity of the Bonds for which the Issuer has elected to utilize the 10% Test, the Representative agrees to promptly report to the Issuer the prices at which Bonds of that maturity or maturities have been sold by the Underwriters to the public. That reporting obligation shall continue until the earlier of the date upon which the 10% Test has been satisfied as to the Bonds of that maturity or maturities or the Closing Date.]]

(c) [The Representative confirms that the Underwriters have offered the Bonds to the public on or before the date of this Purchase Agreement at the offering price or prices (the “initial offering price”), or at the corresponding yield or yields, set forth in Schedule A to Exhibit A attached hereto, except as otherwise set forth therein. Schedule A to Exhibit A also sets forth, as of the date of this Purchase Agreement, the maturities, if any, of the Bonds for which the 10% Test has not been satisfied and for which the Issuer and the Representative, on behalf of the Underwriters, agrees that the restrictions set forth in the next sentence shall apply (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Underwriters will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

- (1) the close of the fifth (5<sup>th</sup>) business day after the sale date; or

(2) the date on which the Underwriters have sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.]

(d) [(c)][(d)] The Representative confirms that:

(1) any agreement among underwriters, any selling group agreement and each third-party distribution agreement (to which the Representative is a party) relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter, each dealer who is a member of the selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:

(i) (A) to report the prices at which it sells to the public the unsold Bonds of each maturity allocated to it until either all Bonds of that maturity allocated to it have been sold or it is notified by the Representative that the 10% Test has been satisfied as to the Bonds of that maturity and (B) to comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Representative and as set forth in the related pricing wires, and

(ii) to promptly notify the Representative of any sales of Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below),

(iii) to acknowledge that, unless otherwise advised by the Underwriter, dealer or broker-dealer, the Representative shall assume that each order submitted by the Underwriter, dealer or broker-dealer is a sale to the public.

(e) any agreement among underwriters and any selling group agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the Bonds to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allocated to it until either all Bonds of that maturity allocated to it have been sold or it is notified by the Representative or such Underwriter that the 10% Test has been satisfied as to the Bonds of that maturity and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Representative or the Underwriter and as set forth in the related pricing wires.

The Issuer acknowledges that, in making the representations set forth in this section, the Representative will rely on (i) the agreement of each Underwriter to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in an agreement among underwriters and the related pricing wires, (ii) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing issue

price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in a selling group agreement and the related pricing wires, and (iii) in the event that an Underwriter or dealer who is a member of the selling group is a party to a third-party distribution agreement that was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable, as set forth in the third-party distribution agreement and the related pricing wires. The Issuer further acknowledges that each Underwriter shall be solely liable for its failure to comply with its agreement to comply with its agreement regarding the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, and that no Underwriter shall be liable for the failure of any other Underwriter, or of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds.

(f) [(d)][(e)] The Underwriters acknowledge that sales of any Bonds to any person that is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(1) “public” means any person other than an underwriter or a related party to an underwriter,

(2) (“underwriter” means (A) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the public),

(3) a purchaser of any of the Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(4) “sale date” means the date of execution of this Purchase Agreement by all parties.

5. REPRESENTATIONS OF THE ISSUER.

The Issuer represents to and agrees with the Underwriters that:

(a) The Issuer is duly organized and validly existing, with full legal right, power and authority to issue, sell and deliver the Bonds to the Underwriters pursuant to the Indenture, and execute, deliver and perform its obligations, as the case may be, under this Purchase Agreement, the Indenture, the Bonds, and the Loan Agreement (collectively, the "Issuer Documents") and to perform and consummate all obligations and transactions required or contemplated by each of the Issuer Documents and the Official Statement.

(b) The Authorizing Resolution approving and authorizing the execution and delivery by the Issuer of the Issuer Documents and the offering, issuance and sale of the Bonds upon the terms set forth herein and in the Official Statement, was duly adopted at a meeting of the Board of \_\_\_\_\_ of the Issuer called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and is in full force and effect and has not been amended or repealed.

(c) The Indenture and the Bonds conform to the descriptions thereof contained in the Preliminary Official Statement and the Official Statement and the Bonds, when duly issued and authenticated in accordance with the Indenture and delivered to the Underwriters as provided herein, will be validly issued and outstanding obligations of the Issuer, entitled to the benefits of the Indenture and payable from the sources therein specified.

(d) The Issuer has executed and delivered, or will execute and deliver on or before the Closing Date, each of the Issuer Documents. Each of the Issuer Documents constitutes, or will, as of the Closing Date, constitute, a legal, valid and binding obligation of the Issuer enforceable in accordance with its terms, subject to any applicable bankruptcy, insolvency or other laws affecting creditors' rights or remedies heretofore or hereafter enacted. Each of the Issuer Documents has been executed and delivered, or will be executed and delivered on or before the Closing Date, by each respective signatory and is currently in full force and effect or, as of the Closing Date, will be in full force and effect.

(e) The Issuer is not in any material respect in breach of or default under any constitutional provision, law or administrative regulation of the State or of the United States or any agency or instrumentality of either, or of any other governmental agency, or any Material Judgment or Agreement (as defined below), and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or event of default under any Material Judgment or Agreement; and the adoption of the Authorizing Resolution, the issuance, delivery and sale of the Bonds and the execution and delivery of the Issuer Documents and compliance with and performance of the Issuer's obligations therein and herein will not in any material respect conflict with, violate or result in a breach of or constitute a default under, any such constitutional provision, law, administrative regulation or any Material Judgment or Agreement, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Issuer (except as described in or contemplated by the Issuer Documents and the Official Statement) or under the terms of any such



law, administrative regulation or Material Judgment or Agreement. As used herein, the term “Material Judgment or Agreement” means any judgment or decree or any loan agreement, indenture, bond, note or resolution or any material agreement or other instrument to which the Issuer is a party or to which the Issuer or any of its property or assets is otherwise subject (including, without limitation, the Act, the Authorizing Resolution and the Issuer Documents).

(f) All approvals, consents and orders of any governmental authority, board, agency, council, commission or other body having jurisdiction which would constitute a condition precedent to the performance by the Issuer of its obligations hereunder and under the Issuer Documents have been obtained; provided, that the Issuer makes no representations as to any approvals, consents or other actions which may be necessary to qualify the Bonds for offer and sale under Blue Sky or other state securities laws or regulations.

(g) Any certificates executed by any officer of the Issuer and delivered to the Underwriters pursuant hereto or in connection herewith shall be deemed a representation and warranty of the Issuer as to the accuracy of the statements therein made.

(h) Between the date hereof and the time of the Closing, the Issuer shall not, without the prior written consent of the Representative, offer or issue in any material amount any bonds, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, except in the course of normal business operations of the Issuer or except for such borrowings as may be described in or contemplated by the Official Statement.

(i) Except for information which is permitted to be omitted pursuant to Rule 15c2-12(b)(1), the information in the Preliminary Official Statement under the captions “INTRODUCTION – The Issuer, – Authority for Issuance,” “THE ISSUER”, “LITIGATION – the Issuer” and “CONTINUING DISCLOSURE” with respect to the Issuer, as of its date and as of the date hereof was and is true and correct in all material respects and did not and does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(j) The Official Statement is, as of its date and at all times after the date of the Official Statement, under the captions “INTRODUCTION – The Issuer, – Authority for Issuance,” “THE ISSUER”, “LITIGATION – the Issuer” and “CONTINUING DISCLOSURE” with respect to the Issuer, up to and including the Closing Date will be, true and correct in all material respects and will not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(k) If the Official Statement is supplemented or amended, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended) at all times subsequent thereto up to and including that date that is 25 days from the “end of the underwriting period” (as defined in Rule 15c2-12), the Official Statement as so supplemented or amended will be true and correct in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(l) If between the date hereof and the end of the underwriting period, any event shall occur which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Issuer shall notify the Representative thereof, and if, in the opinion of the Representative, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Issuer shall promptly (and in any event before the Closing) prepare and furnish (at the expense of the City) a reasonable number of copies of an amendment of or supplement to the Official Statement in form and substance satisfactory to the Representative.

(m) Except as described in the Preliminary Official Statement and Official Statement, no litigation, proceeding or official investigation of any governmental or judicial body is pending against the Issuer or against any other party of which the Issuer has notice or, to the knowledge of the Issuer, threatened against the Issuer: (i) seeking to restrain or enjoin the issuance, sale or delivery of any of the Bonds, or the payment or collection of any amounts pledged or to be pledged to pay the principal of and interest on the Bonds, (ii) in any way contesting or affecting any authority for the issuance of the Bonds or the validity or binding effect of any of the Issuer Documents, (iii) which is in any way contesting the creation, existence, powers or jurisdiction of the Issuer or the validity or effect of the Indenture or the Act or any provision thereof or the application of the proceeds of the Bonds, (iv) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or (v) which, if adversely determined, could materially adversely affect the financial position or operating condition of the Issuer or the transactions contemplated by the Preliminary Official Statement and Official Statement or any of the Issuer Documents. The Issuer shall advise the Representative promptly of the institution of any proceedings known to it by any governmental agency prohibiting or otherwise affecting the use of the Preliminary Official Statement or the Official Statement in connection with the offering, sale or distribution of the Bonds.

(n) The Issuer, to the best of its knowledge, has never been and is not in default in the payment of principal of, premium, if any, or interest on, or otherwise is not nor has it been in default with respect to, any bonds, notes, or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, if any, or interest.

All representations, warranties and agreements of the Issuer shall remain operative and in full force and effect, regardless of any investigations made by any Underwriter or on the Underwriters' behalf, and shall survive the delivery of the Bonds.

## 6. REPRESENTATIONS OF THE CITY.

(a) The City is a municipal corporation within the meaning of the Act, duly created and existing under the laws of the State of Tennessee and possessing general powers of taxation, including the power to levy ad valorem taxes, and has full legal right, power and authority (i) to conduct its business and own its properties and (ii) to enter into this Purchase Agreement, the Loan Agreement, the Series 2021 Note and the Disclosure Agreement (collectively, the "City Documents") and execute, deliver and perform its obligations, as the case may be, under the City Documents and to perform and consummate all obligations and transactions required or contemplated by each of the City Documents and the Official Statement.

(b) The City Documents and the offering and sale of the Bonds upon the terms set forth herein and in the Official Statement, was duly adopted at a meeting of the City Council called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and is in full force and effect and has not been amended or repealed.

(c) The City has all material and necessary licenses and permits required as of the date hereof to carry on its business and to operate the Project as described in the Official Statement and the City Documents. The City has not received any notice of an alleged violation and, to the best of its knowledge, is not in violation of any zoning, land use or other similar law or regulation applicable to the Project which would materially adversely affect the operations or financial condition of the City, or the City's ability to perform its obligations under the City Documents;

(d) The City has executed and delivered, or will execute and deliver on or before the Closing Date, each of the City Documents. Each of the City Documents constitutes, or will, as of the Closing Date, constitute, a legal, valid and binding obligation of the City enforceable in accordance with its terms, subject to any applicable bankruptcy, insolvency or other laws affecting creditors' rights or remedies heretofore or hereafter enacted. Each of the City Documents has been executed and delivered, or will be executed and delivered on or before the Closing Date, by each respective signatory and is currently in full force and effect or, as of the Closing Date, will be in full force and effect.

(e) The City is not in any material respect in breach of or default under any constitutional provision, law or administrative regulation of the State or of the United States or any agency or instrumentality of either, or of any other governmental agency, or any Material Judgment or Agreement (as defined below), and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or event of default under any Material Judgment or Agreement; and the execution and delivery of the City Documents and compliance with and performance of the City's obligations therein and herein will not in any material respect conflict with, violate or result in a breach of or constitute a default under, any such constitutional provision, law, administrative regulation or any Material Judgment or Agreement, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the City (except as described in or contemplated by the City Documents and the Official Statement) or under the terms of any such law, administrative regulation or Material Judgment or Agreement. As used herein, the term "Material Judgment or Agreement" means any judgment or decree or any loan agreement, indenture, bond, note or resolution or any material agreement or other instrument to which the City is a party or to which the City or any of its property or assets is otherwise subject (including, without limitation, the Act, and the City Documents).

(f) All approvals, consents and orders of any governmental authority, board, agency, council, commission or other body having jurisdiction which would constitute a condition precedent to the performance by the City of its obligations hereunder and under the City Documents have been obtained; provided, that the City makes no representations as to any

approvals, consents or other actions which may be necessary to qualify the Bonds for offer and sale under Blue Sky or other state securities laws or regulations.

(g) Any certificates executed by any officer of the City and delivered to the Underwriters pursuant hereto or in connection herewith shall be deemed a representation and warranty of the City as to the accuracy of the statements therein made.

(h) Between the date hereof and the time of the Closing, the City shall not, without the prior written consent of the Representative, offer or issue in any material amount any bonds, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, except in the course of normal business operations of the City or except for such borrowings as may be described in or contemplated by the Official Statement.

(i) The financial statements of the City as of June 30, 2020 fairly represent the receipts, expenditures, assets, liabilities and cash balances of such amounts and, insofar as presented, other funds of the City as of the dates and for the periods therein set forth. Except as disclosed in the Official Statement or otherwise disclosed in writing to the Representative, there has not been any materially adverse change in the financial condition of the City or in its operations since June 30, 2020 and there has been no occurrence, circumstance or combination thereof which is reasonably expected to result in any such materially adverse change.

(j) Except for information which is permitted to be omitted pursuant to Rule 15c2-12(b)(1), the information in the Preliminary Official Statement (other than the information with respect to the Issuer, the Underwriter or DTC and its book-entry system set forth under the headings "INTRODUCTION – The Issuer, – Authority for Issuance," "THE ISSUER", "LITIGATION – the Issuer," "CONTINUING DISCLOSURE," and "UNDERWRITING"), as of its date and as of the date hereof was and is true and correct in all material respects and did not and does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(k) The Official Statement is, as of its date and at all times after the date of the Official Statement (other than the information with respect to the Issuer, the Underwriter or DTC and its book-entry system set forth under the headings "INTRODUCTION – The Issuer, – Authority for Issuance," "THE ISSUER", "LITIGATION – the Issuer," "CONTINUING DISCLOSURE," and "UNDERWRITING," such descriptions, information and statements are herein collectively called the "City Information") up to and including the Closing Date will be, true and correct in all material respects and will not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(l) If the Official Statement is supplemented or amended, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended) at all times subsequent thereto up to and including that date that is 25 days from the "end of the underwriting period" (as defined in Rule 15c2-12), the Official Statement as so supplemented or amended will be true and correct in all material respects and will not contain any untrue statement

of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(m) If between the date hereof and the end of the underwriting period, any event shall occur which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the City shall notify the Representative thereof, and if, in the opinion of the Representative, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the City shall promptly (and in any event before the Closing) prepare and furnish (at the expense of the City) a reasonable number of copies of an amendment or supplement to the Official Statement in form and substance satisfactory to the Representative.

(n) Except as described in the Preliminary Official Statement and Official Statement, no litigation, proceeding or official investigation of any governmental or judicial body is pending against the City or against any other party of which the City has notice or, to the knowledge of the City, threatened against the City: (i) seeking to restrain or enjoin the issuance, sale or delivery of any of the Bonds, or the payment or collection of any amounts pledged or to be pledged to pay the principal of and interest on the Bonds, (ii) in any way contesting or affecting any authority for the issuance of the Bonds or the validity or binding effect of any of the City Documents, (iii) which is in any way contesting the creation, existence, powers or jurisdiction of the City or the validity or effect of the Indenture or the Act or any provision thereof or the application of the proceeds of the Bonds, (iv) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or (v) which, if adversely determined, could materially adversely affect the financial position or operating condition of the City or the transactions contemplated by the Preliminary Official Statement and Official Statement or any of the City Documents. The City shall advise the Representative promptly of the institution of any proceedings known to it by any governmental agency prohibiting or otherwise affecting the use of the Preliminary Official Statement or the Official Statement in connection with the offering, sale or distribution of the Bonds.

(o) During the last five years, the City has not failed to materially comply with any previous undertaking relating to continuing disclosure of information pursuant to Rule 15c2-12 except as disclosed in the Preliminary Official Statement under the caption "CONTINUING DISCLOSURE."

(p) The City, to the best of its knowledge, has never been and is not in default in the payment of principal of, premium, if any, or interest on, or otherwise is not nor has it been in default with respect to, any bonds, notes, or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, if any, or interest.

All representations, warranties and agreements of the City shall remain operative and in full force and effect, regardless of any investigations made by any Underwriter or on the Underwriters' behalf, and shall survive the delivery of the Bonds.

7. CLOSING.

At \_\_\_\_\_ A.M., Central Time, on \_\_\_\_\_, 2021, or at such other time or date as the Representative and the Issuer may mutually agree upon as the date and time of the Closing (the "Closing Date"), the Issuer will deliver or cause to be delivered to the Underwriters, at the offices of Butler Snow, LLP ("Co-Bond Counsel"), 6075 Poplar Avenue, Suite 500, Memphis, TN 38119, or at such other place as the Representative and the Issuer may mutually agree upon, the Bonds, through the facilities of The Depository Trust Company, New York, New York ("DTC"), duly executed and authenticated, and the other documents specified in Section 8. At the Closing, (a) upon satisfaction of the conditions herein specified, the Underwriters shall accept the delivery of the Bonds, and pay the purchase price therefor in federal funds payable to the order of the Trustee for the account of the Issuer and (b) the Issuer shall deliver or cause to be delivered the Bonds to the Underwriters through the facilities of DTC in definitive or temporary form, duly executed by the Issuer and in the authorized denominations as specified by the Representative at the Closing and the Issuer shall deliver the other documents hereinafter mentioned. The Bonds shall be made available to the Underwriters at least one (1) business day before the Closing Date for purposes of inspection.

8. CONDITIONS PRECEDENT.

The Underwriters have entered into this Purchase Agreement in reliance upon the representations and agreements of the Issuer and the City contained herein and the performance by the Issuer and the City of their obligations hereunder, both as of the date hereof and as of the Closing Date. The Underwriters' obligations under this Purchase Agreement are and shall be subject to the following further conditions:

(a) The representations of the Issuer and the City contained herein shall be true, complete and correct in all material respects on the date of acceptance hereof and on and as of the Closing Date.

(b) At the time of the Closing, the Official Statement, the Issuer Authorizing Resolution, the Issuer Documents and the City Documents shall be in full force and effect and shall not have been amended, modified or supplemented except as may have been agreed to in writing by the Representative.

(c) The Issuer shall perform or have performed all of its obligations required under or specified in the Issuer Authorizing Resolution, the Issuer Documents, and the Official Statement to be performed at or prior to the Closing.

(d) The City shall perform or have performed all of its obligations required under or specified in the City Documents and the Official Statement to be performed at or prior to the Closing.

(e) The Issuer and the City shall have delivered to the Underwriters final Official Statements by the time, and in the numbers, required by Section 3 of this Purchase Agreement.

(f) As of the date hereof and at the time of Closing, all necessary official action of the Issuer relating to the Issuer Documents and the Official Statement shall have been taken and shall be in full force and effect and shall not have been amended, modified or supplemented in any material respect.

(g) As of the date hereof and at the time of Closing, all necessary official action of the City relating to the City Documents and the Official Statement shall have been taken and shall be in full force and effect and shall not have been amended, modified or supplemented in any material respect.

(h) After the date hereof, up to and including the time of the Closing, there shall not have occurred any change in or particularly affecting the Issuer, the City, the Act, the Issuer Authorizing Resolution, the Issuer Documents, the City Documents or the Trust Estate as the foregoing matters are described in the Preliminary Official Statement and the Official Statement, which in the reasonable professional judgment of the Representative materially impairs the investment quality of the Bonds.

(i) At or prior to the Closing, the Representative shall receive the following documents (in each case with only such changes as the Representative shall approve):

(1) The approving opinion[s] of Co-Bond Counsel relating to the Bonds, dated the Closing Date, substantially in the form[s] attached as Appendix E to the Official Statement, and, if not otherwise directly addressed to the Underwriters, a reliance letter with respect to each opinion addressed to the Underwriters;

(2) The supplemental opinion of Co-Bond Counsel, addressed to the Underwriters, dated the Closing Date, to the effect that:

(i) This Purchase Agreement has been duly executed and delivered by the Issuer and is a legal, valid and binding obligation of the Issuer enforceable in accordance with its terms, subject to laws relating to bankruptcy, insolvency, reorganization or creditors' rights generally, to the application of equitable principles, the exercise of judicial discretion and the limitations on legal remedies against public entities in the State of Tennessee;

(ii) The statements contained in the Preliminary Official Statement and the Official Statement on the cover page and in the sections entitled "INTRODUCTION," "THE SERIES 2021 BONDS," (other than the information concerning DTC and the book-entry system) "SECURITY AND SOURCES OF PAYMENT," "APPENDIX A - DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" insofar as such statements expressly summarize certain provisions of the Indenture, the Bonds, and the form and content of such counsels' opinions attached as Appendix E to the Preliminary Official Statement and the Official Statement, are accurate in all material respects; and

(iii) The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended (the "1933 Act") and the Indenture is

exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act");

(3) Letters, dated the Closing Date and addressed to the Underwriters, from Bruce Turner Law and Bass, Berry & Sims PLC, as Co-Disclosure Counsel, to the effect, collectively, that:

(i) The Bonds are exempt from the registration requirements of the 1933 Act and the Indenture is exempt from qualification under the Trust Indenture Act; and

(ii) Based upon the information made available to them in the course of their participation in the preparation of the Preliminary Official Statement and the Official Statement and without passing on and without assuming any responsibility for the accuracy, completeness and fairness of the statements in the Preliminary Official Statement and the Official Statement, and having made no independent investigation or verification thereof, nothing has come to their attention which would lead them to believe that the Preliminary Official Statement, as of its date and as of the date hereof, did not and does not, and the Official Statement as of its date and all times subsequent thereto during the period up to and including the Closing Date, does not and will not, contain an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect;

(4) The opinion of the [\_\_\_\_\_] [in its capacity as Issuer's Counsel], dated the date of the Closing and addressed to the Underwriters, to the effect that:

(i) The Issuer has been duly organized and is validly existing under the Constitution and laws of the State of Tennessee, and has all requisite power and authority thereunder: (a) to adopt the Issuer Authorizing Resolution, and to enter into, execute, deliver and perform its covenants and agreements under the Issuer Documents; (b) to approve and authorize the use, execution and distribution of the Preliminary Official Statement and the Official Statement; (c) to issue, sell, execute and deliver the Bonds; (d) to pledge the Trust Estate as contemplated by the Issuer Documents; and (e) to carry on its activities as currently conducted;

(ii) The Issuer has taken all actions required to be taken by it before the Closing Date material to the transactions contemplated by the documents mentioned in paragraph (a) above, and the Issuer has duly authorized the execution and delivery of, and the due performance of its obligations under, the Issuer Documents;

(iii) The Authorizing Resolution was duly adopted by the Board of \_\_\_\_\_ of the Issuer at a meeting of the governing body of the Issuer which was called and held pursuant to law and with all required notices and in accordance



with all applicable open meetings laws and at which a quorum was present and acting at the time of the adoption of the Authorizing Resolution;

(iv) The adoption of the Authorizing Resolution, the execution and delivery by the Issuer of the Issuer Documents and the compliance with the provisions of the Issuer Documents, do not and will not conflict with or violate in any material respect any Tennessee constitutional, statutory or regulatory provision, or, to the best of such counsel's knowledge after due inquiry, conflict with or constitute on the part of the Issuer a material breach of or default under any agreement or instrument to which the Issuer is a party or by which it is bound;

(v) The Issuer Documents constitute legal, valid and binding obligations of the Issuer and are enforceable according to the terms thereof, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting enforcement of creditors' rights generally, and by the application of equitable principles if equitable remedies are sought, by the exercise of judicial discretion and the limitations on legal remedies against public entities in the State;

(vi) No litigation is pending or, to the best of such counsel's knowledge after due inquiry, threatened against the Issuer in any court in any way affecting the titles of the officials of the Issuer to their respective positions, or seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds, or the collection of revenues pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way contesting or affecting the validity or enforceability of the Authorizing Resolution or the Issuer Documents, or contesting in any way the completeness or accuracy of the Official Statement, or contesting the powers of the Issuer or its authority with respect to the Authorizing Resolution or the Issuer Documents;

(vii) The information contained in the Preliminary Official Statement, as of its date and as of the date hereof and the Official Statement as of its date and as of the Closing Date under the captions "INTRODUCTION – THE ISSUER," "THE ISSUER" and "LITIGATION – The Issuer" does not contain any untrue statement of a material fact and does not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(viii) To the best of such counsel's knowledge after due inquiry, no authorization, approval, consent or other order of the State or any local agency of the State, other than such authorizations, approvals and consents which have been obtained, is required for the valid authorization, execution and delivery by the Issuer of the Issuer Documents and the authorization and distribution of the Preliminary Official Statement and the Official Statement (provided that no opinion need be expressed as to any action required under state securities or Blue Sky laws in connection with the purchase of the Bonds by the Underwriters); and

(ix) To the best of such counsel's knowledge after due inquiry, the Issuer is not in breach of or default under any applicable law or administrative regulation of the State or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject, which breach or default would materially adversely affect the Issuer's ability to enter into or perform its obligations under the Issuer Documents, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument and which would materially adversely affect the Issuer's ability to enter into or perform its obligations under the Issuer Documents;

(5) The opinion of the Chief Legal Officer/City Attorney, dated the date of the Closing and addressed to the Underwriters, to the effect that:

(i) The City is a municipal corporation existing under the Constitution and laws of the State of Tennessee, and has all requisite power and authority thereunder: (a) to enter into, execute, deliver and perform its covenants and agreements under the City Documents; (b) to approve and authorize the use, execution and distribution of the Preliminary Official Statement and the Official Statement; and (c) to carry on its activities as currently conducted;

(ii) The City has taken all actions required to be taken by it before the Closing Date material to the transactions contemplated by the documents mentioned in paragraph (a) above, and the City has duly authorized the execution and delivery of, and the due performance of its obligations under, the City Documents;

(iii) The execution and delivery by the City of the City Documents and the compliance with the provisions of the City Documents, do not and will not conflict with or violate in any material respect any Tennessee constitutional, statutory or regulatory provision, or, to the best of such counsel's knowledge after due inquiry, conflict with or constitute on the part of the City a material breach of or default under any agreement or instrument to which the City is a party or by which it is bound;

(iv) The City Documents constitute legal, valid and binding obligations of the City and are enforceable according to the terms thereof, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting enforcement of creditors' rights generally, and by the application of equitable principles if equitable remedies are sought, by the exercise of judicial discretion and the limitations on legal remedies against public entities in the State;

(v) No litigation is pending or, to the best of such counsel's knowledge after due inquiry, threatened against the City in any court in any way affecting the titles of the officials of the City to their respective positions, or seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds, or the collection

of revenues pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way contesting or affecting the validity or enforceability of the Authorizing Resolution or the City Documents, or contesting in any way the completeness or accuracy of the Official Statement, or contesting the powers of the City or its authority with respect to the Authorizing Resolution or the City Documents;

(vi) The information contained in the Preliminary Official Statement, as of its date and as of the date hereof and the Official Statement as of its date and as of the Closing Date does not contain any untrue statement of a material fact and does not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(vii) To the best of such counsel's knowledge after due inquiry, no authorization, approval, consent or other order of the State or any local agency of the State, other than such authorizations, approvals and consents which have been obtained, is required for the valid authorization, execution and delivery by the City of the City Documents and the authorization and distribution of the Preliminary Official Statement and the Official Statement (provided that no opinion need be expressed as to any action required under state securities or Blue Sky laws in connection with the purchase of the Bonds by the Underwriters); and

(viii) To the best of such counsel's knowledge after due inquiry, the City is not in breach of or default under any applicable law or administrative regulation of the State or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject, which breach or default would materially adversely affect the City's ability to enter into or perform its obligations under the City Documents, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument and which would materially adversely affect the City's ability to enter into or perform its obligations under the City Documents;

(6) The opinion of [NAME OF TRUSTEE'S COUNSEL], counsel to the Trustee, dated the date of the Closing and addressed to the Underwriters, to the effect that:

(i) The Trustee is a national banking association duly organized, validly existing and in good standing under the laws of the United States having full power and authority and being qualified to enter into, accept and administer the trust created under the Indenture to which it is a party and to enter into such Indenture;

(ii) The Issuer Documents to which it is a party have been duly authorized, executed and delivered by the Trustee and constitute the legal, valid

and binding obligations of the Trustee enforceable against the Trustee in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting enforcement of creditors' rights generally and by the application of equitable principles if equitable remedies are sought;

(iii) The execution, delivery and performance of the Indenture will not conflict with or cause a default under any law, ruling, agreement, administrative regulation or other instrument by which the Trustee is bound;

(iv) All authorizations and approvals required by law and the articles of association and bylaws of the Trustee in order for the Trustee to execute and deliver and perform its obligations under Indenture to which it is a party have been obtained; and

(v) No action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body, is pending or threatened in any way affecting the existence of the Trustee or the titles of its directors or officers to their respective offices, or seeking to restrain or enjoin the issuance, sale or delivery of the Bonds or the application of proceeds thereof in accordance with the Indenture, or in any way contesting or affecting the Bonds or the Indenture;

(7) The opinion of Squire Patton Boggs (US) LLP, counsel to the Underwriters, dated the date of the Closing and addressed to the Underwriters, and covering such matters as the Representative may reasonably request;

(8) A certificate, dated the Closing Date, signed by the Chairman of the Board of the Issuer to the effect that: (a) the representations and agreements of the Issuer contained herein are true and correct in all material respects as of the date of the Closing; (b) the Issuer Documents have been duly authorized and executed and are in full force and effect; (c) except as described in the Preliminary Official Statement as of its date and as of the date hereof and the Official Statement, no litigation is pending or, to his knowledge, threatened (i) seeking to restrain or enjoin the issuance or delivery of any of the Bonds, (ii) in any way contesting or affecting any authority for the issuance of the Bonds or the validity of the Bonds, the Authorizing Resolution or any Legal Document, (iii) in any way contesting the creation, existence or powers of the Issuer or the validity or effect of the Act or any provision thereof or the application of the proceeds of the Bonds, or (iv) which, if adversely determined, could materially adversely affect the financial position or operating condition of the Issuer or the transactions contemplated by the Preliminary Official Statement as of its date and as of the date hereof and the Official Statement as of its date and as of the Closing Date or any Legal Document; and (d) the Official Statement as to the section captioned "INTRODUCTION – The Issuer, – Authority for Issuance," "THE ISSUER", "LITIGATION – the Issuer" and "CONTINUING DISCLOSURE" with respect to the Issuer, is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading,

except no review has been made of information in the Official Statement under the any other captions;

(9) A certificate executed by the City dated the Closing Date, signed by a duly authorized person on behalf of the City, in form and substance satisfactory to the Underwriters and Underwriter's Counsel, to the effect that:

(i) the City Information in the Preliminary Official Statement was correct in all material respects as of its date and immediately prior to the execution and delivery of this Purchase Agreement, and the City Information in the Official Statement is correct in all material respects, as of the date of the Official Statement and as of the Closing Date;

(ii) such City Information in the Preliminary Official Statement, as of the date of the Preliminary Official Statement and as of the date of this Purchase Agreement did not contain any untrue statement of a material fact or omit to state a material fact (other than information relating to the maturities, interest rates, redemption provisions and other terms of the Bonds determined during the pricing of Bonds) required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading and the Information in the Official Statement, as of the date of the Official Statement did not, and as of the Closing does not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading;

(iii) no litigation or proceeding is pending or, to the knowledge of the City, threatened in any court, tribunal or administrative body, nor is there any basis for any litigation which would (1) contest the due organization, existence or corporate powers of the City, (2) contest or affect the validity or enforceability of any of the City Documents or the execution of the Official Statement, (3) seek to limit, enjoin or prevent the City from functioning or making payments under any of the City Documents to which it is a party, (4) seek to restrain or enjoin the issuance or delivery of the Series 2021 Bonds, the execution, delivery or performance by City of this Purchase Agreement, the Official Statement or any of the City Documents, the pledge of the Trust Estate to the payment of the Bonds under the Indenture or the application of the proceeds of sale of the Bonds as provided in the Indenture and as described in the Official Statement, (5) contest or affect the issuance or the validity or enforceability of the Bonds, (6) contest or affect any permit, license or other approval that is required for the acquisition, construction, equipping and operation of the Project as contemplated in the Official Statement which is required to have been obtained as of the date of such certificate, or (7) adversely affect the federal tax-exempt status of the interest on the Bonds or the amounts to be received by the Authority pursuant to the Series 2021 Note, the Loan Agreement or the Indenture;

(iv) no event affecting City has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purpose for which it is to be used or which is necessary to be disclosed in order to make the statements and information made therein not misleading in any material respect as of the time of the Closing;

(v) the representations and warranties of City in any of the City Documents to which it is a party, as well as those contained in this Purchase Agreement, are true and correct in all material respects as of the Closing Date;

(vi) at the time of the Closing, no default or event of default has occurred and is continuing, and no event has occurred and is continuing which, with the lapse of time or the giving of notice, or both, would constitute a default or an event of default under any of the City Documents or any other material agreement to which the Project or other assets is or may be subject, including all such agreements or instruments to which City is a party; and

(vii) the resolutions or actions of the City Council authorizing and approving the transactions described or contemplated herein, in the City Documents and in the Official Statement, as well as the execution of or approving, as necessary, of the respective forms of, as the case may be, the City Documents, have been duly adopted by the City Council and are in full force and effect;

(10) A certificate, dated the Closing Date, signed by the Chief Financial Officer of the City, in form and substance satisfactory to the Underwriters, to the effect that (i) the financial statements of the City as of June 30, 2020 fairly represents the receipts, expenditures, assets, liabilities and cash balances of such amounts and, insofar as presented, other funds of the City as of the dates and for the periods therein set forth and (ii) except as disclosed in the Preliminary Official Statement and the Official Statement, since June 30, 2020, no materially adverse change has occurred, or any development involving a prospective material change, in the financial position or results of operations of the City and the City has not incurred since June 30, 2020, any material liabilities other than in the ordinary course of business or as set forth in or contemplated by the Official Statement;

(11) Executed or certified copies of the Indenture;

(12) Executed or certified copies of each other Issuer Document;

(13) Executed or certified copies of the Disclosure Agreement;

(14) A Tax Certificate of the Issuer and the City, in form satisfactory to Bond Counsel, executed by such officials of the Issuer and the City as shall be satisfactory to the Representative;

(15) A certified copy of the Issuer Authorizing Resolution;

(16) Evidence satisfactory to the Representatives of the assignment of ratings assigned to the Bonds of “\_\_\_” by Moody’s Investors Service Inc. and “\_\_\_” by S&P Global Ratings;

(17) [The agreed-upon procedures letter of Banks, Finley, White & Co. relating to the information in the Official Statement under the caption “FISCAL OVERVIEW.”];

(18) A certificate of an authorized officer of the Trustee, as trustee, dated as of the Closing Date, to the effect that: (a) the Trustee is a national banking association organized and existing under and by virtue of the laws of the United States, having the full power and being qualified to enter into and perform its duties under the Indenture and to authenticate and deliver the Bonds to the Underwriters; (b) the Trustee is duly authorized to enter into the Indenture and to authenticate and deliver the Bonds to the Underwriters pursuant to the Indenture; (c) when delivered to and paid for by the Underwriters at the Closing, the Bonds will have been duly authenticated and delivered by the Trustee; (d) the execution and delivery of the Indenture and compliance with the provisions on the Trustee’s part contained therein, will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, note, resolution, agreement or other instrument to which the Trustee is a party or is otherwise subject (except that no representation, warranty or agreement is made with respect to any federal or state securities or blue sky laws or regulations), which conflict, breach or default would materially impair the ability of the Trustee to perform its obligations under the Indenture, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets held by the Trustee pursuant to the lien created by the Indenture under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided by the Indenture; and (e) to the best of the knowledge of the Trustee, it has not been served with any action, suit, proceeding, inquiry or investigation in law or in equity, before or by any court, governmental agency, public board or body, nor is any such action or other proceeding threatened against the Trustee, affecting the existence of the Trustee, or the titles of its officers to their respective offices or seeking to prohibit, restrain, or enjoining the execution and delivery of the Bonds or the collection of revenues to be applied to pay the principal, premium, if any, and interest with respect to the Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Indenture, or contesting the powers of the Trustee or its authority to enter into, adopt or perform its obligations under any of the foregoing to which it is a party, wherein an unfavorable decision, ruling or funding would materially adversely affect the validity or enforceability of the Indenture or the power and authority of the Trustee to enter into and perform its duties under the Indenture and to authenticate and deliver the Bonds to or upon the order of the Underwriters;

(19) Evidence that a Form 8038-G relating to the Bonds has been executed by the Issuer and will be filed with the Internal Revenue Service (the “IRS”) within the applicable time limit:

- (20) A copy of the Blue Sky Survey with respect to the Bonds;
- (21) A copy of the Issuer's executed Blanket Letter of Representation to The Depository Trust Company; and
- (22) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Representative, counsel for the Underwriters or Bond Counsel may reasonably request to evidence compliance by the Issuer with legal requirements, the truth and accuracy, as of the time of Closing, of the representations of the Issuer herein contained and the due performance or satisfaction by the Issuer at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Issuer and all conditions precedent to the issuance of additional Bonds pursuant to the Indenture shall have been fulfilled.

9. TERMINATION.

If the Issuer shall be unable to satisfy the conditions of the Underwriters' obligations contained in this Purchase Agreement or if the Underwriters' obligations shall be terminated for any reason permitted by this Purchase Agreement, this Purchase Agreement may be cancelled by the Representative at, or at any time before, the time of the Closing. Notice of such cancellation shall be given by the Representative to the Issuer in writing, or by telephone confirmed in writing. The performance by the Issuer of any and all conditions contained in this Purchase Agreement for the benefit of the Underwriters may be waived by the Representative.

(a) The Underwriters shall also have the right, before the time of Closing, to cancel [their][its] obligations to purchase the Bonds, by written notice by the Representative to the Issuer, if between the date hereof and the time of Closing:

(1) Any event or circumstance occurs or information becomes known, which, in the professional judgment of the Representative, makes untrue any statement of a material fact set forth in the Preliminary Official Statement or the Official Statement or results in an omission to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading; or

(2) (The market for the Bonds or the market prices of the Bonds or the ability of the Underwriters to enforce contracts for the sale of the Bonds shall have been materially and adversely affected, in the professional judgment of the Representative, by:

(i) An amendment to the Constitution of the United States or the State of Tennessee shall have been passed or legislation shall have been introduced in or enacted by the Congress of the United States or the legislature of any state having jurisdiction of the subject matter or legislation pending in the Congress of the United States shall have been amended or legislation (whether or not then introduced) shall have been recommended to the Congress of the United States or to any state having jurisdiction of the subject matter or otherwise endorsed for passage (by press release, other form of notice or otherwise) by the President of the United States, the Treasury Department of the United States, the Internal Revenue Service or the Chairman or ranking minority member of the Committee



on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, or legislation shall have been proposed (whether or not then introduced) for consideration by either such Committee by any member thereof or presented as an option for consideration (whether or not then introduced) by either such Committee by the staff of such Committee or by the staff of the joint Committee on Taxation of the Congress of the United States, or legislation shall have been favorably reported for passage to either House of the Congress of the United States by a Committee of such House to which such legislation has been referred for consideration, or a decision shall have been rendered by a court of the United States or of the State of Tennessee or the Tax Court of the United States, or a ruling shall have been made or a regulation or temporary regulation shall have been proposed or made or any other release or announcement shall have been made by the Treasury Department of the United States, the Internal Revenue Service or other federal or State of Tennessee authority, with respect to federal or State of Tennessee taxation upon revenues or other income of the general character to be derived by the Issuer or upon interest received on obligations of the general character of the Bonds which, in the judgment of the Representative, may have the purpose or effect, directly or, indirectly, of affecting the tax status of the Issuer, its property or income, its securities (including the Bonds) or the interest thereon, or any tax exemption granted or authorized by State of Tennessee legislation; or

(ii) The declaration of war or engagement in or escalation of military hostilities by the United States or the occurrence of any other national emergency or calamity or terrorism affecting the operation of the government of, or the financial community in, the United States; or

(iii) The declaration of a general banking moratorium by federal, New York or Tennessee authorities; or

(iv) The occurrence of a major financial crisis, a material disruption in commercial banking or securities settlement or clearance services, or a material disruption or deterioration in the fixed income or municipal securities market; or

(v) Additional material restrictions not in force or being enforced as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange; or

(vi) The general suspension of trading on any national securities exchange; or

(3) Legislation enacted, introduced in the Congress or recommended for passage (whether or not then introduced) by the President of the United States, or a decision rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed) or official statement issued or made by or on behalf of the Securities and

Exchange Commission, or any other governmental agency having jurisdiction of the subject matter shall have been made or issued to the effect that the Bonds, other securities of the Issuer or obligations of the general character of the Bonds are not exempt from registration under the 1933 Act, or that the Indenture is not exempt from qualification under the Trust Indenture Act; or

(4) Any change in or particularly affecting the Issuer, the Act, the Authorizing Resolution, the Issuer Documents or the Trust Estate as the foregoing matters are described in the Preliminary Official Statement or the Official Statement, which in the professional judgment of the Representative materially impairs the investment quality of the Bonds; or

(5) An order, decree or injunction of any court of competent jurisdiction, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including any or all underlying obligations, as contemplated hereby or by the Preliminary Official Statement or the Official Statement, is or would be in violation of any applicable law, rule or regulation, including (without limitation) any provision of applicable federal securities laws as amended and then in effect; or

(6) A stop order, ruling, regulation or official statement by the SEC or any other governmental agency having jurisdiction of the subject matter shall have been issued or made or any other event occurs, the effect of which is that the issuance, offering or sale of the Bonds, or the execution and delivery of any Issuer Documents, as contemplated hereby or by the Preliminary Official Statement or the Official Statement, is or would be in violation of any applicable law, rule or regulation, including (without limitation) any provision of applicable federal securities laws, including the 1933 Act, the Securities Exchange Act of 1934 or the Trust Indenture Act, each as amended and as then in effect; or

(7) Any change or any development involving a prospective change in or affecting the business, properties or financial condition of the Issuer, except for changes which the Preliminary Official Statement and Official Statement discloses are expected to occur.

(8) Any litigation shall be instituted or be pending at the time of the Closing to restrain or enjoin the issuance, sale or delivery of the Bonds, or in any way contesting or affecting any authority for or the validity of the proceedings authorizing and approving the Act, the Authorizing Resolution, the Issuer Documents or the existence or powers of the Issuer with respect to its obligations under the Issuer Documents; or

(9) A reduction or withdrawal in any of the following assigned ratings, or, as of the Closing Date, the failure by any of the following rating agencies to assign the following ratings, to the Bonds: “\_\_” by Moody’s Investors Service Inc. and “\_\_” by S&P Global Ratings.

10. INDEMNIFICATION.

(a) The City shall indemnify and hold harmless, to the extent permitted by law, the Underwriters and their respective directors, officers, employees and agents and each person who controls any Underwriter within the meaning of Section 15 of the 1933 Act (any such person being therein sometimes called an “Underwriter Indemnitee”), against any and all losses, claims, damages or liabilities, joint or several, (a) to which any such Underwriter Indemnitee may become subject, under any statute or regulation at law or in equity or otherwise, insofar as such losses claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement of a material fact set forth in the Preliminary Official Statement or the Official Statement or any amendment or supplement to either, or arise out of or are based upon the omission to state therein a material fact which is necessary in order to make the statements made therein, in the light of the circumstances in which they were made, not misleading, except such indemnification shall not extend to statements in the Preliminary Official Statement or the Official Statement under the caption “UNDERWRITING,” and (b) to the extent of the aggregate amount paid in any settlement of any litigation commenced or threatened arising from a claim based upon any such untrue statement or omission if such settlement is effected with the written consent of the Issuer (which consent shall not be unreasonably withheld); and will reimburse any legal or other expenses reasonably incurred by any such Underwriter Indemnitee in connection with investigating or defending any such loss, claim, damage, liability or action. This indemnity agreement shall not be construed as a limitation on any other liability which the Issuer may otherwise have to any Underwriter Indemnitee.

(b) The Underwriters shall indemnify and hold harmless, to the extent permitted by law, the Issuer and the City and their respective directors, officers, members, employees and agents and each person who controls the Issuer within the meaning of Section 15 of the 1933 Act (any such person being therein sometimes called an “Issuer Indemnitees” or “City Indemnitees” as applicable or collectively “Government Indemnitees”), against any and all losses, claims, damages or liabilities, joint or several, to which such Government Indemnitee may become subject under any statute or at law or in equity or otherwise, and shall promptly reimburse any such Government Indemnitee for any reasonable legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, but only to the extent that such losses, claims, damages, liabilities or actions arise out of or are based upon any untrue statement of a material fact contained in, or the omission to state therein a material fact necessary to make the statements therein in light of the circumstances under which they were made not misleading, the Preliminary Official Statement or the Official Statement, or any amendment or supplement thereof, under the caption “UNDERWRITING.” This indemnity agreement shall not be construed as a limitation on any other liability which the Underwriters may otherwise have to any Government Indemnitee. The liability of any Underwriter obligations under this Section 10 shall not exceed the amount of its pro rata compensation under this Purchase Agreement.

(c) For purposes of subsection (a) or (b) above, an “Indemnified Party” means an Underwriter Indemnitee or a Government Indemnitee as the context dictates and an “Indemnifying Party” means the Issuer, the City or an Underwriter who is under the obligation to indemnify an Indemnified Party under this Section 10. An Indemnified Party shall, promptly after the receipt of notice of the commencement of any action against such Indemnified Party in respect of which indemnification may be sought against an Indemnifying Party, notify the Indemnifying

Party in writing of the commencement thereof, but the omission to notify the Indemnifying Party of any such action shall not relieve the Indemnifying Party from any liability that it may have to such Indemnified Party otherwise than under the indemnity agreement contained herein. In case any such action shall be brought against an Indemnified Party and such Indemnified Party shall notify the Indemnifying Party of the commencement thereof, the Indemnifying Party may, or if so requested by such Indemnified Party shall, participate therein or assume the defense thereof, with counsel satisfactory to such Indemnified Party, and after notice from the Indemnifying Party to such Indemnified Party of an election so to assume the defense thereof, the Indemnifying Party will not be liable to such Indemnified Party under this paragraph for any legal or other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof other than reasonable costs of investigation. If the Indemnifying Party shall not have employed counsel to manage the defense of any such action or if the Indemnified Party shall have reasonably concluded that there may be defenses available to it or them that are different from or additional to those available to the Indemnifying Party (in which case the Indemnifying Party shall not have the right to direct the defense of such action on behalf of such Indemnified Party), such Indemnified Party shall have the right to retain legal counsel of its own choosing and the reasonable legal and other expenses incurred by such Indemnified Party shall be borne by the Indemnifying Party.

An Indemnifying Party shall not be liable for any settlement of any such action effected without its consent by any Indemnified Party, which consent shall not be unreasonably withheld, but if settled with the consent of the Indemnifying Party or if there be a final judgment for the plaintiff in any such action against the Indemnifying Party or any Indemnified Party, with or without the consent of the Indemnifying Party, the Indemnifying Party agrees to indemnify and hold harmless such Indemnified Party to the extent provided herein.

(d) If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an Indemnified Party under subsection (a) or (b) above, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of the losses, claims, damages, liabilities or expenses referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Issuer on the one hand and the Underwriters on the other from the offering of the Bonds or (ii) if the allocation provided by clause (i) above is not permitted by applicable law in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Issuer on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses as well as any other relevant equitable considerations. The relative benefits received by the Issuer and the City on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Issuer or the City bear to the total underwriting discounts and commissions received by the Underwriters. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuer, the City or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an Indemnified Party as a result of the losses, claims, damages, liabilities or expenses referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any action or claim which is the subject to this

subsection (d). Notwithstanding the provisions of this subsection (d), each Underwriter shall not have any obligation under this subsection (d) to contribute an amount in excess of the amount of its pro rata compensation under this Purchase Agreement. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint.

11. AMENDMENTS TO OFFICIAL STATEMENT.

During the period commencing on the Closing Date and ending twenty-five (25) days from the end of the underwriting period, the Issuer shall advise the Representative if any event relating to or affecting the Official Statement shall occur as a result of which it may be necessary or appropriate to amend or supplement the Official Statement in order to make the Official Statement not misleading in light of the circumstances existing at the time it is delivered to a purchaser or "potential customer" (as defined for purposes of Rule 15c2-12). If the Official Statement is supplemented or amended, at the time of each supplement or amendment thereto and at all times subsequent thereto up to and including that date that is 25 days from the end of the "underwriting period" (as defined in Rule 15c2-12), the Official Statement as supplemented or amended will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading and shall amend or supplement the Official Statement (in form and substance satisfactory to counsel for the Underwriters) so that the Official Statement will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

12. EXPENSES.

All expenses and costs of the Issuer incident to the performance of its obligations in connection with the authorization, issuance and sale of the Bonds to the Underwriters, including the costs of printing or reproduction of the Bonds, the Issuer Documents and the Official Statement in reasonable quantities, fees of consultants, fees of rating agencies, advertising expenses, fees and expenses of the Trustee and its counsel and fees and expenses of counsel to the Issuer and Bond Counsel, shall be paid by the Issuer from the proceeds of the Bonds or other revenues of the Issuer. The Issuer shall be solely responsible for and shall pay for any expenses incurred by the Underwriters on behalf of the Issuer's employees and representatives which are incidental to implementing this Purchase Agreement, including, but not limited to, meals, transportation, lodging, and entertainment of those employees and representatives.

13. USE OF DOCUMENTS.

The Issuer hereby authorizes the Underwriters to use, in connection with the public offering and sale of the Bonds, this Purchase Agreement, the Preliminary Official Statement, the Official Statement and the Issuer Documents, and the information contained herein and therein.

14. QUALIFICATION OF SECURITIES.

The Issuer will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Representative may reasonably request to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Representative may designate and to provide for the continuance of such qualification; *provided, however*, that the Issuer will not be required to qualify as a foreign corporation or to file any general or special consents to service of process under the laws of any state.

15. NOTICES.

Any notice or other communication to be given to the parties under this Purchase Agreement may be given by delivering the same in writing to:

For the Issuer:

New Memphis Arena Public Building Authority of Memphis and Shelby County  
[address to be provided]

With copy to:

Carpenter Law, PLLC  
386 Beale Street  
Memphis, TN 38103

For the City:

City of Memphis  
125 N. Main Street Room 368  
Memphis, TN 38103  
Attention: Chief Financial Officer

With copy to:

Chief Legal Officer/City Attorney  
125 N. Main Street, Room 336  
Memphis, TN 38103

For the Representative:

BofA Securities, Inc.  
One Bryant Park, 12<sup>th</sup> Floor  
New York, NY 10036  
Attention: Allegra Ivey

16. BENEFIT.

This Purchase Agreement is made solely for the benefit of the Issuer and the Underwriters (including their successors or assigns) and no other person, partnership, association or corporation

shall acquire or have any right hereunder or by virtue hereof. Except as otherwise expressly provided herein, all of the agreements and representations of the Issuer contained in this Purchase Agreement and in any certificates delivered pursuant hereto shall remain operative and in full force and effect regardless of: (i) any investigation made by or on behalf of the Underwriters; (ii) delivery of and payment for the Bonds hereunder; or (iii) any termination of this Purchase Agreement, other than pursuant to Section 9 (and in all events the agreements of the Issuer pursuant to Sections 10 and 12 hereof shall remain in full force and effect notwithstanding the termination of this Purchase Agreement under Section 9 hereof).

17. **GOVERNING LAW.** THIS PURCHASE AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CHOICE OF LAW RULES (OTHER THAN NEW YORK GENERAL OBLIGATIONS LAWS SECTION 5-1401 AND 5-1402); PROVIDED, HOWEVER, THAT THE OBLIGATIONS OF THE ISSUER AND THE CITY SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TENNESSEE.

18. **WAIVER OF JURY TRIAL.** THE ISSUER HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS PURCHASE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

19. **MISCELLANEOUS.**

(a) This Purchase Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes all oral statements, prior writings and representations with respect thereto.

(b) This Purchase Agreement may be executed in counterparts (and by different parties on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Purchase Agreement by emailed pdf, or any other electronic means that reproduces an image of the actual executed signature page, shall be effective as delivery of a manually executed counterpart. The words “executed”, “signed”, “signature”, “delivery” and words of like import in this Purchase Agreement shall be deemed to include electronic signatures, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery or the use of a paper-based recordkeeping system, as the case may be, and as provided for in any applicable law.

Very truly yours,

By:

BOFA SECURITIES, INC.,  
as Representative

By: \_\_\_\_\_

Approved and Agreed to: \_\_\_\_\_, 2021

THE NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY

By: \_\_\_\_\_

Name:

Title:

CITY OF MEMPHIS, TENNESSEE

By: \_\_\_\_\_

Name: Jim Strickland

Title: Mayor



**SCHEDULE I**

**Principal Amounts, Interest Rates and Prices**

**Optional and Mandatory Redemption**

**EXHIBIT A**

**FORM OF ISSUE PRICE CERTIFICATE**  
**[to be revised upon pricing]**

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**[\$[PRINCIPAL AMOUNT]**

NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY  
OF MEMPHIS AND SHELBY COUNTY, TENNESSEE

LOCAL GOVERNMENT PUBLIC IMPROVEMENT  
CAPITAL APPRECIATION BONDS  
(CITY OF MEMPHIS PROJECT), SERIES 2021

The undersigned, on behalf of BofA Securities, Inc. (the “Representative”), on behalf of itself and Wells Fargo Securities, LLC, Raymond James & Associates, Inc., Loop Capital Markets, LLC and Siebert Williams Shank & Co., LLC (together, the “Underwriting Group”), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. [Alternative 1 – All Maturities Use General Rule: *Sale of the Bonds*. As of the date of this certificate, for each Maturity of the Bonds, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Schedule A.][Alternative 2 – Select Maturities Use General Rule: *Sale of the General Rule Maturities*. As of the date of this certificate, for each Maturity of the General Rule Maturities, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Schedule A.]

2. ***Initial Offering Price of the Bonds***. [form to be revised if General Maturities rule used for any maturity]

a) The Underwriting Group offered the Bonds to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B.

b) As set forth in the Bond Purchase Agreement, the members of the Underwriting Group have agreed in writing that, (i) for each Maturity of the Bonds, they would neither offer nor sell any of the unsold Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the hold-the-offering-price rule. No member of the Underwriting Group has offered or sold any

Maturity of the unsold Bonds at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.

3. ***Defined Terms.***

a) *Hold-the-Offering-Price Maturities* means those Maturities of the Bonds listed in Schedule A hereto as the “Hold-the-Offering-Price Maturities.”]

b) *Holding Period* means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date ([DATE]), or (ii) the date on which the Underwriters have sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

c) *Issuer* means the New Memphis Arena Public Building Authority of Memphis and Shelby County.

d) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

e) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

f) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is [DATE].

g) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Representative’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer and the City with respect to certain of the representations set forth in the [Tax Certificate] and with respect to compliance with the federal income tax rules affecting the Bonds, and by [BOND COUNSEL] in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of Internal Revenue Service Form 8038-G, and other federal income tax advice it may give to the Issuer and the City from time to time relating to

the Bonds. The representations set forth herein are not necessarily based on personal knowledge and, in certain cases, the undersigned is relying on representations made by the other members of the Underwriting Group.

Dated:

BOFA SECURITIES, INC., as Representative

By: \_\_\_\_\_

Name: \_\_\_\_\_

**SCHEDULE A**  
**SALE PRICES OF [THE GENERAL RULE MATURITIES AND]**  
**INITIAL OFFERING PRICES OF THE HOLD-THE-OFFERING-PRICE MATURITIES**

*(Attached)*

**SCHEDULE B**

**PRICING WIRE OR EQUIVALENT COMMUNICATION**

**(Attached)**

04.22.2021 DRAFT

\$\_[ ]

LOAN AGREEMENT

DATED [JUNE] 1, 2021

BETWEEN

NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY  
OF MEMPHIS AND SHELBY COUNTY, TENNESSEE

AND

THE CITY OF MEMPHIS, TENNESSEE

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LOAN AGREEMENT

This Loan Agreement is made and entered into as of the \_\_\_\_\_ day of [June], 2021, by and between NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY OF MEMPHIS AND SHELBY COUNTY, TENNESSEE (the "Authority"), and THE CITY OF MEMPHIS, TENNESSEE (the "Borrower").

WITNESSETH:

WHEREAS, the Authority is a public nonprofit corporation and a public instrumentality of the City of Memphis, Tennessee, and Shelby County, Tennessee, organized and existing pursuant to Chapter 10, Title 12, Tennessee Code Annotated (the "Act"), to finance any project or projects eligible to be financed by bonds, notes, interim certificates or other obligations authorized to be issued by an incorporated city or town, county, metropolitan government, school district or other municipal governmental body or political subdivision in the State of Tennessee (the "State") and any agency, authority, corporation or instrumentality thereof; and

WHEREAS, it has heretofore been determined by the governing body of the Borrower to be in the best interest of the Borrower to (i) finance the Costs of various public works projects of the Borrower (collectively the "Project"), including interest on Bonds during construction of the Project and for two (2) years after the estimated date of completion of the Project; and (ii) pay costs of issuance and sale of the Bonds (as defined below) and this Agreement; and

WHEREAS, under Tennessee law, the Borrower is authorized to issue its bonds, notes, interim certificates or other obligations to finance the Project and to refinance outstanding obligations of the Borrower; and

WHEREAS, the Borrower has determined that it is necessary and desirable to borrow sufficient funds to accomplish the purposes set forth above; and

WHEREAS, the Authority has determined to lend money to the Borrower for the purposes set forth above on the terms and conditions set forth herein; and

WHEREAS, to obtain funds for such purposes the Authority will issue and sell its Local Government Public Improvement Bonds (City of Memphis Project), Series 2021, consisting of [(a) Current Interest Bonds (the "Current Interest Bonds"), (b) Convertible Capital Appreciation Bonds (the "Convertible Capital Appreciation Bonds"), and (c) Capital Appreciation Bonds (the "Capital Appreciation Bonds," and together with the Current Interest Bonds and the Convertible Capital Appreciation Bonds, the "Bonds")], to be secured by and to contain such terms and provisions as are set forth in that certain Indenture of Trust dated as of [June] 1, 2021 (as supplemented from time to time, the "Indenture"), between the Authority and Regions Bank, an Alabama banking corporation, Nashville, Tennessee, as trustee (the "Trustee"), and deposit the proceeds from the sale of the Bonds with the Trustee to be disbursed in the manner and for the purposes set forth in the Indenture, all as more fully provided therein.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the Authority and the Borrower agree as follows:

## ARTICLE I

### Definitions

Section 1.01 Defined Terms. In addition to the words, terms and phrases elsewhere defined in this Agreement or the Indenture, the following words, terms and phrases as used in this Agreement shall have the following respective meanings:

“Act” means Chapter 10, Title 12, Tennessee Code Annotated.

“Additional Payments” means the payments required to be made by the Borrower pursuant to Section 3.02 hereof.

“Agreement” means this Loan Agreement as it now exists and as it may hereafter be amended.

“Authority” means the New Memphis Arena Public Building Authority of Memphis and Shelby County, Tennessee, and any successor to its functions hereunder.

“Authorized Authority Representative” means the [Chairman, Vice-Chairman, Secretary or Assistant Secretary of the Authority], and when used with reference to any act or document also means any other person authorized by resolution of the Authority, a copy of which is filed with the Trustee, to perform such act or execute such document.

“Authorized Borrower Representative” means the [Mayor and Chief Financial Officer] of the Borrower, and any such other person from time to time authorized to act in behalf of a Borrower pursuant to the Charter, or ordinance or resolution of the governing body of such Borrower, a copy of which is filed with the Trustee, to perform such act or execute such document on behalf of the Borrower pursuant to a certificate signed by any of the above and giving the name and specimen signature of the person or persons so designated.

[“Authorized Investments” means any of the following, which at the time of investment are authorized pursuant to State law:

- (a) Government Obligations;
- (b) Obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:

Export – Import Bank;  
Farm Credit System Financial Assistance Corporation;  
Rural Economic Community Development Administration (formerly the Farmers Home Administration);  
General Services Administration;  
U. S. Maritime Administration;  
Small Business Administration;  
Government National Mortgage Association (GNMA);  
U.S. Department of Housing & Urban Development (PHA's);

Federal Housing Administration; and  
Federal Financing Bank;

(c) Direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:

Senior debt obligations rated “AAA” by Standard & Poor’s Ratings Group (“S&P”) and “Aaa” by Moody’s Investor Services (“Moody’s”) issued by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC);

Senior debt obligations of the Federal Home Loan Bank System; and

Senior debt obligations of other agencies sponsored by the United States government;

(d) U.S. dollar denominated deposit accounts, federal funds and banker’s acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of “A-1+” by S&P and “P-1” by Moody’s and maturing no more than 360 calendar days after the date of purchase (ratings on holding companies are not considered as the rating of the bank);

(e) Commercial paper which is rated at the time of purchase in the single highest classification, “A-1+” by S&P and “P-1” by Moody’s and which matures not more than 270 calendar days after the date of purchase;

(f) Investments in a money market fund rated “AAAm” or “AAAm-G” or better by S&P;

(g) Pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local government unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (i) which are rated, based on an irrevocable escrow account or fund (the “escrow”), in the highest rating category of S&P and Moody’s or any successors thereto; or (ii)(A) which are fully secured as to principal and interest and redemption premium, if any, by an escrow fund consisting only of cash or obligations described in paragraph (a) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (B) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate;

(h) Municipal Obligations rated “Aaa” or general obligations of states or their political subdivisions (including bonds issued by public building authorities in the State of Tennessee) with a rating of at least “A2” or higher by Moody’s; and

(i) Investment Agreements with respect to each Series of Bonds supported by opinions of counsel as to their due execution, delivery and enforceability, with notice to each Rating Agency having assigned a rating to the Series of Bonds;

“Value” of the Authorized Investments shall be determined as of the end of each Interest Payment Date, and shall be calculated using the value thereof using the Trustee’s standard market value methodology.]

“Bond Fund” means the fund established under Section 5.02 of the Indenture.

“Bonds” has the meaning assigned to that term in the recitals to this Indenture.

“Borrower” means the City of Memphis, Tennessee.

“Borrower Request”, “Borrower Order” and “Borrower Consent” means, respectively, a written request, order or consent signed by an Authorized Borrower Representative and delivered to the Trustee.

“Business Day” means with respect to the Bonds any day other than (a) a Saturday or Sunday, (b) a day on which banking institutions in New York City or any other city where the principal United States office of the Trustee is located are required or authorized by law (including executive order) to close or on which the principal United States office of the Trustee is closed for a reason not related to financial condition, or (c) a day on which The New York Stock Exchange is closed, or a Saturday, Sunday, holiday or day on which banks located in New York City, the State or the New York Stock Exchange, the payment office or principal office of the Trustee are authorized or permitted by law to close.

“Closing Date” means the date of issuance and delivery of the Bonds which shall be the Issue Date of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended, as it applies to the Bonds, including applicable regulations and revenue rulings thereunder. Reference herein to sections of the Code are to the sections thereof as they exist on the date of execution of this Agreement, but include any successor provisions thereof to the extent applicable to the Bonds.

“Cost” or “Cost of the Project” means:

(a) The cost of acquiring, erecting, extending, improving, equipping, repairing or refinancing the Project, including refunding outstanding obligations of the Borrower and of the Authority or of any other public building authority created under the Act, or any combination of such purposes, demolishing structures on the Project sites, and acquiring sites or estates therein and easements necessary or convenient for the Project;

(b) The cost of labor, materials, machinery and equipment as payable to contractors, builders and materialmen in connection with the Project;

(c) Governmental charges levied or assessed during equipping of the Project or upon any property acquired therefor, and premiums on insurance in connection with the Project during construction;

(d) Fees and expenses of architects and engineers for estimates, surveys and other preliminary investigations, environmental tests, soil borings, appraisals, preparation of plans, drawings and specifications and supervision of the Project properly chargeable to the Project, as well as for the performance of all other duties of architects and engineers in relation to the construction and installation of the Project;

(e) Expenses of administration, supervision and inspection properly chargeable to the Project, including the fees of the Borrower relating to the design, construction and equipping of the Project and all other items of expense, not elsewhere specified herein incident to the construction, installation and placing in operation of the Project;

(f) Fees and expenses incurred in connection with the issuance and administration of the Bonds and this Loan Agreement, including but not limited to, fees and expenses of the underwriter for the Bonds and its counsel, the Authority and its counsel, Bond Counsel, the Trustee and its counsel, the Borrower's counsel, printing costs and rating fees;

(g) Interest on the Bonds during the construction and installation of the Project and for up to two (2) years thereafter; and

(h) Any other cost of the Project permitted to be financed pursuant to the Act.

“Event of Default” means any event defined in Section 5.01 hereof.

“Favorable Opinion of Bond Counsel” means with respect to any action relating to the Bonds, the occurrence of which requires such an opinion, a written legal opinion of Bond Counsel to the effect that such action is permitted under the Indenture and will not impair the exclusion of interest on the Bonds for gross income for purposes of federal income taxation.

“Government Obligations” means any of the following, which at the time of investment are authorized pursuant to State law: (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in (ii)); or (ii) direct obligations (including issued or held in book entry form on the books of the Department of the Treasury) of the United States of America, or (iii) Senior debt obligations of other agencies sponsored by the United States government.

“Indenture” means the Indenture of Trust, dated as of [June] 1, 2021, as supplemented from time to time, by and between the Authority and the Trustee.

“Interest Payment Date” means the first day of each [\_\_\_\_\_] and [\_\_\_\_\_] , commencing [\_\_\_\_\_] 1, 2021, and the Maturity of the Bonds; provided, however, if such scheduled Interest Payment Date is not a Business Day, then such interest shall be payable on the next succeeding Business Day calculated as though paid on the scheduled Interest Payment Date.

“Loan” means the loan described in Section 2.02 hereof.

“Loan Fund” means the fund established under Section 5.04 of the Indenture in which the proceeds of the Loan to the Borrower are deposited.

“Loan Repayments” means the payments of principal of, Accreted Value, as applicable, and interest on the Loan, Additional Payments and any other amounts payable by the Borrower hereunder.

“Loan Repayment Date” means, [(a) with respect to any portion of Loan Repayments attributable to interest on the Bonds, the [twenty-fifth (25<sup>th</sup>)] day of the month prior to each Interest Payment Date; (b) with respect to that portion of Loan Repayments attributable to any principal or Accreted Value, as applicable, on the Bonds, the [twenty-fifth (25<sup>th</sup>)] day of the month prior to each Maturity; and (c) with respect to that portion of Loan Repayments consisting of Additional Payments, other than Rebate Amounts, if any, the [twenty-fifth (25<sup>th</sup>)] day of the month prior to each Interest Payment Date.] Any Rebate Amount shall be payable as set forth in Section 3.08 hereof.

“Maturity” means the earliest of (i) the Stated Maturity of the Bonds, and (ii) the date on which the principal of such Bonds otherwise becomes due and payable[, including optional and mandatory redemption].

“Optional Prepayment Price” has the meaning provided in Section 6.02 hereof.

“Outstanding”, when used with respect to the Bonds, means as of the date of determination, all Bonds theretofore authenticated and delivered under the Indenture, except:

(a) Bonds theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(b) Bonds for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee in trust for the registered owners of the Bonds, provided that, if such Bonds are to be redeemed, notice of such redemption has been duly given pursuant to the Indenture or provision therefor satisfactory to the Trustee has been made; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to the Indenture.

“Project” shall mean the projects financed with this Loan Agreement.

“Rebate Amount” means 100% of the amount owed to the United States under Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations issued thereunder.

“Rebate Analyst” means an independent, certified public accountant, accountant, financial analyst, Bond Counsel, or any firm of the foregoing, or any financial institution which is experienced in making the rebate calculations required to be made for the purposes of Section 3.08, and which in each case is retained by the Borrower to make such calculations.

“Trustee” means Regions Bank, an Alabama banking corporation, Nashville, Tennessee, and any successor trustee under the Indenture, acting as paying agent, bond registrar and trustee.

Section 1.02 Interpretation. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. The words “Bond”, “holder”, and “person” shall include the plural as well as the singular number unless the context shall otherwise indicate. The word “person” shall include corporations, associations, natural persons and public bodies unless the context shall otherwise indicate.

Any certificate or opinion made or given by an Authorized Authority Representative or an Authorized Borrower Representative may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should have known that the same were erroneous. Any certificate or opinion made or given by counsel may be based (insofar as it relates to factual matters, information with respect to which is in the possession of the Authority or a Borrower), upon the certificate or opinion of or representations by an officer or officers or officials of the Authority or the Borrower, unless such counsel knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

## ARTICLE II The Bonds

### Section 2.01 Issuance of the Bonds.

(a) In order to obtain funds to lend to the Borrower to assist in financing the Project and paying costs of issuance in connection with the Bonds and the Agreement as provided in Section 2.02 hereof, the Authority agrees to issue and deliver the Bonds. The Bonds shall be issued as capital appreciation bonds paying no current interest and shall accrete in value in accordance with the Accretion Table set forth in Exhibit B to the Indenture, compounding semi-annually on each [June] 1 and [December] 1, commencing [\_\_\_\_\_] 1, 202[ ], from their date of delivery. The Authority will cause the proceeds received from the sale of the Bonds to be deposited with the Trustee in the Loan Fund pursuant to Section 5.05 of the Indenture, to the Cost of Issuance Fund pursuant to Section 5.10 of the Indenture, and to the Interest Account of the Bond Fund. Disbursement of funds upon initial requisition by the Borrower from the Cost of Issuance Fund for the payment of costs of issuance of the Bonds and costs related to this Agreement are hereby approved.

(b) The liability of the Authority under the Bonds shall be enforceable only to the extent of its rights under this Agreement or any amendment or supplement hereto. The Bonds shall be payable solely from payments made by or on behalf of the Borrower to the Trustee pursuant to the terms of this Agreement.

Section 2.02 Loan. Upon the sale and delivery of the Bonds, deposit of the proceeds thereof to the appropriate Funds and Accounts as above provided, and receipt by the Trustee of the submissions required upon the issuance of the Bonds under Section 2.02(d) of the Indenture, and receipt by the Trustee, with respect to each disbursement of Loan Funds, of a requisition for funds conforming to the requirements of Section 2.04 hereof, the proceeds of the Bonds will be



loaned from time to time to the Borrower in the amount of \$[ ] in the manner hereinafter set forth. Proceeds of the Bonds deposited to the Loan Fund and any other funds so deposited shall be and remain funds of the Authority for so long as they are in the Loan Fund and shall become funds of the Borrower only upon disbursement to the Borrower in accordance with the terms hereof. The Loan shall compound interest at the rate as set forth in Sections 3.01 and 3.04 hereof.

Section 2.03 Use of Proceeds by the Borrower. The Borrower will use the funds loaned to it by the Authority pursuant to Section 2.02 hereof solely to pay the Cost of the Project.

Section 2.04 Disbursements of Loan Proceeds. Pursuant to Section 5.06 of the Indenture, the Authority has authorized and directed the Trustee to use the moneys in the Loan Fund solely to pay the Cost of the Project. The Authority shall cause funds to be disbursed by the Trustee from the Loan Fund only upon receipt by the Trustee of a requisition, appropriately completed and signed by an Authorized Borrower Representative in the form attached hereto as Exhibit A. The initial requisition on the Closing Date shall be made by the Chairman of the Authority and shall be in an amount sufficient to pay costs of issuance of the Bonds and of the execution and delivery of this Agreement. In making any such payment from the Loan Fund, the Trustee may rely on a requisition delivered to it pursuant to this Section, and the Trustee shall be relieved of all liability with respect to making such payments in accordance with any such requisitions without any other investigation.

Section 2.05 Completion of the Project. Unless the request for final payment fully depletes the Loan Fund, when requesting final payment, the Borrower shall cause to be submitted to the Trustee, in addition to the requisition required by Section 2.04 hereof, a certificate signed by an Authorized Borrower Representative in the form attached hereto as Exhibit B. Said certificate shall state that no further funds will be withdrawn from the Loan Fund to pay the Cost of the Project. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. All moneys remaining in the Loan Fund upon the filing of the certificate described in this Section, including investment earnings thereon, [shall be deposited in the Principal Account of the Bond Fund and applied by the Trustee to the redemption of Bonds on the first redemption date occurring after such completion, at the applicable optional or mandatory redemption price, and/or shall be deposited in the Interest Account of the Bond and applied by the Trustee to the payment of interest on the Bonds on the next Interest Payment Date]. The Authority does not make any warranty, either express or implied, that the moneys which will be paid into the Loan Fund and which, under the provisions of this Agreement, will be available for the Costs of the Project, will be sufficient to pay all of the Costs of the Project.

Section 2.06 Investment of Funds; Application of Investment Earnings. Any moneys held by the Trustee in the Loan Fund shall be invested or reinvested by the Trustee in Authorized Investments at the written direction of the Borrower. Except as otherwise set forth below, all earnings accruing on funds in the Loan Fund shall be credited by the Trustee on the [ ] day of [ ], [ ], [ ] and [ ], first to the Interest Account in the Bond Fund in an amount, which when combined with all other amounts then held therein, does not exceed interest accruing on the Bonds on the next succeeding Interest Payment Date computed in accordance with Section 3.04 hereof, provided the amount to be credited to said Accounts on the [ ] day

of [ ] of each year shall not exceed the amount which when combined with all other amounts then held in said Accounts does not exceed the amount needed to pay principal of, Accreted Value, as applicable, and interest on the Bonds on the next Interest Payment Date, and excess earnings not so credited shall be deposited to the Loan Fund. Upon direction of an Authorized Borrower Representative, funds in the Loan Fund shall be applied to the Project and disbursed upon requisition as set forth in Section 2.04 hereof, transferred to the Rebate Fund or applied as set forth in Section [5.08] of the Indenture.

All income derived from the investment of moneys on deposit in the Principal Account, Interest Account and Additional Payments Account of the Bond Fund shall be credited to the Additional Payments Account of the Bond Fund and applied to the payment of Additional Payments next due. To the extent amounts on deposit in the Additional Payments Account exceeds the Additional Payments next coming due, such excess amounts may be transferred to the Interest and/or Principal Account.

Section 2.07 Tax Status of the Bonds. It is the intention of the parties hereto that the interest on the Bonds be and remain excluded from gross income for federal income tax purposes, and to that end the Borrower hereby represents, warrants and agrees as follows:

(a) The Borrower shall not take or omit to take any action the taking or omission of which will cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code or otherwise cause interest on the Bonds to be includable in the gross income of the registered owners thereof for federal income tax purposes under existing statutes. Without limiting the generality of the foregoing, the Borrower, on behalf of the Authority, shall comply with any provision of the law which may require the Authority at any time to make rebate payments to the United States of any part of the earnings derived from the investment of the gross proceeds of the Bonds.

(b) The Borrower shall not permit the proceeds of the Bonds to be used in any manner that would result in (a) 5% or more of such proceeds being used in a trade or business carried on by any person other than a governmental unit as provided in Section 141(b) of the Code, (b) 5% or more of such proceeds being used with respect to any output facility (other than an output facility for the furnishing of water) within the meaning of Section 141(b)(4) of the Code, or (c) 5% or more of such proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental unit as provided in Section 141(c) of the Code; or (d) the payment of principal of, or interest on more than 10% of the proceeds of the Bonds (under the terms of the Bonds or any underlying arrangement) being directly or indirectly (A) secured by any interest in (1) property used or to be used for private business use or (2) payments in receipt of such property or (B) derived from payments (whether or not to the Borrower) in respect of property, or borrowed money, used or to be used for a private business use, provided, however, that if the Borrower receives a Favorable Opinion that any such covenant need not be complied with to prevent the interest on the Bonds from being includable in the gross income of the registered owners thereof for federal income tax purposes under existing statutes, the Borrower need not comply with such covenants.

(c) Neither the obligations of the Borrower under this Agreement nor the Bonds are or will be "federally guaranteed", as defined in Section 149(b) of the Code.

ARTICLE III  
Payment Obligations of Borrower

Section 3.01 Principal and Interest Payments. Notwithstanding any other provision of this Loan Agreement, the Borrower agrees to pay to the Trustee, for the account of the Authority, [(i) an amount equal to the aggregate principal amount and Accreted Value, as applicable, of the Bonds and (ii) as interest on its obligation, such amount equal to interest on the Bonds at the rates set forth on Exhibit C hereto;] such amounts to be paid in installments on or before each Loan Repayment Date, without notice or demand, to be deposited by the Trustee to the Bond Fund to be applied to the payment of principal of, Accreted Value of, as applicable, and premium, if any, and interest on the Bonds, [on each Interest Payment Date][at Maturity].

Section 3.02 Additional Payments. The Borrower agrees to pay to the Trustee on the dates, in the manner and in the amounts set forth in Sections 3.03 and 3.04 hereof, the following Additional Payments (except that the payee of any such payment related to the making of the Loan may require payment on the Closing Date of the Loan and provided that each reference to expenses set forth below shall include reasonable attorney fees and expenses):

(a) The fees and expenses of the Trustee under the Indenture relating to the Bonds, including all expenses necessary to prepare notices of redemption of the Bonds or to cancel and discharge the Indenture with respect to the Bonds, and the reasonable fees and expenses of the Trustee.

(b) The fees and expenses of Bond Counsel, Disclosure Counsel, the Underwriter and other costs of issuance relating to the Bonds.

(c) Rating agency fees relating to the Bonds.

(d) Any amounts required to be paid to the U.S. Government as arbitrage rebate as determined pursuant to Section 148(f) of the Code with respect to the Bonds, payable on demand.

(e) Such other reasonable fees and expenses relating to the Bonds.

Section 3.03 Time and Manner of Payment. The Borrower agrees to make each of the Loan Repayments directly to the Trustee for the account of the Authority on or before each Loan Repayment Date in lawful money of the United States of America by wire transfer of immediately available funds.

Section 3.04 Amount of Payment. The amount of each of the Loan Repayments shall be computed as follows:

(a) [With respect to the interest portion of each Loan Repayment, the amount thereof shall be equal to the interest on the Bonds[, as computed by the [\_\_\_\_],] for the applicable Loan Repayment computation period, which period shall commence on the Closing Date].

- (b) [With respect to the principal portion of each of the Loan Repayments, the amount thereof shall be equal to next ensuing principal reduction requirement on the Loan set forth on Exhibit C attached hereto, payable on the [ ] day of [ ], in the year of each principal reduction date shown on Exhibit C].
- (c) With respect to the Additional Payments portion of each of the Loan Repayments, the amount thereof shall be computed, as provided in Section 3.02 hereof, for any period commencing on the Closing Date, or the Business Day on which an Additional Payment was last paid to and ending on the day next preceding the Business Day on which the Additional Payment is due.
- (d) All payments of interest shall be reduced to the extent investment earnings on the Loan Fund have been credited to the Interest Account on the Loan Repayment Date as provided in and subject to the limitations of Section 2.06 hereof, and the Additional Payments shall be reduced to the extent of excess investment earnings on the Loan Fund not credited to the Interest Account and investment earnings on the Interest Account, the Principal Account and the Additional Payments Account of the Bond Fund which have been credited to the Additional Payments Account on the Loan Repayment Date as provided in and subject to the limitations of Section 2.06 hereof. If funds in the Loan Fund are invested in investments bearing interest at a variable rate, then the interest rate used by the Trustee for estimating the estimated amount of earnings shall be a zero rate of interest from the date earnings on such investments were last credited to the Loan Fund.
- (e) It is the intention of the Authority and the Borrower that, notwithstanding any other provision of this Agreement, the Trustee, as assignee of the Authority, shall receive funds from or on behalf of the Borrower in such amounts and at such times as will enable the Authority to pay when due all obligations for the payment of principal of, Accreted Value of, as applicable, and premium, if any, and interest on the Bonds and for payment of all Additional Payments payable by the Borrower. It is further intended that the earnings on the Loan Fund and the Interest Account and the Additional Payments Account of the Bond Fund will be sufficient to pay the interest and Additional Payment components of the Loan Repayments relating to the portion of the Loan not disbursed from the Loan Fund, subject to the limitations of Section 2.06 hereof. In the event said earnings are not sufficient to make such payments, the Borrower shall pay the deficiency in the manner and at the times required herein for Loan Repayments in consideration for the agreement by the Authority to continue to make the amounts therein available to be disbursed by the Authority.

Section 3.05 Payments Assigned. It is understood and agreed that the rights of the Authority under this Agreement, except Unassigned Rights, are assigned to the Trustee pursuant to the Indenture. The Borrower consents to such assignment, and agrees to pay to the Trustee all amounts payable by the Borrower that are so assigned. All such assigned payments shall be made directly to the Trustee and shall be deposited as provided in the Indenture.

Section 3.06 Obligation of Borrower Unconditional. The obligation of the Borrower to make payments hereunder (including Additional Payments) and to perform and observe all other covenants, conditions and agreements hereunder shall be absolute and unconditional until payment of all Borrower obligations hereunder, irrespective of any defense or any rights of setoff, recoupment or counterclaim which the Borrower might otherwise have against the Authority or the Trustee. Until payment of all Borrower obligations hereunder, the Borrower shall not suspend or discontinue any such payment hereunder or fail to observe and perform any of their other covenants, conditions and agreements hereunder for any cause, including without limitation failure of consideration, failure of title to any part or all of the Project, or commercial frustration of purpose, or any damage to or destruction or condemnation of all or any part of the Project financed, or any change in the tax or other laws of the United States of America, the State or any political subdivision of either, or any failure of the Authority to observe and perform any covenant, condition or agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with any document in connection with the refinancing of the Project. Nothing contained in this Section shall be construed to release the Authority and the Trustee from the performance of any of their respective obligations hereunder or under any documents related hereto, and in the event the Authority or the Trustee should fail to perform any such obligation, the Borrower may institute such action as the Borrower may deem advisable to compel performance or recover damages for non-performance so long as such action is consistent with the preceding sentence.

Section 3.07 Pledge of Taxing Power. The Borrower covenants that it shall provide for the annual levy and collection of a tax on all taxable property within the jurisdiction of the Borrower sufficient to pay when due the annual amounts payable under this Agreement [(including Additional Payments)] as and when they become due and payable and to pay all other expenses of maintaining and operating the Project required to be paid by the Borrower under the terms of this Agreement. The Borrower hereby pledges its full faith and credit to such payments. The tax to be levied pursuant to this Section shall be assessed, levied, collected and paid in like manner as other taxes of the Borrower. [Such tax shall not be included within any statutory or other limitation of rate or amount for the Borrower but shall be excluded therefrom and be in addition thereto and in excess thereof, notwithstanding and without regard to the prohibitions, restrictions or requirements of any other law.] To the extent other moneys are not available therefor, there shall be set aside by the Borrower from such tax levy in a special fund an amount sufficient for the payment of the amounts under this Agreement, and such fund shall be used exclusively for such purpose and shall not be used for any other purpose until the amounts payable hereunder have been paid in full. Notwithstanding the foregoing, the tax hereinabove described will not be required to be levied by the Borrower or, if levied, may be proportionately reduced to the extent of payments derived by the Borrower from other funds appropriated by the governing body of the Borrower to the payment of the amounts described above from other revenues of the Borrower. Notwithstanding the foregoing, the Borrower shall be unconditionally obligated to levy such tax and to pay, whether from the proceeds of such tax or from other funds, the amounts due hereunder.

Section 3.08 Rebate Covenants of Borrower.

- (a) The Borrower, on behalf of the Authority, shall retain a Rebate Analyst to determine on behalf of the Borrower the Rebate Amount as of each of the dates set forth in (b) and (d) below.
- (b) The Borrower shall deliver to the Trustee the determination of the Rebate Amount in writing signed by an authorized official of the Borrower not later than [fifty (50)] days after each Computation Date, provided, that if such [fiftieth (50<sup>th</sup>)] day after any Computation Date is not a Business Day, then not later than three (3) Business Days prior to such [fiftieth (50<sup>th</sup>)] day.
- (c) Not later [than fifty (50)] days following each Installment Computation Date, the Borrower shall deposit with the Trustee for deposit into the Rebate Fund an amount equal to the portion of the Rebate Amount that is required to be paid to the United States with respect to such Installment Computation Date.
- (d) Not later than [fifty (50)] days following the Final Computation Date, the Borrower shall deposit with the Trustee for deposit into the Rebate Fund an amount equal to the portion of the Rebate Amount that is required to be paid to the United States as of the Final Computation Date.
- (e) The Borrower shall not make, or permit to be made, any payment, or agreement to pay, to a party other than the United States, any amount that is required to be paid to the United States by entering into a transaction that reduces the amount required to be paid pursuant to Section 148(f) of the Code because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's-length and had the yield on the Bonds not been relevant to either party (the failure to invest, or direct investment of, moneys that could be invested shall constitute an agreement to pay that results in such a smaller profit for the purposes of this subsection).
- (f) The restrictions contained in the foregoing subsections (b) through (e) shall not apply to obligations the interest on which is exempt from gross income pursuant to Section 103(a) of the Code (other than obligations that constitute "specified private activity bonds" within the meaning of Section 57(a)(5)(C) of the Code), and any interest or other income from such obligations, or the sale thereof, shall not be included in any of the calculations or rebates required pursuant to such subsections.
- (g) None of the foregoing provisions of this Section 3.08 need be observed, and, anything herein or in the Indenture to the contrary notwithstanding, this Section 3.08 may be amended, supplemented or terminated by the Authority, the Trustee and the Borrower, (i) if the Administrator files a certificate with the Trustee stating that the rebate exceptions set forth in the [Arbitrage Certificate] of the Borrower have been fulfilled, (ii) if the Authority receives an opinion of Bond Counsel, in form and substance satisfactory to the Trustee, that the failure to observe such covenants or entering into such amendments or supplements, will not cause the Bonds to become arbitrage bonds under Section 148 of the Code or otherwise adversely affect the exclusion of interest on the Bonds from the gross income of the owners thereof for purposes

of federal income taxation or (iii) additional or different regulatory or statutory provisions must be complied with for the interest on the Bonds to remain excludable from gross income for federal income tax purposes.

#### ARTICLE IV Representations and Covenants

Section 4.01 Representations and Covenants of the Authority. The Authority makes the following representations and covenants as the basis for the undertakings on the part of the Borrower contained herein:

- (a) The Authority is a [public nonprofit corporation and a public instrumentality of the City of Memphis, Tennessee, and Shelby County, Tennessee,] organized and existing pursuant to the Act. The Authority is authorized to issue the Bonds in accordance with the Act and to use the proceeds thereof to provide funds for making the Loan.
- (b) The Authority has complied with the provisions of the Act and has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and to perform its obligations hereunder.
- (c) The Authority is not in violation of any of the laws of the State which would affect its existence or its powers referred to in the preceding subsection (b).
- (d) By resolutions duly adopted by the Board of Directors of the Authority and in full force and effect on the date hereof, the Authority has authorized the execution and delivery of the Indenture, this Agreement and the Bonds, the due performance of all obligations of the Authority hereunder, under the Indenture and under the Bonds, and the taking of any and all actions as may be required on the part of the Authority to carry out, give effect to and consummate the transactions contemplated by each of the foregoing, and the Authority will take all actions within its reasonable control to obtain all approvals necessary in connection with the foregoing that have not been obtained as of the date hereof.
- (e) This Agreement has been duly authorized, executed and delivered by the Authority, and upon due authorization, execution and delivery by the Borrower, will constitute a legal, valid and binding obligation of the Authority. The Bonds will constitute legal, valid and binding limited special obligations of the Authority and will be payable solely from the Trust Estate and any amounts otherwise available under the Indenture, and will be entitled to the benefit of the Indenture. None of the Authority (except to the foregoing extent), Shelby County, the State, or any political subdivision thereof shall be obligated, directly or (except as a Borrower from the Authority) indirectly, to pay the principal of, Accreted Value of, as applicable, or premium, if any, or interest on the Bonds. The Authority has no taxing power.
- (f) The execution and delivery by the Authority of this Agreement, the Bonds, and the Indenture and the consummation of the transactions contemplated

in each of the foregoing will not violate any indenture, mortgage, deed of trust, note, loan agreement or other contract or instrument to which the Authority is a party or by which it is bound or, to the best of the Authority's knowledge, any judgment, decree, order, statute, rule or regulation applicable to the Authority, and the Authority will take all actions within its reasonable control to obtain all consents, approvals, authorizations and orders of governmental or regulatory authorities which are required for the consummation of the transactions contemplated thereby that have not been obtained as of the date hereof.

- (g) The Authority will apply or cause to be applied the proceeds of the Bonds in accordance with the Indenture and this Agreement.
- (h) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the Authority or, to the best knowledge of the Authority, any basis therefor, wherein an unfavorable decision, ruling, or finding would adversely affect the transactions contemplated hereby or by the Indenture or the Bonds or which, in any way, would adversely affect the validity of this Agreement, the Bonds, the Indenture or any agreement or instrument to which the Authority is a party and which is used or contemplated for use in consummation of the transactions contemplated by each of the foregoing.
- (i) The Authority covenants that it will not pledge the amounts derived from this Agreement other than to secure the Bonds.

Section 4.02 Representations and Covenants of the Borrower. The Borrower makes the following representations and covenants, in addition to those elsewhere set forth herein, as the basis for the undertakings on the part of the Authority contained herein:

- (a) The Borrower is a [municipal corporation or political subdivision], as appropriate, within the meaning of the Act, duly created and existing under the laws of the State and possessing general powers of taxation, including the power to levy ad valorem taxes, and has full legal right, power and authority (i) to conduct its business and own its properties, (ii) to enter into this Agreement, and (iii) to carry out and consummate all other transactions contemplated by this Agreement.
- (b) With respect to the authorization, execution and delivery of this Agreement, the Borrower has complied and will comply with all applicable laws of the State.
- (c) The Borrower has duly approved the execution and delivery of this Agreement and has authorized the taking of any and all action as may be required on the part of the Borrower to carry out, give effect to and consummate the transactions contemplated by this Agreement and the Indenture.
- (d) This Agreement has been duly authorized executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the



Authority, will constitute a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms. To the extent permitted by applicable law, the defense of sovereign immunity is not available to the Borrower in any proceedings by the Authority or the Trustee to enforce any of the obligations of the Borrower under this Agreement and, to the fullest extent permitted by law, the Borrower consents to the initiation of any such proceedings in any court of competent jurisdiction and agrees not to assert the defense of sovereign immunity in any such proceedings.

- (e) There is no action, suit, proceedings, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the Borrower, threatened against the Borrower, nor is there any basis therefor, (i) affecting the creation, organization or existence of the Borrower or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the execution or delivery of this Agreement, (iii) in any way contesting or affecting the validity or enforceability of this Agreement or any agreement or instrument relating to any of the foregoing or used or contemplated for use in the consummation of the transactions contemplated by any of the foregoing, or (iv) materially adversely affecting the Borrower's financial condition or its obligations to make Loan Repayments under this Agreement.
- (f) The Borrower is not in any material respect in breach of or in default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgement or decree or any agreement or other instrument to which the Borrower is a party or by which it or any of its properties is bound, and no event has occurred which with the passage of time, the giving of notice or both would constitute such a breach or default; and the execution and delivery of this Agreement and compliance with the respective provisions thereof will not conflict with or constitute a breach of or default under any applicable law or administrative regulation of the State or of the United States of America or any applicable judgment or decree or any agreement or other instrument to which the Borrower is a party or by which it or any of its property is bound.
- (g) So long as any Bonds are Outstanding, the Borrower shall promptly cure any violations under all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities, which are or shall become applicable to the Project, the repair and alteration thereof, and the use or manner of use of the Project, whether or not such laws, ordinances, orders, rules, regulations and requirements are foreseen or unforeseen, ordinary or extraordinary, and whether or not they shall involve any change or governmental policy or shall require structural or extraordinary repairs, alterations or additions, irrespective of the cost thereof.
- (h) The Borrower will not take or omit to take any action which action or omission will in any way cause the proceeds of the Bonds advanced to it to be applied in a manner contrary to that provided in the Indenture and this Agreement.

- (i) The Borrower has not taken or omitted to take, and will not take or omit to take, any action, and knows of no action that any other person, firm or corporation has taken or intends to take; which would cause interest on the Bonds to be includable in the gross income of owners thereof for federal income tax purposes.
- (j) The Borrower is not in default under any loan agreement, note, bond, mortgage or other instrument evidencing or securing indebtedness.
- (k) The Borrower approves the issuance of the Bonds and, as of the date hereof, is not in default in the performance or observance of any of the covenants, conditions, agreements or provisions of this Loan Agreement and all warranties and representations of Borrower herein are true and correct on the date hereof.
- (l) The Borrower covenants and agrees to comply with the terms and requirements applicable to the Borrower in the Indenture.
- (m) The interest on the Agreement is intended to be excludable from gross income for purposes of Federal income taxation.
- (n) All information provided to the Authority in this Agreement or in any other document or instrument with respect to the Loan, this Agreement or the Project, was at the time provided, and is now, true, correct and complete, and such information does not omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

ARTICLE V  
Events of Default

Section 5.01 Events of Default. An Event of Default shall occur hereunder if any one or more of the following events shall happen:

- (a) the payments required by Sections 3.01 through 3.02 are not paid punctually when due;
- (b) default shall be made by the Borrower in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing subdivision (a), and such default shall continue for thirty (30) days after the Authority or the Trustee shall have given the Borrower written notice of such default (or in the case of any such default which cannot with due diligence be cured within such 30-day period, if the Borrower shall fail to proceed promptly to commence curing the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with any such default not susceptible of being cured with due diligence within the 30 days that the time to cure the same shall be extended for such period as may be reasonably necessary to complete the curing of the same with all due diligence);

- (c) the Borrower shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, composition, readjustment, liquidation or similar relief for itself under any present or future statute, law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Borrower or of all or any substantial part of its properties or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due;
- (d) a petition shall be filed against the Borrower seeking any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation and shall remain undismissed or unstayed for an aggregate of 90 days (whether or not consecutive), or if any trustee, receiver or liquidator of the Borrower or of all or any substantial part of its properties shall be appointed without the consent or acquiescence of the Borrower and such appointment shall remain unvacated or unstayed for an aggregate of 90 days (whether or not consecutive); or
- (e) the Borrower shall contest the validity or enforceability of any provision of this Agreement.

Section 5.02 Remedies. Upon the occurrence of an Event of Default (regardless of the pendency of any proceeding which has or might have the effect of preventing the Borrower from complying with the terms of this Agreement), the Trustee, as assignee of the Authority, or any other Person who has succeeded to the rights of the Authority hereunder, including the registered owners of the Bonds, at any time thereafter and while such Event of Default shall continue, may, at its option, subject to the provisions of the Indenture, take any action at law, including mandamus, or in equity to collect amounts then due and thereafter to become due hereunder as such amounts become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement. Any amounts collected pursuant to action taken under this Article shall be applied in accordance with the Indenture.

## ARTICLE VI Prepayment

Section 6.01 Option to Prepay. The Borrower shall have the right and option throughout the term hereof to prepay in whole or in part the Loan advanced hereunder at the prices and upon the terms hereinafter set forth.

Section 6.02 Optional Prepayment Price. [TBD][The prepayment amount shall be the par amount of the Outstanding Bonds, plus interest accrued from the last Interest Payment Date to the maturity dates for the Bonds (or, if said investment earnings exceed interest accrued during said period, less said excess), plus Additional Payments accrued to said maturity dates. The Borrower acknowledges that the Bonds are not subject to optional redemption prior to their stated maturity.]

Section 6.03 Notice of Prepayment. The Borrower shall give notice of its intent to prepay its Loan to the Trustee in the manner for giving notices hereunder pursuant to Section 8.07 hereof at least [forty-five (45)][thirty (30)] days prior to the Prepayment Date. The notice shall state the intent of the Borrower to prepay its Loan or a portion thereof, the proposed Prepayment Date and, in the case of a partial prepayment, the principal amount and Accreted Value, as applicable, of the Bonds to be refunded. The Borrower shall instruct the Trustee as to the investment of the funds so deposited and the amount of the Optional Prepayment Price required to be paid by the Borrower, and the Authority and Trustee are entitled to rely on said instructions.

Section 6.04 Partial Prepayment. If the Borrower exercises its right and option to prepay the Loan in part, the amount of the prepayment shall be in an increment of the Authorized Denomination. [The principal prepayment amount shall be applied in reduction of payment obligations set forth on Exhibit C as Borrower shall elect by written notice to the Trustee.]

Section 6.05 Deposit of Prepayment Amount. The prepayment amount shall be deposited on any date prior to the applicable Loan Repayment Date.

Section 6.06 Discharge of Other Obligations. Notwithstanding any other provisions hereof, this Agreement shall not terminate on the date on which the Borrower shall be obligated to prepay (whether or not any delay in the completion of such prepayment shall be the fault of Authority), nor shall the Borrower's obligations hereunder cease until the Borrower shall have paid all amounts payable hereunder without set-off, counterclaim, abatement, suspension, deduction, diminution or defense for any reason whatsoever, so long as the Bonds are Outstanding and unpaid, and until the Borrower shall have discharged or made provision satisfactory to the Authority for the discharge of all of its obligations under this Agreement, which obligations have arisen on or before the date for prepayment, including the obligation to pay amounts due and payable on the date of the prepayment.

## ARTICLE VII Indemnification

Section 7.01 Indemnification of Trustee and Authority. The Borrower covenants and agrees, to the extent it is authorized by applicable law, to indemnify the Trustee and the Authority and each successor trustee and the officers, directors, employees and agents of the Trustee or any such successor trustee and the Authority (the Trustee, each successor trustee, the Authority and such officers, directors, employees and agents being hereinafter referred to in this Section collectively as the "Indemnified Parties" and individually as an "Indemnified Party") for, and to hold each Indemnified Party harmless against, any loss, liability, tax, assessment or other governmental charge (other than taxes applicable to their compensation hereunder) or expenses incurred without negligence, willful misconduct or bad faith on the part of such Indemnified Party, arising out of or in connection with the acceptance or administration of the Indenture or the trusts thereunder and the duties of the Trustee and the Authority thereunder (but only to the extent the Indenture, its administration, required duties and trusts thereunder are applicable to Borrower, this Agreement or the Bonds), including enforcement of this Agreement and this Section thereof and also including any liability which may be incurred as a result of failure to withhold, pay or report any tax, assessment or other governmental charge, and the costs and

expenses incurred by such Indemnified Party in the course of defending itself against or investigating any claim of liability in the premises. The obligations of the Borrower under this Section to compensate and indemnify the Indemnified Parties and to pay or reimburse each Indemnified Party for expenses, disbursements and advances shall constitute an additional obligation hereunder and shall survive the satisfaction and discharge of this Agreement.

## ARTICLE VIII Miscellaneous

Section 8.01 Waiver of Statutory Rights. The rights and remedies of the Authority and the Borrower under this Agreement shall not be adversely affected by any laws, ordinances, or regulations, whether federal, state, county, city, municipal or otherwise, which may be enacted or become effective from and after the date of this Agreement affecting or regulating or attempting to affect or regulate any amounts payable hereunder.

Section 8.02 Non-Waiver by Authority. No failure by the Authority or by any assignee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of any payment hereunder, in full or in part, during the continuance of such breach, shall constitute waiver of such breach or of such term. No waiver of any breach shall affect or alter this Agreement or constitute a waiver of a then existing or subsequent breach.

Section 8.03 Remedies Cumulative. Each right, power and remedy of the Authority provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise, in any jurisdiction where such rights, powers or remedies are sought to be enforced, and the exercise or beginning of the exercise by the Authority or the Trustee of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute, or otherwise shall not preclude the simultaneous or later exercise by the Authority or Trustee of any or all such other rights, powers or remedies.

Section 8.04 Amendments, Changes and Modification. Except as otherwise provided in this Agreement or in the Indenture, subsequent to the issuance of the Bonds and prior to the payment in full of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Agreement may not be effectively amended, changed, modified, altered or terminated without the concurring prior written consent of the Trustee, given in accordance with the provisions of the Indenture.

Section 8.05 Applicable Law – Entire Understanding. This Agreement shall be governed exclusively by the applicable laws of the State. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement.

Section 8.06 Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provisions shall not affect any of the remaining provisions of such instrument.

Section 8.07 Notices and Demands. All notices, certificates, demands, requests, consents, approvals and other similar instruments under this Agreement shall be in writing, and shall be deemed to have been properly given and received if sent by United States certified or registered mail, postage prepaid, (a) if to the Borrower, addressed to the Borrower at City Hall, [ADDRESS], Attention: [Mayor][Chief Financial Officer]; (b) if to the Authority, addressed to the Authority at [ADDRESS], Attention: [\_\_\_\_], with a copy to the Authority's counsel, Carpenter Law, PLLC, [ADDRESS], Attention: [\_\_\_\_]; and (c) if to the Trustee, addressed to the Trustee at [ADDRESS], Attention: [\_\_\_\_], or at such other addresses as any addressee from time to time may have designated by written notice to the other addressees named above. The Authority shall promptly forward to the Borrower copies of any notice received by it from the Trustee under the Indenture.

Section 8.08 Headings and References. The headings in this Agreement are for the convenience of reference only and shall not define or limit the provisions thereof. All references in this Agreement to particular Articles or Sections are references to Articles or Sections of this Agreement, unless otherwise indicated.

Section 8.09 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 8.10 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

Section 8.11 Amendments, Changes and Modifications of Indenture. The Authority covenants and agrees that it will not, without the prior written consent of the Borrower, enter into or consent to any amendment, change or modification of the Indenture which would adversely affect the Borrower rights under this Agreement.

Section 8.12 No Liability of Authority's and Borrower's Officers. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any incorporator, member, director or officer, as such, past, present or future, of the Authority or the Borrower, either directly or through the Authority or the Borrower. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer is hereby expressly waived and released by the Borrower and the Authority against the other's incorporators, members, directors or officers as a condition of and consideration for the execution of this Agreement.

Section 8.13 Refunding of the Bonds. [The Bonds may be refunded at any time and from time to time as permitted by applicable law, upon the direction of the Borrower.][UPDATE WHEN 6.02 UPDATED.] In the event the Bonds are refunded by Bonds issued by the Authority, all references in this Agreement to (i) the Bonds shall be deemed to refer also to the refunding

bonds, (ii) the Indenture shall be deemed to refer also to the indenture or other instrument pursuant to which the refunding bonds are issued, and (iii) any funds or accounts referred to herein shall be deemed to refer also to the corresponding funds or accounts established under the indenture or other instrument pursuant to which the refunding bonds are issued.

Section 8.14 Continuing Disclosure. The Borrower hereby covenants and agrees that it will provide such annual financial information and event notices, if any, as required by Rule 15c2-12 of the Securities Exchange Commission for the Bonds. The Authorized Borrower Representative is authorized to execute an agreement for the benefit of and enforceable by the owners of the Bonds specifying the details of the financial information and event notices to be provided and its obligations relating thereto. Failure of the Borrower to comply with the undertaking herein described and to be detailed in said closing agreement, shall not be a default hereunder, but any such failure shall entitle the owner or owners of any of the Bonds to take such actions and to initiate such proceedings as shall be necessary and appropriate to cause the Borrower to comply with its undertaking as set forth herein and in said agreement, including the remedies of mandamus and specific performance.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY OF MEMPHIS AND SHELBY COUNTY, TENNESSEE, has executed this Loan Agreement by causing its name to be hereunto subscribed by its Chairman and attested by its Secretary; and the CITY OF MEMPHIS, TENNESSEE, has executed this Loan Agreement by causing its name to be hereunto subscribed by its Mayor and [Comptroller], all being done as of the day and year first above written.

NEW MEMPHIS ARENA PUBLIC  
BUILDING AUTHORITY OF MEMPHIS  
AND SHELBY COUNTY, TENNESSEE

SEAL:

By: \_\_\_\_\_

[Chairman]

ATTEST:

\_\_\_\_\_  
[Secretary]

CITY OF MEMPHIS, TENNESSEE

SEAL:

By: \_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_  
[Comptroller]



**EXHIBIT A**

**FORM OF PROJECT COST REQUISITION**

**REQUISITION # \_\_\_\_\_**

Regions Bank  
Corporate Trust Services  
150 Fourth Avenue North, Suite 1500  
Nashville, Tennessee 37219  
Attention: Corporate Trust Services

Re: New Memphis Arena Public Building Authority of Memphis and Shelby County, Tennessee, Local Government Public Improvement Bonds (City of Memphis Project), Series 2021

Ladies and Gentlemen:

In connection with the Loan Fund established under an Indenture of Trust dated as of \_\_\_\_\_, 2021 (the "Indenture") by and between the New Memphis Arena Public Building Authority of Memphis and Shelby County, Tennessee, and Regions Bank, as Trustee, as may be amended and supplemented to the date hereof, the undersigned Authorized Officer of the City of Memphis, Tennessee (the "Borrower"), hereby requests disbursement from the Loan Fund to each of the following payees in the respective amounts and for the respective purposes set forth below.

**[INSERT THE NAME OF EACH PAYEE, THE STATED PURPOSE(S) IN TERMS SUFFICIENT FOR IDENTIFICATION, AND THE RESPECTIVE STATED DOLLAR AMOUNT TO BE PAID TO EACH PAYEE].**

The undersigned does hereby certify as follows:

1. The above obligations in the stated amounts have been incurred by or on behalf of the Borrower and are presently due and payable and constitute Costs of the Project within the meaning of the Indenture and that each item thereof is a proper charge against the Loan Fund and has not been paid or reimbursed, as the case may be, from the proceeds of the Bonds.
2. This requisition contains no item representing payment on account of any retained percentage which the Borrower is at the date of such requisition entitled to retain, unless the Borrower has waived such retention right
3. There is no outstanding indebtedness known to the Borrower, after due inquiry, for work, materials or supplies which, if unpaid, could be the basis for a vendor's or mechanic's or similar lien on the Project or any part of it, other than indebtedness to be paid pursuant to the requisition or from amounts withheld to secure completion, and no notice of any lien or claim affecting the right of any Person to receive a payment requested in this requisition has been filed with or served upon the Borrower.

4. The withdrawal and use of the Loan Fund money for the purpose intended will not cause any representations or certifications of the Borrower made herein or in the Loan Agreement to be untrue.

5. The Borrower has copies of all invoices and statements with respect to the amounts to be paid pursuant to this requisition.

6. As to any payment to be made under a construction contract:

(i) the Borrower has obtained written waiver by the construction manager or general contractor under such contract of mechanics' and vendors' liens for all work and material described in the requisition performed or furnished by such construction manager or general contractor; and

(ii) either (a) a lien search report dated within two business days of the date of the requisition reflects no liens, stop notices or other evidence of nonpayment of any mechanic, materialman or other person; or (b) waivers of mechanics' and vendors' liens for all work and material performed or furnished to the Project from all others (other than the construction manager or general contractor); and

(iii) the contractor is entitled to payment in the amount shown in this requisition.

Capitalized terms used but not defined herein have the meaning set forth in the Indenture.

**CITY OF MEMPHIS, TENNESSEE**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT B**  
**COMPLETION CERTIFICATE**

**New Memphis Arena Public Building Authority  
of Memphis and Shelby County, Tennessee,  
Local Government Public Improvement Bonds  
(City of Memphis Project)  
Series 2021**

**Consisting of**

\$[\_\_\_\_\_] **Current Interest Bonds**

\$[\_\_\_\_\_] **Convertible Capital  
Appreciation Bonds**

**and**

\$[\_\_\_\_\_] **Capital Appreciation**

The undersigned, being an Authorized Borrower Representative within the meaning of that term as set forth in a Loan Agreement (“Loan Agreement”), dated as of [June] 1, 2021, by and between the New Memphis Arena Public Building Authority of Memphis and Shelby County, Tennessee, and the City of Memphis, Tennessee (the “Borrower”), submits this Completion Certificate on behalf of the Borrower pursuant to Section 2.05 of the Loan Agreement, as follows:

1. No additional advances of funds under the Loan Agreement will be requested from the Trustee, and no additional Requisitions for disbursement of funds will be presented to the Trustee;
2. The Project to be financed with the proceeds of the Loan under the Loan Agreement has been completed or sufficient funds are available to do so to the satisfaction of the Borrower; and
3. The Authority and the Trustee are directed to apply any excess funds remaining in the Borrower Account of the Loan Fund under the Loan Agreement in accordance with the provisions of Section 2.05 of the Loan Agreement.

Notwithstanding the foregoing, this Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

IN WITNESS WHEREOF, the undersigned has hereunto set his (her) hand this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF MEMPHIS, TENNESSEE

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C**  
**PRINCIPAL REDUCTION SCHEDULE**

58033517.v1



04.22.2021 DRAFT

INDENTURE OF TRUST

between

NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY  
OF MEMPHIS AND SHELBY COUNTY, TENNESSEE

and

REGIONS BANK  
as Trustee

---

Dated as of [June] 1, 2021

---

Relating to

Local Government Public Improvement Bonds  
(City of Memphis Project)  
Series 2021

Consisting of

\$[ ]  
Current Interest Bonds

\$[ ]  
Convertible Capital  
Appreciation Bonds

and

\$[ ]  
Capital Appreciation Bonds

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## INDENTURE OF TRUST

THIS INDENTURE OF TRUST, dated as of [June] 1, 2021, between the NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY OF MEMPHIS AND SHELBY COUNTY, TENNESSEE (the "Authority"), a public corporation of the State of Tennessee (the "State"), and REGIONS BANK, an Alabama banking corporation organized under the laws of the State of Alabama, duly established, existing and authorized to accept and execute trusts of the character herein set out under and by virtue of the laws of the State of Alabama, with a corporate trust office and post office address at Nashville, Tennessee, as trustee (the "Trustee").

### WITNESSETH:

WHEREAS, the Authority has been formed pursuant to Chapter 10 of Title 12 of Tennessee Code Annotated (the "Act") for the purposes set forth in the Act; and

WHEREAS, the Authority is authorized under the Act, among other things, to enter into loan agreements with incorporated cities or towns, counties, metropolitan governments, school districts or other municipal, governmental bodies or political subdivisions in the State and any agency, authority, corporation or instrumentality thereof for the purpose of financing the costs of any project which is eligible to be financed by bonds, notes or other obligations of an incorporated city or town, county, metropolitan government, school district or other municipal, governmental body or political subdivision in the State and any agency, authority, corporation or instrumentality thereof; and

WHEREAS, the Authority is authorized under the Act, among other things, to issue and sell its revenue bonds to provide funds for the purpose of financing, refinancing, acquiring, erecting, extending, improving, equipping or repairing any such project, acquiring sites necessary and convenient for such project, paying architectural, engineering, legal, financing and bond insurance expenses, and funding interest on such revenue bonds during construction of any project and for up to two years after the estimated date of completion of such project; and

WHEREAS, as security for the payment of the principal of and interest on its bonds, the Authority may assign and pledge all or any part of its interest in and rights under the loan agreements relating to the projects financed to any bonds; and

WHEREAS, the City of Memphis, Tennessee (the "Borrower"), desires the Authority to issue its Local Government Public Improvement Bonds (City of Memphis Project), Series 2021, consisting of [(a) Current Interest Bonds (the "Current Interest Bonds"), (b) Convertible Capital Appreciation Bonds (the "Convertible Capital Appreciation Bonds"), and (c) Capital Appreciation Bonds (the "Capital Appreciation Bonds," and together with the Current Interest Bonds and the Convertible Capital Appreciation Bonds, the "Bonds")], and to loan the proceeds thereof to the Borrower pursuant to the Loan Agreement dated as of [June] 1, 2021, by and between the Authority and the Borrower (as the same may from time to time be amended, supplemented and restated, the "Loan Agreement"), for the purpose of financing the Costs of various public works projects of the Borrower (collectively the "Project")[, including interest on Bonds during construction of the Project and for two (2) years after the estimated date of completion of the Project,] and paying certain expenses incurred in connection with the issuance of Bonds, all as permitted under the Act; and

WHEREAS, the Authority has determined that the public interest will be best served and that the purposes of the Act can be more advantageously obtained by the Authority's issuance of the Bonds in order to loan funds to the Borrower as aforesaid; and

WHEREAS, to secure the payment of the principal of, interest on, and redemption premium, if any, on the Bonds and the performance and observance of the covenants and conditions herein contained the Authority has authorized the execution and delivery of this Indenture; and

WHEREAS, the Authority has authorized and executed the Loan Agreement with the Borrower which is being pledged and assigned by the Authority to the Trustee (except for certain rights reserved under this Indenture) with payments made thereunder by the Borrower to be used to pay principal of, interest on, and redemption premium, if any, on the Bonds; and

WHEREAS, the Authority has entered into a Bond Purchase Agreement (the "Bond Purchase Agreement") with BofA Securities, Inc. (the "Underwriter"), to provide for the purchase of the Bonds upon initial issuance and sale by the Authority; and

WHEREAS, the Bonds shall be in the form of Exhibit A attached hereto with necessary or appropriate variations, omissions and insertions, permitted or required by this Indenture; and

WHEREAS, all things necessary to make the Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and binding limited obligations of the Authority according to the import thereof, and to constitute this Indenture a valid assignment and pledge of the amounts pledged to the payment of the principal of, premium, if any, and interest on the Bonds issued and to be issued hereunder have been done and performed, and a valid assignment of the rights of the Authority under the Loan Agreement and the creation, execution and delivery of this Indenture and the Loan Agreement, and the creation, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

#### GRANTING CLAUSES

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that, to secure payment of the principal of, premium, if any, and interest on the Bonds issued hereunder according to their tenor and effect and the performance of all covenants and conditions therein and herein contained, and in consideration of the premises, and of the purchase of the Bonds by the Holders thereof, the Authority by these presents does grant, to the Trustee and its successors in trust, a lien on and a security interest in the following described property, rights, privileges and franchises with respect to the Bonds (which collectively are hereinafter called the "Trust Estate");

#### GRANTING CLAUSE FIRST

All right, title and interest and privilege of the Authority now owned or hereafter acquired in, to and under the Loan Agreement and any agreement supplementing, extending or modifying the same, including, without limitation, all present and future rights of the Authority to make claim for, collect and receive Loan Repayments and any other income, revenues, issues, profits, insurance proceeds and other sums of money payable to or for the account of or receivable by the Authority under the Loan Agreement (whether payable pursuant to the Loan

Agreement or otherwise), to bring actions and proceedings under the Loan Agreement or for the enforcement thereof, to pursue the remedies provided in the Loan Agreement upon the occurrence of an event of default thereunder, and to do any and all things that the Authority is or may become entitled to do under the Loan Agreement, but excluding Unassigned Rights as hereinafter defined;

#### GRANTING CLAUSE SECOND

All monies and securities (including the investment income therefrom) held by the Trustee in any of the funds or accounts established under this Indenture (except the Additional Payments Account of the Bond Fund referred to in Section 5.02 hereof and the Rebate Fund referred to in Section 5.12), subject, however, to the application thereof to the uses and in the manner set forth in this Indenture; and

#### GRANTING CLAUSE THIRD

All property which is by the express provisions of this Indenture required to be subject to the lien hereof and any additional property that may, from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien hereof, by the Authority or by anyone on its behalf, for the benefit of Owners of the Bonds hereunder, and the Trustee is hereby authorized to receive the same at any time as additional security hereunder;

TO HAVE AND TO HOLD the Trust Estate unto the Trustee and its successors and assigns forever;

BUT IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of the Holders from time to time to the extent provided herein for the Bonds without any priority of any one Bond over any other Bond except as herein expressly provided.

PROVIDED, HOWEVER, that if (1) the Authority shall pay or cause to be paid the principal of, and the premium, if any, and interest on, the Bonds at the time and in the manner mentioned in the Bonds and this Indenture, or shall provide, as permitted hereby, for the payment thereof; (2) the Authority shall perform and observe all the covenants to be performed and observed by it hereunder with respect to the Bonds; and (3) the Authority shall pay or cause to be paid to the Trustee all sums of money due or to become due to the Trustee in accordance with the terms and provisions hereof and of the Loan Agreement; then upon such final payments this Indenture and the rights hereby granted shall cease, terminate, and be void with regard to the Bonds (other than such provisions hereof, if any, as may by their express terms survive any such termination); otherwise this Indenture shall be and remain in full force and effect;

AND THEREFORE, the Authority hereby covenants and agrees with the Trustee and with the respective Owners, from time to time, of the Bonds, or any part thereof, for the equal and proportionate benefit of such Owners of the Bonds as follows:

#### ARTICLE I

##### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Definitions. Certain terms used in this Indenture are defined in this Section 1.01 and in other Sections hereof and, when and if used herein, such terms shall have the meanings

given to them in this Section 1.01 and such other Sections (except as otherwise expressly provided or unless the context otherwise requires); All terms defined in the Loan Agreement or the Bonds and used herein shall, unless the context otherwise requires, have the meanings in this Indenture respectively assigned to such terms in the Loan Agreement or the Bonds.

“Account” means any account or subaccount created pursuant to the terms of this Indenture.

“Accreted Interest” means, on any date (prior to the Conversion Date) and with respect to any Bond, the difference between that portion of the Original Principal Amount allocable to such Bond and the then current Accreted Value of such Bond.

“Accreted Value” means the value of a Capital Appreciation Bond on any date on which it is calculated as computed in accordance with the Accretion Table and the value of a Convertible Capital Appreciation Bond on any date (prior to the Conversion Date) on which it is calculated as computed in accordance with the Accretion Table.

“Accretion Date” means, with respect to the Capital Appreciation Bonds and, prior to the Conversion Date, the Convertible Capital Appreciation Bonds, each [June] 1 and [December] 1, commencing [December] 1, 202[1].

“Accretion Table” means the table set forth in Exhibit B attached hereto and incorporated by this reference herein.

“Act” means the Chapter 10 of Title 12, Tennessee Code Annotated, as amended.

“Action,” when referring to an act or action taken by any Bondholder, shall have the meaning assigned to it in Section 13.06 hereof.

“Additional Payments” means the payments required to be made by the Borrower pursuant to Section 3.02 of the Loan Agreement.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any specified Person shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract, by membership or power to appoint directors, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Authority” means the New Memphis Arena Public Building Authority of Memphis and Shelby County, Tennessee, and any successor to its functions hereunder.

“Authority Certificate” means a certificate signed by an Authorized Authority Representative and delivered to the Trustee.

“Authority Request”, “Authority Order” or “Authority Consent” means, respectively, a written request, order or consent of the Authority, signed by an Authorized Authority Representative and delivered to the Trustee.

“Authorized Authority Representative” means the [Chairman, Vice-Chairman, Secretary or Assistant Secretary] of the Authority, and when used with reference to any act or document also means any other person authorized by resolution of the Authority, a copy of which is filed with the Trustee, to perform such act or execute such document.

“Authorized Borrower Representative” means such Persons as, at the time, are authorized to act on behalf of the Borrower pursuant to charter, or ordinance or resolution of the governing body of such Borrower and designated in the Loan Agreement and any such other Persons from time to time authorized to act on behalf of the Borrower pursuant to charter, or ordinance or resolution of the governing body of the Borrower, a copy of which is filed with the Trustee, to perform such act or execute such document.

“Authorized Denominations” means \$5,000 each or any integral multiple thereof.

[“Authorized Investments” means any of the following, which at the time of investment are authorized pursuant to State law:

(a) Government Obligations;

(b) Obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:

Export – Import Bank;

Farm Credit System Financial Assistance Corporation;

Rural Economic Community Development Administration (formerly the Farmers Home Administration);

General Services Administration;

U. S. Maritime Administration;

Small Business Administration;

Government National Mortgage Association (GNMA);

U.S. Department of Housing & Urban Development (PHA’s);

Federal Housing Administration; and

Federal Financing Bank;

(c) Direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:

Senior debt obligations rated “AAA” by Standard & Poor’s Ratings Group (“S&P”) and “Aaa” by Moody’s Investor Services (“Moody’s”) issued by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC);

Senior debt obligations of the Federal Home Loan Bank System; and

Senior debt obligations of other agencies sponsored by the United States government;

(d) U.S. dollar denominated deposit accounts, federal funds and banker’s acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of “A-1” or “A-1+” by S&P and “P-1” by Moody’s and maturing no more than 360 calendar days after the date of purchase (ratings on holding companies are not considered as the rating of the bank);



(e) Commercial paper which is rated at the time of purchase in the single highest classification, “A-1+” by S&P and “P-1” by Moody’s and which matures not more than 270 calendar days after the date of purchase;

(f) Investments in a money market fund rated “AAAm” or “AAAm-G” or better by S&P;

(g) Pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local government unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (i) which are rated, based on an irrevocable escrow account or fund (the “escrow”), in the highest rating category of S&P and Moody’s or any successors thereto; or (ii)(A) which are fully secured as to principal and interest and redemption premium, if any, by an escrow fund consisting only of cash or obligations described in paragraph (a) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (B) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate; and

(h) Municipal Obligations rated “Aaa/AAA” or general obligation of states with a rating of at least “A2/A” or higher by both Moody’s and S&P;

“Value” of the Authorized Investments shall be determined as of the end of each Interest Payment Date, and shall be calculated using the value thereof using the Trustee’s standard market value methodology.]

“Bond Counsel” means an attorney or firm of attorneys nationally recognized on the subject of municipal bonds and the status of the income thereon for purposes of federal income taxation.

“Bond Fund” means the fund created in Section 5.02.

“Bond Register” has the meaning specified in Section 2.06.

“Bond Resolution” means the resolution duly adopted by the members of the Authority on [\_\_\_\_], 2021, as from time to time amended or supplemented, authorizing the issuance of the Bonds.

“Bondholder”, “Owner”, “owner”, “Holder” or “holder” or any similar term, when used with reference to any of the Bonds, means any Person who shall be shown in the Bond Register as the registered owner of any then Outstanding Bonds.

“Bonds” has the meaning assigned to that term in the recitals to this Indenture.

“Borrower” means the City of Memphis, Tennessee, a Tennessee municipal corporation.

“Borrower Certificate” means a certificate signed by an Authorized Borrower Representative and delivered to the Trustee.

“Borrower Request”, “Borrower Order” and “Borrower Consent” means, respectively, a written request, order, or consent signed by an Authorized Borrower Representative and delivered to the Trustee.

“Business Day” means any day other than (a) a Saturday or Sunday, (b) a day on which banking institutions in New York City or any other city where the principal United States office of the Trustee is located are required or authorized by law (including executive order) to close or on which the principal United States office of the Trustee is closed for a reason not related to financial condition, or (c) a day on which The New York Stock Exchange is closed.

“Capital Appreciation Bond” means a fixed-rate Bond, the interest on which is payable only at maturity or earlier redemption in amounts determined by reference to the Accreted Value of such Bond, and with respect to the Bonds means the Series 2021B Bonds and the Series 2021C Bonds.

“Cede & Co.” means Cede & Co., the nominee of DTC or any successor nominee of DTC with respect to the Bonds.

“Chairman” means the Chairman of the Authority or, in the event of his or her unavailability or incapacity, the Vice-Chairman or such other Authority official who may be properly authorized to act in the place of the Chairman pursuant to the governing documents of the Authority and applicable law.

“Closing Date” means the date of the issuance and delivery of the Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, as it applies to the Bonds, including applicable regulations and revenue rulings thereunder. Reference herein to sections of the Code are to the sections thereof as they exist on the date of execution of this Indenture, but include any successor provisions thereof, to the extent applicable to the Bonds.

“Computation Date” means any Installment Computation Date and the Final Computation Date.

“Conversion Date” means [\_\_\_\_\_].

“Cost of Issuance Fund” means the fund established by Section 5.10.

“Cost” or “Cost of the Project” means:

(a) The cost of acquiring, erecting, extending, improving, equipping, repairing or refinancing the Project, including refunding outstanding obligations of the Borrower and of the Authority or of any other public building authority created under the Act, funding of a debt service reserve fund and payment of a fee or premium in connection with a surety bond, bond insurance or letter of credit and a debt service reserve fund, or for any combination of such purposes, demolishing structures on the Project sites, and acquiring sites or estates therein, and easements necessary or convenient for the Project;

(b) The cost of labor, materials, machinery and equipment as payable to contractors, builders and materialmen in connection with the Project;

(c) Governmental charges levied or assessed during equipping of the Project or upon any property acquired therefor, and premiums on insurance in connection with the Project during construction;

(d) Fees and expenses of architects and engineers for estimates, surveys and other preliminary investigations, environmental tests, soil borings, appraisals, preparation of plans, drawings and specifications and supervision of the Project properly chargeable to the Project, as well as for the performance of all other duties of architects and engineers in relation to the construction and installation of the Project;

(e) Expenses of administration, supervision and inspection properly chargeable to the Project, including the fees of the Borrower relating to the design, construction and equipping of the Project and all other items of expense, not elsewhere specified herein incident to the construction, installation and placing in operation of the Project;

(f) Fees and expenses incurred in connection with the issuance and administration of the Bonds and the Loan Agreement, including but not limited to, fees and expenses of the Underwriter for the Bonds and its counsel, the Authority and its counsel, Bond Counsel, Disclosure Counsel, the Trustee and its counsel, the Borrower's counsel, printing costs and rating fees;

(g) Interest on the Bonds during the construction and installation of the Project and for up to two years thereafter; and

(h) Any other cost of the Project permitted to be financed pursuant to the Act.

“Counsel” means an attorney, or firm thereof, admitted to practice law before the highest court of any state in the United States of America or the District of Columbia.

“Default” means any event which with the giving of notice or lapse of time, or both, would constitute an Event of Default.

“Defaulted Interest” has the meaning stated in Section 2.04(f).

“DTC” means The Depository Trust Company, a limited purpose company organized under the laws of the State of New York, and its successors and assigns.

“DTC Participant” or “DTC Participants” means securities brokers and dealers, banks, trust companies and clearing corporations that have access to the DTC system.

“Eastern Time” means the prevailing time in New York, New York.

“Event of Default” means any event defined as such in Section 14.01.

“Extraordinary Services and Extraordinary Expenses” means all services rendered and all expenses incurred by the Trustee under this Indenture other than Ordinary Services and Ordinary Expenses.

“Favorable Opinion of Bond Counsel” means with respect to any action relating to the Bonds, the occurrence of which requires such an opinion, a written legal opinion of Bond Counsel to the effect that such action is permitted under this Indenture and will not impair the exclusion of interest on the Bonds from gross income for purposes of federal income taxation (if applicable).

“Final Computation Date” means the date the Bonds are paid in full.

“Fitch” means Fitch Ratings, Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns; and if such corporation shall be dissolved or liquidated or shall no longer perform the function of a municipal securities rating agency, “Fitch” shall be deemed to refer to any other recognized municipal securities rating agency designated by the Authority.

“Fund” means any fund created pursuant to this Indenture, including the Bond Fund, the Loan Fund, the Rebate Fund and the Cost of Issuance Fund.

“Government Obligations” means any of the following, which at the time of investment are authorized pursuant to State law: (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in (ii)); or (ii) direct obligations (including issued or held in book entry form on the books of the Department of the Treasury) of the United States of America, or [(iii) Senior debt obligations of other agencies sponsored by the United States government].

“Indenture” means this Indenture of Trust between the Authority and the Trustee, as supplemented from time to time by Supplemental Indentures.

“Installment Computation Date” means the fifth anniversary of the issue date of the Bonds and each fifth anniversary of such date.

“Interest Payment Date” means the first day of each [June] and [December] and the Maturity of the Bonds.

“Loan” means the loan made by the Authority to the Borrower under the Loan Agreement.

“Loan Agreement” means the Loan Agreement, including the Exhibits attached thereto, entered into by the Authority and the Borrower, as the same may be from time to time amended or supplemented in accordance with the provisions thereof and hereof.

“Loan Default” means an Event of Default under Section 5.01 of a Loan Agreement.

“Loan Fund” means the fund established by Section 5.04.

“Loan Repayments” mean the payments of principal of and interest on the Loan, Additional Payments and any other amounts payable by the Borrower pursuant to the provisions of the Loan Agreement.

“Maturity” when used with respect to any Bond shall mean the earliest of (i) the Stated Maturity of such Bond, (ii) the date of optional or mandatory redemption of such Bond pursuant to the terms hereof, and (iii) the date on which the principal of such Bond otherwise becomes due and payable.

“Moody’s” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns; and if such corporation shall be dissolved or liquidated or shall no longer perform the function of a municipal securities rating agency, “Moody’s” shall be deemed to refer to any other recognized municipal securities rating agency designated by the Authority.

“Opinion of Bond Counsel” means a written opinion of Bond Counsel.

“Opinion of Counsel” means a written opinion of Counsel, who may (except as otherwise expressly provided in the Loan Agreement or this Indenture) be counsel for the Authority and/or the Borrower.

“Ordinary Services and Ordinary Expenses” means those services normally rendered and those expenses normally incurred by a Trustee under instruments similar hereto, including, but not limited to, reasonable attorneys’ fees.

“Original Principal Amount” means the principal amount of any Capital Appreciation Bond and, prior to the Conversion Date, the principal amount of any Convertible Capital Appreciation Bond, as of the date of original issuance and, with respect to any single Bond, the original principal amount of such Bond on the date of its original issuance.

“Outstanding” when used with respect to the Bonds means, as of the date of determination, all Bonds theretofore authenticated and delivered under this Indenture, except:

(a) Bonds theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(i) Bonds for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee in trust for the Holders of such Bonds, provided that, if such Bonds are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(ii) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

“Person” means any natural person, corporation, joint venture, cooperative, partnership, trust or unincorporated organization, government or governmental body or agency, political subdivision or other legal entity, as in the context may be appropriate.

“Project” means a “project” as defined in the Act, all or a portion of the Costs of which is financed by the Authority pursuant to this Indenture and a Loan Agreement.

“Proportionate Share” has the meaning given to such term in the Loan Agreement.

“Rating Agency” means Moody’s, S&P or Fitch.

“Rebate Fund” means the fund created pursuant to Section 5.12.

“Record Date” means the fifteenth day of the month preceding any Interest Payment Date.

“Redemption Date” when used with respect to any Bond to be redeemed means the date on which it is to be redeemed pursuant hereto.

“Redemption Price” means the price at which a Bond may be redeemed pursuant to the optional or mandatory sinking fund redemption provisions hereof, which shall be the sum of principal of such Bond, the Accreted Value thereof, as applicable, plus accrued and the unpaid interest to the date of redemption, without redemption premium.

“Responsible Officer” when used with respect to the Trustee means the chairman or vice-chairman of the board of directors, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice-president, any trust officer, or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and who, in any event is located at the principal corporate trust office of the Trustee and shall also mean, with respect to a particular corporate trust matter any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject; with respect to any signature on or authentication of Bonds by the Trustee, the term “Responsible Officer” shall also include any authorized signers of the Trustee.

“Secretary” means the Secretary of the Authority or, in the event of his or her unavailability or incapacity, the Assistant Secretary or such other Authority official who may be properly authorized to act in the place of the Secretary pursuant to the governing documents of the Authority and applicable law.

“Securities Depository” means DTC or such other bank or trust company providing a book-entry or similar method for the registration and transfer of Bonds.

“Special Record Date” means the date fixed by the Trustee pursuant to Section 2.04 relating to the payment of any Defaulted Interest.

“S&P” means S&P Global Ratings, a division of McGraw-Hill Financial Services Company, a corporation organized and existing under the laws of the State of New York, its successors and their assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a municipal securities rating agency, S&P shall be deemed to refer to any other nationally recognized municipal securities rating agency designated by the Authority.

“State” means the State of Tennessee.

“Stated Maturity” when used with respect to any Bond means the date specified in such Bond as the fixed date on which principal of such Bond, or Accreted Value thereof, as applicable, is due and payable.

“Supplemental Indenture” means any indenture supplemental to this Indenture entered into pursuant to Article XVII.

“Trust Estate” has the meaning specified in the Granting Clauses of this Indenture.

“Trust Funds” means all of the funds and accounts held by the Trustee pursuant to the terms hereof, excluding the Rebate Fund.

“Trust Moneys” has the meaning stated in Section 7.01.

“Trustee” means Regions Bank, an Alabama banking corporation, Nashville, Tennessee, and any successor trustee under this Indenture, acting as paying agent, bond registrar and trustee.

“Unassigned Rights” means the rights of the Authority (a) to receive payment of the Authority’s expenses and attorneys’ fees under Section 3.02 of the Loan Agreement, (b) to receive notices and other documents under the Loan Agreement and (c) to indemnification under the Loan Agreement.

“Underwriter” means BofA Securities, Inc., on behalf of itself and as representative of the other underwriters listed in the Bond Purchase Agreement.

1.02 Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Indenture:

(a) Words importing the singular number shall include the plural number and vice versa.

(b) Words importing the redemption or calling for redemption of Bonds shall not be deemed to refer to or connote the payment of Bonds at their Stated Maturity.

(c) All references herein to particular articles or sections are references to articles or sections of this Indenture.

(d) The headings and the table of contents herein are solely for convenience of reference and shall not constitute a part of this Indenture nor shall they affect its meaning, construction or effect.

(e) This Indenture shall be construed for the benefit of the Borrower as well as for the parties hereto.

(f) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

**ARTICLE II  
THE BONDS**

2.01 Authorization of the Bonds. In accordance with the Act and pursuant to the Bond Resolution, there shall be issued the Bonds for the purposes hereinafter stated. The aggregate principal amount of the Bonds that may be authenticated and delivered under this Indenture is limited to and shall not exceed \$[\_\_\_\_\_]. The Bonds are being issued for the purpose of providing funds for the Loan to the Borrower pursuant to the Agreement. The Borrower has covenanted in the Loan Agreement to make payments attributable to the Bonds in the years and in the amounts set forth below.

2.02 Bond Details.

(a) Current Interest Bonds. The Current Interest Bonds in the aggregate principal amount of \$[\_\_\_\_\_] will be designated “Local Government Public Improvement Bonds (City of Memphis Project), Series 2021, and will be dated the Closing Date. The Current Interest Bonds will bear interest at the rates per annum set forth below, computed on the basis of a 360-day year consisting of twelve 30-day months, payable on [December] 1, 202[ ], and semiannually thereafter on [June] 1 and [December] 1 of each year and will mature on [December] 1, in the years and in the amounts as follows, unless earlier called for redemption:

| <b>[December] 1 of the Year</b> | <b>Amount</b> | <b>Interest Rate</b> |
|---------------------------------|---------------|----------------------|
| 202[ ]                          | \$[_____]     | [_____]%             |
| 202[ ]                          | [_____]       | [_____]%             |
| 202[ ]                          | [_____]       | [_____]%             |
| 202[ ]                          | [_____]       | [_____]%             |
| 202[ ]                          | [_____]       | [_____]%             |
|                                 |               |                      |

(b) Convertible Capital Appreciation Bonds. The Convertible Capital Appreciation Bonds in an aggregate initial principal amount of \$[\_\_\_\_\_] will be designated “Local Government Public Improvement Convertible Capital Appreciation Bonds (City of Memphis Project), Series 2021,” and will be dated the Closing Date. Interest on the Convertible Capital Appreciation Bonds shall compound from the Closing Date on each Accretion Date as set forth in the Accretion Table and shall be treated as accruing in equal daily amounts between Accretion Dates, payable at maturity or earlier redemption. On the Conversion Date, the Convertible Capital Appreciation Bonds will convert to current interest bonds with interest payable on [June] 1, 20[ ], and on each Interest Payment thereafter. Interest on the Convertible Capital Appreciation Bonds shall be computed on the basis of a 360-day year of twelve 30-day months. The Convertible Capital Appreciation Bonds shall mature on [December] 1 of the years and in the amounts set forth below, unless earlier called for redemption.

| <b>[December] 1 of the Year</b> | <b>Amount</b> | <b>Interest Rate</b> |
|---------------------------------|---------------|----------------------|
| 202[ ]                          | \$[_____]     | [_____]%             |
| 202[ ]                          | [_____]       | [_____]%             |
| 202[ ]                          | [_____]       | [_____]%             |
| 202[ ]                          | [_____]       | [_____]%             |
| 202[ ]                          | [_____]       | [_____]%             |
|                                 |               |                      |



(c) Capital Appreciation Bonds. The Capital Appreciation Bonds in the aggregate principal amount of \$[ ] will be designated "Local Government Public Improvement Capital Appreciation Bonds (City of Memphis Project), Series 2021," and will be dated the Closing Date. Interest on the Capital Appreciation Bonds shall accrete from the Closing Date on each Accretion Date as set forth in the Accretion Table and shall be treated as accruing in equal daily amounts between Accretion Dates, payable at maturity or earlier redemption. The Capital Appreciation Bonds shall mature on [December] 1 of the years and in the amounts set forth below, unless earlier called for redemption.

| <b>[December] 1 of the Year</b> | <b>Amount</b> | <b>Interest Rate</b> |
|---------------------------------|---------------|----------------------|
| 202[ ]                          | \$[ ]         | [ ]%                 |
| 202[ ]                          | [ ]           | [ ]%                 |
| 202[ ]                          | [ ]           | [ ]%                 |
| 202[ ]                          | [ ]           | [ ]%                 |
| 202[ ]                          | [ ]           | [ ]%                 |
|                                 |               |                      |

(d) The Bonds shall be executed by the [Chairman] and attested by the [Secretary] of the Authority and delivered to the Trustee and thereupon shall be authenticated by the Trustee and delivered to the Underwriter, but only upon receipt by the Trustee of:

- (1) Executed counterparts of the Loan Agreement;
- (2) An Opinion of Bond Counsel to the effect that (i) the Bonds are valid and binding limited obligations of the Authority and enforceable in accordance with their terms and the terms of this Indenture, subject to bankruptcy and insolvency laws, usual equity principles and police power principles; (ii) the Bonds have been duly and validly authorized and issued in accordance with law and this Indenture; (iii) the Loan Agreement relating is valid and binding on the Authority and the Borrower, subject to bankruptcy and insolvency laws, usual equity principles and police power principles; (iv) all rights of the Authority under the Loan Agreement and all payments payable under the Loan Agreement are effectively assigned to the Trustee for the security of the Bonds; and (v) subject to customary qualifications, the interest on the Bonds is, or when validly issued, will be excluded from gross income for purposes of Federal income taxation;
- (3) A certified copy of the Bond Resolution;
- (4) Executed counterparts of the Indenture and certification that it has not been amended or supplemented except by Supplemental Indentures previously furnished to the Trustee;
- (5) The Bond Purchase Agreement;
- (6) The Opinions of Counsel to the Borrower and to the Authority in form and substance satisfactory to Bond Counsel;
- (7) An Authority Certificate stating that on the date of the authentication and delivery of the Bonds neither the Authority nor the Borrower is in default in

the performance or observance of any of the covenants, conditions, agreements or provisions of this Indenture relating to the Bonds or the Loan Agreement;

(8) A copy of the initial resolution of the Borrower required under the Act and the resolution or resolutions of the Borrower authorizing or ratifying the Loan Agreement relating to the Bonds certified by an Authorized Borrower Representative;

(9) A Borrower Certificate with respect to the Bonds stating that the Borrower approves the issuance of the Bonds and is not in default in the performance or observance of any of the covenants, conditions, agreements, or provisions of the Loan Agreement;

(10) The purchase price of the Bonds;

(11) An Authority Request for the authentication and delivery of the Bonds;

2.03 Ratable Security Only for the Bonds. The Bonds from time to time Outstanding under this Indenture shall be equally and ratably secured both as to principal, premium, if any, and interest by this Indenture as to such Bonds.

2.04 Terms of Bonds.

(a) The Bonds shall be issued as fully registered bonds without coupons in Authorized Denominations.

(b) The principal of each Bond, the Accreted Value thereof, as applicable, and premium, if any, are payable in lawful money of the United States of America to the Owner of each Bond upon maturity or prior redemption and presentation at the principal office of the Trustee.

(c) The Bonds shall be initially issued in the form of single, certificated, fully registered Bonds for each maturity. Except as otherwise provided in this subsection, the Bonds shall be registered in the name of Cede & Co., as nominee of DTC, which will act as securities depository for the Bonds. References in this Section to a Bond or the Bonds shall be construed to mean the Bond or the Bonds that are held under the book-entry system of DTC. In such event, one Bond for each maturity of Bonds shall be issued to DTC and immobilized in the custody of the Trustee as agent for DTC. A book-entry system shall be employed, evidencing ownership of the Bonds in Authorized Denominations, with transfers of beneficial ownership effected on the records of DTC and the DTC Participants pursuant to rules and procedures established by DTC.

Each DTC Participant shall be credited in the records of DTC with the amount of such DTC Participant's interest in the Bonds. Beneficial ownership interests in the Bonds may be purchased by or through DTC Participants. The holders of these beneficial ownership interests are hereinafter referred to as the "Beneficial Owners." The Beneficial Owners shall not receive Bonds representing their beneficial ownership interests. The ownership interests of each Beneficial Owner shall be recorded through the records of the DTC Participant from which such Beneficial Owner purchased its Bonds or such other DTC Participant as may be determined by such Beneficial Owner. Transfers of ownership interests in the Bonds shall be accomplished by

book entries made by DTC and, in turn, by DTC Participants acting on behalf of Beneficial Owners. SO LONG AS CEDE & CO., AS NOMINEE FOR DTC, IS THE REGISTERED OWNER OF THE BONDS, THE TRUSTEE SHALL TREAT CEDE & CO., AS THE ONLY HOLDER OF THE BONDS FOR ALL PURPOSES UNDER THIS INDENTURE, INCLUDING RECEIPT OF ALL PRINCIPAL OR PURCHASE PRICE OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS, RECEIPT OF NOTICES, VOTING AND REQUESTING OR DIRECTING THE TRUSTEE TO TAKE OR NOT TO TAKE, OR CONSENTING TO, CERTAIN ACTIONS UNDER THIS INDENTURE.

Payments of principal, interest, purchase price and redemption premium, if any, with respect to the Bonds, so long as DTC is the only owner of the Bonds, shall be paid by the Trustee directly to DTC or its nominee, Cede & Co. as provided in the Letter of Representation relating to the Bonds from the Authority and the Trustee to DTC (the "Letter of Representation"). DTC shall remit such payments to DTC Participants, and such payments thereafter shall be paid by DTC Participants to the Beneficial Owners. The Authority and the Trustee shall not be responsible or liable for payment by DTC or DTC Participants, for sending transaction statements or for maintaining, supervising or reviewing records maintained by DTC or DTC Participants.

In the event that (1) DTC determines not to continue to act as securities depository for the Bonds or (2) the Authority determines that the continuation of the book-entry system of evidence and transfer of ownership of the Bonds would adversely affect their interests or the interests of the Beneficial Owners of the Bonds, the Authority shall discontinue the book-entry system with DTC. If the Authority fails to identify another qualified securities depository to replace DTC, the Authority shall cause the Trustee to authenticate and deliver replacement Bonds in the form of fully registered Bonds to each Beneficial Owner.

THE AUTHORITY AND THE TRUSTEE SHALL NOT HAVE ANY RESPONSIBILITY OR OBLIGATIONS TO ANY DTC PARTICIPANT OR ANY BENEFICIAL OWNER WITH RESPECT TO (i) THE BONDS; (ii) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DTC PARTICIPANT; (iii) THE PAYMENT BY DTC OR ANY DTC PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL OR PURCHASE PRICE OF AND INTEREST ON THE BONDS; (iv) THE DELIVERY OR TIMELINESS OF DELIVERY BY DTC OR ANY DTC PARTICIPANT OF ANY NOTICE DUE TO ANY BENEFICIAL OWNER THAT IS REQUIRED OR PERMITTED UNDER THE TERMS OF THIS INDENTURE TO BE GIVEN TO BENEFICIAL OWNERS, (v) THE SELECTION OF BENEFICIAL OWNERS TO RECEIVE PAYMENTS IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE BONDS; OR (vi) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC, OR ITS NOMINEE, CEDE & CO., AS OWNER.

In the event that a book-entry system of evidence and transfer of ownership of the Bonds is discontinued pursuant to the provisions of this Section, the Bonds shall be delivered solely as fully registered Bonds without coupons in the Authorized Denominations, shall be lettered with the prefix letter and numbered separately from 1 upward, and shall be payable, executed, authenticated, registered, exchanged and canceled pursuant to the provisions hereof.

SO LONG AS A BOOK-ENTRY SYSTEM OF EVIDENCE OF TRANSFER OF OWNERSHIP OF ALL THE BONDS IS MAINTAINED IN ACCORDANCE HEREWITH, THE PROVISIONS OF THIS INDENTURE RELATING TO THE DELIVERY OF PHYSICAL BOND CERTIFICATES SHALL BE DEEMED INAPPLICABLE OR BE OTHERWISE SO CONSTRUED AS TO GIVE FULL EFFECT TO SUCH BOOK-ENTRY SYSTEM. THE PROVISIONS OF THE LETTER OF REPRESENTATION SHALL SUPERSEDE THIS INDENTURE IN THE EVENT OF A CONFLICT.

(d) Upon the original issuance and delivery of the Bonds, the Bonds shall be dated the date of such issuance and delivery. Each Bond exchanged or transferred shall be dated as of the date of authentication and delivery.

(e) The Bonds shall be numbered from 1 upward in chronological order of issuance, and the Bond numbers may, but shall not be required to be preceded by a prefix identifying the Series of which such Bonds are a part.

2.05 Execution, Authentication and Delivery. Each Bond shall be executed on behalf of the Authority by the manual or facsimile signature of the [Chairman or Vice Chairman] and attested by the manual or facsimile signature of the [Secretary or Assistant Secretary], and shall be sealed with the official seal, or a facsimile thereof, of the Authority. In case any officer whose signature or a facsimile of whose signature shall appear on any Bond shall cease to be such officer before delivery of the Bonds, such signature or such facsimile shall nevertheless be valid or sufficient for all purposes the same as if he had remained in office until such delivery.

Bonds bearing the manual or facsimile signatures of individuals who were at any time the proper officials of the Authority shall bind the Authority, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Bonds or did not hold such offices at the date of such Bonds.

At any time and from time to time after the execution and delivery of this Indenture, the Authority may deliver Bonds executed by the proper officials of the Authority to the Trustee for authentication; and the Trustee shall authenticate and deliver such Bonds as in this Indenture provided and not otherwise.

No Bond shall be secured by, or entitled to any lien, right or benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Bond a certificate of authentication substantially in the form provided for herein executed by a Responsible Officer of the Trustee by manual signature, and such certificate upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly authenticated and delivered hereunder.

## 2.06 Registration and Transfer of Bonds.

(a) The Authority shall cause books for the registration of the Bonds and for the registration of transfer of the Bonds as provided herein to be kept by the Trustee, which is hereby constituted and appointed the bond registrar for the Bonds. The Trustee hereby agrees to keep such books for registration of the Bonds and for registration of transfer of the Bonds.

(b) Subject to the express limitations contained in this Section, any Holder of a Bond, in person or by his duly authorized attorney, may register the transfer of such Bond on the Bond Register, upon surrender thereof at the principal corporate trust office of the Trustee, together with a written instrument of transfer executed by the Holder or the Holder's duly authorized attorney; and upon surrender for registration of transfer of any Bond, the Authority shall execute and the Trustee shall authenticate and deliver in the name of the designated transferee or transferees a new Bond or Bonds of the same Stated Maturity, aggregate principal amount and tenor as the Bond surrendered and of any Authorized Denomination.

(c) Bonds may be exchanged at the principal corporate trust office of the Trustee for a like aggregate Accreted Value of Bonds of the same Stated Maturity, interest rate, and tenor as the Bonds being exchanged and of any Authorized Denomination. The Authority shall execute and the Trustee shall authenticate and deliver Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously then Outstanding.

(d) Such registrations of transfers or exchanges of Bonds shall be without charge to the Holders of such Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Holder of the Bond requesting such registration of transfer or exchange as a condition precedent to the exercise of such privilege. The Trustee shall not be required (i) to transfer or exchange any Bond during the period from a Record Date to an Interest Payment Date or from the Business Day prior to a Special Record Date to the date for payment of Defaulted Interest, or (ii) to make any exchange or registration of transfer of any Bonds called for redemption in whole or in part.

(e) The Person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of, or on account of, either principal or interest shall be made only to or upon the order of such Person or his duly authorized attorney, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(f) All Bonds issued upon any transfer or exchange of Bonds shall be the valid and binding limited obligations of the Authority, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Bonds surrendered upon such transfer or exchange.

(g) In executing any Bond upon any exchange or transfer provided for in this Section, the Authority may rely conclusively on a representation of the Trustee that such execution is required.

2.07 Mutilated, Lost or Destroyed Bonds. If any Bond is mutilated, lost or destroyed, the Authority may execute and the Trustee (upon the receipt of a written authorization from the

Authority) shall authenticate and deliver, a new Bond of the same maturity, interest rate, like aggregate principal amount or Accreted Value amount, as applicable, and tenor in lieu of and in substitution for the Bond mutilated, lost or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost or destroyed Bond, there shall be first furnished to the Trustee, the related Borrower and the Authority evidence satisfactory to each of them of the ownership of such Bond and of such loss or destruction, together with indemnity satisfactory to each of them. If any such lost or destroyed Bond shall have matured or a redemption date pertaining thereto shall have passed, instead of issuing a new Bond, the Authority may pay the same without surrender thereof. The Authority and the Trustee may charge the Holder of such Bond with their reasonable fees and expenses in this connection. In executing a new Bond and in furnishing the Trustee with the written authorization to authenticate and deliver a new Bond as provided for in this Section, the Authority may rely conclusively on a representation of the Trustee that the Trustee is satisfied with the adequacy of the evidence presented concerning the mutilation, loss or destruction of any Bond.

2.08 Cancellation. All Bonds that have been paid shall be canceled and destroyed by the Trustee and shall not be reissued and a certificate evidencing such cancellation and destruction shall be furnished by the Trustee to the Authority.

2.09 Form of Bonds. The Bonds shall be in substantially the form attached hereto as Exhibit A, with such variations as may be necessary and appropriate for numbers, dates and other matters.

ARTICLE III  
REDEMPTION OF BONDS

3.01 Optional Redemption.

(a) [TBD].

3.02 Mandatory Sinking Fund Redemption of Bonds.

(a) [TBD]

3.03 Notice of Redemption.

(a) The Trustee shall cause notice of the call for any such redemption identifying the Bonds to be redeemed to be sent not less than [30][20] days or more than 60 days prior to the Redemption Date by first-class mail postage prepaid, to the Owner of each such Bond to be redeemed at his address as it appears on the registration books of the Trustee. Failure to give any notice specified herein or any defect in any such notice, shall not affect the validity of any proceedings for the redemption of any Bonds with respect to which no such failure has occurred. Any notice mailed as provided herein shall conclusively be presumed to have been given whether or not actually received by any Holder. All Bonds called for redemption shall cease to bear interest on the specified Redemption Date, provided funds for their redemption are on deposit at the place of payment on the date fixed for redemption.

(b) Any notice of the call for redemption of any or all of the Bonds shall state the following: (1) the name, including the Series designation, of such Bonds, (2) the CUSIP number, if any, and bond certificate number of such Bonds, (3) the original dated date of such Bonds, (4) the interest rate and Stated Maturity of such Bonds, (5) the date of the redemption notice, (6) the Redemption Date, (7) the Redemption Price, (8) if less than all of a Bond is to be redeemed, the amount and Series designation of such Bonds to be redeemed and (9) the address and telephone number of the principal corporate trust office of the Trustee, together with the name of a contact person at the Trustee; provided, however, the Trustee shall not be responsible for the accuracy of CUSIP numbers.

3.04 Deposit of Funds for Redemption. If at the time of the giving of any notice of optional or mandatory redemption there shall not be on deposit with the Trustee moneys sufficient to redeem all the Bonds called for redemption, the notice of redemption shall state that the redemption of such Bonds is conditional upon and subject to deposit of moneys with the Trustee sufficient to redeem all such Bonds not later than the opening of business on the Redemption Date, and that such notice shall be of no effect if such moneys are not on deposit.

3.05 Partial Redemption of Bonds.

(a) If less than all the Bonds are to be redeemed, the particular Bonds or portions thereof to be redeemed shall be selected using the procedures established by the Securities Depository or if none, by the Trustee by lot, which shall be deemed to include pro rata redemption of Bonds within each Stated Maturity and mandatory sinking fund payments, and which may provide for the selection for redemption of portions (equal to Authorized Denominations) of the principal of Bonds; provided that after any partial redemption of the

Bonds, all Bonds that remain Outstanding shall be in Authorized Denominations. No portion of a Bond may be redeemed that would result in a Bond having a principal amount that is less than the minimum Authorized Denomination.

(b) Any Bond which is to be redeemed only in part shall be surrendered to the Trustee (1) for payment of the Redemption Price (including accrued interest thereon to the Redemption Date) or the portion thereof called for redemption and (2) for exchange for Bonds in any Authorized Denomination or denominations in aggregate principal amount equal to the unredeemed portion of such Bond, without charge therefor. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Bonds shall relate, in the case of any Bond redeemed or to be redeemed only in part, to the portion of the principal of such Bond which has been or is to be redeemed.

3.06 Payment of Bonds Upon Redemption. Upon redemption of all or any portion of any Bond, payment of the applicable Redemption Price shall be made only upon surrender of such Bond. If, on the Redemption Date, sufficient moneys shall have been deposited with the Trustee to effect such redemption in accordance with this Indenture, then interest shall cease to accrue on all Bonds or portions thereof so called for redemption.

#### ARTICLE IV COVENANTS

4.01 Payment of Bonds. The Authority shall promptly pay when due the principal of (whether at maturity, call for redemption or otherwise) and premium, if any, and interest on the Bonds at the places, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof; provided, however, that such obligations are not general obligations of the Authority but are limited obligations payable solely from the revenues and receipts derived from the Loan Agreement, which revenues and receipts are specifically pledged to such purposes in the manner and to the extent provided in this Indenture and in any Supplemental Indentures. The Bonds and interest thereon shall not be deemed to constitute a debt of the State or any political subdivision thereof (except to the extent the Authority is obligated to pay principal of and premium, if any, and interest on the Bonds from the revenues and receipts pledged therefor in the Indenture and to the extent that the Borrower is obligated under the Loan Agreement), and neither the State nor any political subdivision thereof shall be obligated to pay the principal of, Accreted Value of, if applicable, or premium, if any, or interest on the Bonds or other costs incident thereto except as provided in this sentence. Neither the full faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of, Accreted Value of, if applicable, or premium, if any, or interest on the Bonds or other costs incident thereto (except to the extent that the Borrower is obligated under the Loan Agreement). The Authority has no taxing power.

4.02 Covenants and Representations of Authority. The Authority shall observe and perform all covenants, conditions and agreements on its part contained in this Indenture, in every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining thereto; provided, however, that the liability of the Authority under any such covenant, condition or agreement for any breach or default by the Authority thereof or thereunder shall be limited solely to the revenues and receipts derived from the Loan Agreement. The Authority represents (a) that it is duly authorized under the Constitution and laws of the State, including particularly



and without limitation the Act, to issue the Bonds authorized hereby and to execute this Indenture; to execute and assign the Loan Agreement; and to pledge the revenues, receipts and funds in the manner and to the extent herein set forth; (b) that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken; and (c) that the Bonds in the hands of the Holders thereof are and will be valid and enforceable obligations of the Authority according to the terms thereof except as limited by bankruptcy and insolvency laws, usual equity principles and police power principles.

4.03 Further Assurances. The Authority shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging and assigning to the Trustee all of the rights assigned hereby and the revenues and receipts pledged hereby to the payment of the principal of and interest on the Bonds. The Authority shall cooperate with the Trustee and the Bondholders in protecting the rights and security of the Bondholders.

4.04 Inspection of Books and Project. All books and documents in the Authority's possession relating to the Loan Agreement and the revenues derived therefrom shall at all times be open to inspection by such agents as the Trustee or the Holders of 25% in aggregate principal amount of Bonds then Outstanding may from time to time designate.

4.05 Rights Under Loan Agreement. The Trustee in its own name or in the name of the Authority may enforce all rights of the Authority and all obligations of the Borrower under and pursuant to the Loan Agreement, for and on behalf of the Bondholders, whether or not the Authority is in default hereunder.

4.06 Prohibited Activities. The Authority shall not knowingly engage in any activities or take any action that might result in (a) the income of the Authority derived from the Loan Agreement becoming taxable to it, (b) any Bond becoming an "arbitrage bond" within the meaning of Section 148 of the Code and the regulations and rulings thereunder, or (c) any interest on the Bonds otherwise becoming includable in the gross income of the recipients thereof under the federal income tax laws or becoming taxable under the laws of the State, if applicable.

## ARTICLE V APPLICATION OF TRUST MONEYS, BOND FUND, LOAN FUND, COST OF ISSUANCE FUND

5.01 "Trust Moneys" Defined. All moneys received by the Trustee with respect to the Loan Agreement or the Bonds (a) as elsewhere herein provided to be held and applied under this Article V (other than the Additional Payments Account of the Bond Fund and the Rebate Fund), or required to be paid to the Trustee and whose disposition is not elsewhere herein otherwise specifically provided for, including but not limited to the investment income of all Trust Funds held by the Trustee under this Indenture; or (b) as payments under a Loan Agreement, except Unassigned Rights (all such moneys being herein sometimes called "Trust Moneys"), shall be held by the Trustee as a part of the Trust Estate for the Bonds as and to the extent provided in the granting clauses of this Indenture, and, upon the exercise by the Trustee of any remedy specified in Article IX hereof, such Trust Moneys shall be applied in accordance with Section 9.05 hereof,

except to the extent that the Trustee is holding in trust moneys and/or Government Obligations for the payment of any of the Bonds which are no longer deemed to be Outstanding under the provisions of Article VIII hereof, which moneys and/or Government Obligations shall be applied only as provided in said Article VIII. Prior to the exercise of any such remedy, all or any part of the Trust Moneys shall be held, invested, withdrawn, paid or applied by the Trustee, from time to time, as provided in this Article V and in Article VI hereof.

The Bonds are not general obligations of the Authority but are limited obligations payable solely from the revenues and receipts derived from the Loan Agreement, which revenues and receipts are specifically pledged to such purposes in the manner and to the extent provided in this Indenture and in any Supplemental Indentures. The Bonds and interest thereon shall not be deemed to constitute a debt of the State or any political subdivision thereof (except to the extent the Authority is obligated to pay principal of and premium, if any, and interest on the Bonds from the revenues and receipts pledged therefor in the Indenture and to the extent that the Borrower is obligated under the Loan Agreement), and neither the State nor any political subdivision thereof shall be obligated to pay the principal of, Accreted Value of, if applicable, or premium, if any, or interest on the Bonds or other costs incident thereto except as provided in this sentence. Neither the full faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or premium, if any, or interest on the Bonds or other costs incident thereto (except to the extent that the Borrower is obligated under the Loan Agreement). The Authority has no taxing power.

#### 5.02 Bond Fund.

(a) A special trust fund is hereby established with the Trustee and designated as the "Bond Fund." There shall be established within the Bond Fund a Principal Account, an Interest Account and an Additional Payments Account.

(1) There shall be credited to the Principal Account, as and when received, each Loan Repayment representing a payment of principal or Accreted Value, if applicable, under the Loan Agreement, including the Optional Prepayment Price, received by the Trustee under and pursuant to any of the provisions of this Indenture or the Loan Agreement which is required, or which is accompanied by directions that such payment is, to be credited to the Bond Fund. All income derived from the investment of such amounts as realized shall be transferred to the Additional Payments Account.

(2) There shall be credited to the Interest Account, as and when received, each Loan Repayment representing a payment of interest, including capitalized interest, under the Loan Agreement received by the Trustee under and pursuant to any of the provisions of this Indenture or the Loan Agreement. Any funds remaining in the Interest Account after an Interest Payment Date shall be credited to the next Loan Repayment representing a payment of interest. All income derived from the investment of such amounts as realized shall be transferred to the Additional Payments Account. There shall also be credited to the Interest Account the interest earnings realized from the Loan Fund as set forth in Section 5.06 hereof unless directed to be retained in the Loan Fund or transferred to the Cost of Issuance Fund as set forth in Section 5.06 hereof.

(3) There shall be credited to the Additional Payments Account, when and as received, (i) all portions of Loan Repayments constituting Additional Payments received by the Trustee under and pursuant to any of the provisions of this Indenture or the Loan Agreement, (ii) interest earnings from the Accounts in (1) and (2) above, and (iii) interest earnings realized from the Loan Fund as set forth in Section 5.06 hereof, after the required deposit to the Interest Account unless directed to be retained in the Loan Fund or transferred to the Cost of Issuance Fund as set forth in Section 5.06 hereof. All income derived from the investment of such amounts shall be retained in the Additional Payments Account. To the extent the amounts set forth in (i) through (iii) exceed the amount necessary to pay the Additional Payments next coming due, the Trustee, upon written direction of the Borrower, may transfer such excess to the Interest Account and/or Principal Account.

(b) The Trustee shall disburse, from time to time, sufficient moneys from the Bond Fund as specified below to pay the principal of, Accreted Value of, if applicable, premium if any, and the interest on, the Bonds as the same become due and payable.

(c) Funds for the payment of the principal of, Accreted Value of, if applicable, premium, if any, and interest on the Bonds shall be derived from the following sources:

(1) funds for the payment of interest on the Bonds shall be disbursed by the Trustee from the Interest Account on each Interest Payment Date; and

(2) funds for the payment of the principal of, Accreted Value of, if applicable, and premium, if any, on the Bonds shall be disbursed by the Trustee from the Principal Account upon Maturity of the Bonds.

(d) Funds for payment of Additional Payments shall be disbursed by the Trustee from the Additional Payments Account when due.

(e) If any Bond shall not be presented for payment at Maturity, provided moneys sufficient to pay such Bond shall have been made available to the Trustee, all liability of the Authority to the Holder thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such moneys, subject to the provisions of Sections 5.02(g) and 5.14, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such moneys for any claim of whatever nature on his part hereunder or on, or with respect to, such Bond.

(f) All moneys paid over to the Trustee for the account of the Bond Fund (except the Additional Payments Account) under any provision hereof, shall be held (subject to the provisions of Sections 5.02(g) and 5.14) in trust by the Trustee for the benefit of the Holders of the Bonds.

(g) Any moneys remaining in the Interest Account, the Principal Account, and the Additional Payments Account after payment of the Bonds and payment of the fees, charges and expenses of the Trustee which have accrued and which will accrue and all other items required to be paid hereunder with respect to the Bonds shall be paid to the Borrower.

5.03 Additional Payments. Under Section 3.02 of each Loan Agreement, the Borrower has covenanted to pay directly to the Trustee when due Additional Payments in amounts sufficient to pay the fees, costs and expenses of the Trustee, the Authority, the Rebate Analyst, the Bond Counsel, and the Rating Agencies, if any, including, without limitation, fees and expenses of their respective counsel. Such Additional Payments shall not be treated or considered as Trust Moneys for any purpose of this Indenture, and the Trustee may on its own behalf enforce such covenant against the Borrower. Additional Payments will be deposited by the Trustee to the Additional Payments Account in the Bond Fund as collected and shall be disbursed by the Trustee quarterly or as otherwise due as set forth in the Loan Agreement upon receipt of an invoice therefor.

5.04 Creation of Loan Fund. There is hereby created and ordered established with the Trustee a trust fund to be designated the "Loan Fund."

5.05 Payment Into Loan Fund; Disbursements. Proceeds from the sale of the Bonds in the amount of \$[ ] shall be deposited in the Loan Fund.

The Trustee is hereby authorized and directed to make each disbursement from the Loan Fund required by the provisions of this Indenture. The Trustee shall keep and maintain adequate records pertaining to the Loan Fund and all disbursements therefrom. After the Project funded under the Loan Agreement has been completed and a certificate of payment of all costs is or has been filed and the final payment from the Loan Fund has been made as provided in Section [5.08] hereof, the Trustee shall file an accounting thereof with the Authority and the Borrower.

5.06 Custody and Application of Bond Proceeds. The Trustee shall use moneys within the Loan Fund solely to pay the Cost of the Project, to redeem all or a portion of the Bonds, to pay interest on the Bonds as set forth herein to the extent permitted by the Act. Before any payment shall be made from the Loan Fund, there shall be filed with the Trustee pursuant to the Loan Agreement a requisition appropriately completed and signed by an Authorized Borrower Representative in the form attached as Exhibit A to the Loan Agreement.

The Trustee shall be entitled to conclusively rely upon the information stated in any requisition and shall not be liable for any disbursement made in accordance therewith. If any payment from the Loan Fund is made without timely filing of any document provided for above, timely filing thereof shall be deemed to have been waived by the Trustee, but only with respect to the payment so made and not with respect to any future payment.

All funds held in the Loan Fund shall be invested by the Trustee in Authorized Investments at the written direction of the Borrower. Except as otherwise set forth below, all earnings received on funds in the Loan Fund shall be credited on the twenty-fifth day of each [February, May, August and November] first to the Interest Account of the Bond Fund in an amount, which when combined with all other amounts then held therein, does not exceed interest due on the Bonds on the next succeeding Interest Payment Date computed in accordance with Section 3.04 of the Loan Agreement and then to the Additional Payments Account of the Bond Fund[; provided, however, that the transfer to occur on the twenty-fifth day of [May] of each year shall not exceed the amount necessary, together with amounts on deposit in the Interest Account of the Bond Fund and the Additional Payments Account of the Bond Fund, to make the

next succeeding interest payment on the Bonds and Additional Payments with respect to the Bonds.]

Anything in the Indenture to the contrary notwithstanding, on [June 1<sup>st</sup>] of each year the amount held in the Principal Account and the Interest Account of the Bond Fund, less the sum of (i) any amounts to be applied on such date to the payment of principal or interest on the Bonds and (ii) an amount equal to one-twelfth of the principal and interest paid on the Bonds for the twelve month period preceding such [June 1<sup>st</sup>], shall be disbursed to the Borrower.

At the written direction of an Authorized Borrower Representative, all or a portion of the earnings accruing on funds in the Loan Fund shall be retained in the Loan Fund or transferred to the Cost of Issuance Fund and to the extent so retained shall not be transferred to the Interest Account of the Bond Fund.

5.07 Payments from Loan Fund. [If all conditions precedent to payment from the Loan Fund have been performed, the Trustee shall make such payment by check or wire made payable to the Borrower as provided in the requisition. Disbursements shall be made by the Trustee from the Loan Fund to pay the Cost of the Project, and the Trustee shall make disbursements as soon as possible after receipt of a requisition but not later than the earlier of (i) seven days after receipt of the requisition and (ii) if the seventh day after receipt of the requisition is not a Business Day, then on the next succeeding Business Day. The proceeds of each disbursement hereunder shall be applied exclusively to payment, or to reimbursement of the Borrower for payment, of the Cost of the Project, which may include costs of issuance of the Bonds if not paid on the Closing Date.

5.08 Final Payment from Loan Fund; Completion of the Project. The final payment from the Loan Fund shall be made no later than three years from the Closing Date of the Loan unless that Borrower delivers to the Trustee an Opinion of Bond Counsel that the disbursement of funds from the Loan Fund more than three years from the Closing Date will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes.

When requesting the final payment from the Loan Fund, the Borrower shall file, in addition to the items required in Section 5.06, a certificate stating that the Project has been completed in all material respects and in the form required by Section 2.05 of the Loan Agreement unless the request for final payment fully depletes the Loan Fund.

The balance of any moneys remaining in the Loan Fund upon completion of the Project or remaining after three years from the Closing Date and no Opinion of Bond Counsel has been delivered as described above, shall be deposited in the Principal Account of the Bond Fund and applied by the Trustee to the redemption of the Bonds on the first redemption date occurring after such completion, at the optional or mandatory redemption price and/or shall be deposited in the Interest Account of the Bond Fund, for payment of interest on the next Interest Payment Date for the Bonds, as directed by the Borrower. Any funds held three years or greater from the Closing Date shall not be invested at a yield in excess of the yield on the Bonds from which such amounts were derived unless there shall be delivered to the Trustee an Opinion of Bond Counsel that amounts held for application under this Section shall not cause interest on the Bonds to be includable in gross income under Section 103 of the Code. Any Bonds purchased or redeemed by the Trustee in accordance with this Section shall be canceled, and the Borrower will receive a credit corresponding to the principal amount of such Bonds and to any deposit in the Bond Fund

as contemplated by this Section against its obligations to make Loan Repayments under the Loan Agreement; provided, however that such disbursements shall be made.

5.09 Trust Moneys; Reports. All Trust Moneys shall be trust funds under the terms hereof and shall not be subject to lien or attachment of any creditor of the Authority, the Trustee or the Borrower. Such Trust Moneys shall be held in trust and applied in accordance with the provisions of this Indenture. The Trustee shall furnish to the Borrower as of each Interest Payment Date a statement of the moneys (including all investment activity) in the Principal Account, Interest Account and Additional Payments Account of the Bond Fund, the Loan Fund, the Cost of Issuance Fund and the Rebate Fund.

5.10 Cost of Issuance Fund. There is hereby created and ordered established with the Trustee a trust fund to be designated the "Cost of Issuance Fund." Moneys in the Cost of Issuance Fund shall be used to pay the costs of issuing the Bonds. Such costs shall be paid on the date of original authentication and delivery of the Bonds, upon the submission of requisitions to the Trustee stating the amount to be paid, to whom it is to be paid and the reason for such payment, each such requisition to include a certificate signed by an Authorized Borrower Representative stating that the amount of such requisition is justly due and owing and has not been the subject of another requisition which has been paid and is a proper expense of issuing the Bonds. Moneys in the Cost of Issuance Fund shall be invested as directed by the Borrower and all earnings on moneys in the Cost of Issuance Fund shall be credited to the Cost of Issuance Fund as received.

5.11 Arbitrage. The Authority agrees that it will not knowingly commit any act that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code and the applicable regulations thereunder. The Trustee covenants that, should the Authority file with the Trustee, or should the Trustee otherwise receive, an Opinion of Bond Counsel requested by the Trustee, to the effect that any proposed investment or other use of proceeds of the Bonds would cause the Bonds to become "arbitrage bonds," then the Trustee will comply with any instructions of the Authority or such counsel regarding such investment or use so as to prevent the Bonds from becoming "arbitrage bonds." The Trustee shall file a copy of any such Opinion of Bond Counsel with the Authority and the Borrower.

5.12 Rebate Requirements.

(a) A special trust fund is hereby established with the Trustee and designated as the "Rebate Fund." The Trustee is authorized and directed to receive and hold in the Rebate Fund (i) all payments made by the Borrower pursuant to Section 3.08 of the Loan Agreement with respect to the Bonds, and (ii) all earnings on investment of such payments and earnings on reinvestment of such investment earnings.

(b) If required, not later than 60 days after each Computation Date the Trustee shall pay to the United States on behalf of the Authority the amount on deposit in the Rebate Fund.

(c) Moneys and securities held by the Trustee in the Rebate Fund shall not be deemed funds of the Authority and are not pledged or otherwise subject to any security interest in favor of the Bondholders to secure the Bonds or any other obligation.

(d) Moneys in the Rebate Fund shall be held uninvested.

5.13 Effect of Certain Loan Defaults under Loan Agreement; Assignment of Loan Agreement. Upon the occurrence of a Loan Default under Section 5.01 of the Loan Agreement consisting of the failure to timely make Loan Repayments, and upon receipt of indemnity satisfactory to it for its fees and expenses, the Trustee may, and shall upon the direction of the requisite percentage of Bondholders, take all actions to enforce the remedies of the Authority set forth in Section 5.02 of the Loan Agreement.

5.14 Payment to Borrower Upon Payment in Full of Loan Agreement. Any moneys remaining in the Interest Account, the Principal Account, and the Additional Payments Account in the Bond Fund and the Rebate Fund after payment of (i) the Bonds, (ii) the fees, charges and expenses of the Authority and the Trustee which have accrued and which will accrue, (iii) all rebatable arbitrage, and (iv) all other items required to be paid hereunder with respect to the Bonds, shall be paid to the Borrower.

## ARTICLE VI INVESTMENTS

6.01 Bond Fund, Loan Fund, Cost of Issuance Fund and Rebate Fund Investments. Except as otherwise herein provided, moneys held in the Bond Fund, the Loan Fund, the Cost of Issuance Fund and the Rebate Fund shall be invested and reinvested by the Trustee in Authorized Investments as directed by the Borrower in writing. In the absence of any such instruction, moneys in such funds shall remain uninvested. All such investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund or account in which the moneys so invested were originally held and the interest accruing thereon and any profit realized therefrom shall be credited to and held in such fund or account and any loss resulting therefrom shall be charged to such fund or account unless otherwise set forth herein. The Trustee is directed to sell at the best price reasonably obtainable in the markets in which the Trustee is normally active and convert to cash a sufficient amount of such investments in any fund whenever the cash held in such fund is insufficient for the purposes thereof.

6.02 Use of Trustee's Departments. The Trustee may make the investments referred to in Section 6.01 through any division or department of the Trustee or any of its Affiliates.

### 6.03 Limitation of Liability.

(a) Since any investments permitted by this Article VI made at the request of the Borrower and the making of such investments from time to time will be subject to the Borrower's discretion, the Authority, in addition to the limit of liability set forth herein, specifically disclaims any obligation to the Trustee and the Borrower for any loss arising from investments made at the direction of any Borrower pursuant to this Article VI. The Trustee shall not be responsible for any losses on investments or for the redemption, sale or maturity of any such investments made at the direction of the Borrower in accordance with this Article VI, and the Borrower shall under the Loan Agreement specifically hold the Trustee harmless and agree to indemnify the Trustee for any claim resulting from any losses on investments made in accordance with the Borrower's instructions.

(b) Notwithstanding any provision of this Indenture or the Loan Agreement to the contrary, unless otherwise specifically agreed in a separate written agreement, the Trustee shall not be liable or responsible for any calculation or determination which may be required in connection with, or for the purpose of complying with, Section 148 of the Code, or any successor statute or any regulation, ruling or other judicial or administrative interpretation thereof, including, without limitation, the calculation of amounts required to be paid to the United States of America or the determination of the maximum amount which may be invested in nonpurpose obligations having a yield higher than the yield on the Bonds, or the determination as to whether any investments are permissible under Section 148 of the Code or the regulations thereunder, and the Trustee shall not be liable or responsible for monitoring the compliance by the Borrower or the Authority with any of the requirements of Section 148 of the Code or any applicable regulation, ruling or other judicial or administrative interpretation thereof (other than as set forth in Section 5.12 hereof); it being acknowledged and agreed that the sole obligation of the Trustee in this regard shall be to hold and invest monies received by it pursuant to the terms hereof in accordance with this Indenture in each case pursuant to the instructions of the Borrower and the Authority, or as otherwise set forth herein. The Trustee may conclusively presume that any investment made at the request of the Borrower is permitted by applicable law.

## ARTICLE VII THE LOAN

7.01 Terms and Conditions of Loans. Moneys in the Loan Fund shall be used to make the Loan to the Borrower to finance the Cost of the Project upon the terms and conditions set forth in the Loan Agreement and upon submission of the documents contained in this Article VII and not otherwise.

7.02 Loan Repayments. [The portion of each Loan Repayment constituting interest shall be calculated as set forth in the Loan Agreement and shall be paid by the Borrower on or before each Loan Repayment Date, which shall be a date prior to the date necessary to make interest payments on the Bonds. The portion of each Loan Repayment constituting principal and Accreted Value, as applicable, shall be calculated as set forth in the Loan Agreement and shall be paid on or before each Loan Repayment Date. The portion of each Loan Repayment constituting Additional Payments shall be submitted to the Trustee as set forth in Section 3.02 of the Loan Agreement and shall be payable as provided in the Loan Agreement by the Borrower on the



Loan Repayment Date which shall be a date prior to the date necessary to make such payments to the Persons to whom such payments are due.]

7.03 Defaults. Subject to Section 10.01 hereof, the Trustee may, and shall upon the direction of the requisite percentage of Bondholders, in accordance with Sections 5.13 and 9.02 hereof, enforce, and take all reasonable steps, actions and proceedings necessary for the enforcement of all terms, covenants and conditions of the Loan Agreement and any documents securing the Loan Agreement including the prompt payment of all Loan Repayments and all other amounts due thereunder. The Trustee shall not release the obligations of the Borrower under the Loan Agreement and shall at all times, in accordance with Section 10.01 and to the extent permitted by law, defend, enforce, preserve and protect the rights and privileges of the owners of the Bonds and of the Trustee under or with respect to the Loan Agreement, provided that this provision shall not be construed to prevent the Trustee from settling a default under the Loan Agreement on terms as the Trustee shall determine to be in the best interest of the Owners of the Bonds. The Authority hereby appoints the Trustee its agent and attorney-in-fact for purposes of enforcing all rights under the Loan Agreement or any document securing it.

7.04 Requirements. In connection with its activities provided for hereunder, the Trustee upon receipt of indemnity for its liabilities, fees and expenses agrees to comply with all relevant state and federal laws and to take such reasonable acts as shall be necessary to permit recovery under the Loan Agreement and the Bonds.

7.05 Payment or Prepayment by Borrower. Upon the payment of all sums due and to become due under the Loan Agreement or the prepayment of the Loan Agreement by the Borrower by payment of the Optional Prepayment Price pursuant to Article VI of the Loan Agreement, the Trustee shall cancel the Loan Agreement on behalf of the Authority and shall take any other action required of the Trustee under the Loan Agreement and shall execute in its own name all relevant documents in connection with such actions upon receipt of indemnity for its fees and expenses (and the Trustee is hereby appointed the Authority's agent and attorney-in-fact for purposes of taking any act, including the execution and delivery of any document, required by this Section).

7.06 Loan File. All documents received by the Trustee with regard to the Loan shall be retained by the Trustee in a file pertaining to the Loan (a "Loan File"). The Loan File shall be kept at the principal corporate trust office of the Trustee and shall be available for inspection by the Authority at such reasonable times and under reasonable circumstances.

7.07 Trustee and Authority Not to Impair Tax Exemption of the Bonds. The Trustee and the Authority shall not take any action or omit to take any action or permit any action, except actions required to be taken or omitted hereunder and under the Loan Agreement, which is within their respective control to be taken or omitted which would to the actual knowledge of their respective officers impair the exclusion of interest on the Bonds from gross income of the owners thereof, for federal income tax purposes, if applicable; provided, that the Trustee shall not be deemed to have constructive knowledge of the Code or regulations, rulings and judicial decisions concerning the Code; and provided, further, that the Trustee shall not be liable for an act or omission which is required hereunder or under the Loan Agreement which act or omission is directed by the Authority or, with respect to disbursements from the Loan Fund, the Borrower,

notwithstanding that such act or omission adversely affects or impairs the exclusion of interest on the Bonds.

7.08 Incomplete Payments. If the Borrower shall pay only a portion of a Loan Repayment when due, the payment shall be applied first as interest on the Loan, then as principal of the Loan and then as Additional Payments.

## ARTICLE VIII DISCHARGE OF LIEN

8.01 Discharge of Lien and Security Interests. If the Authority shall pay or cause to be paid in full the principal of, Accreted Value of, if applicable, premium, if any, and the interest on all or any portion of the Bonds, through depositing or causing to be deposited with the Trustee in trust cash and/or Government Obligations, which do not permit the redemption thereof at the option of the issuer thereof, the principal of, Accreted Value of, if applicable, premium, if any, and interest on which when due (or upon the redemption thereof at the option of the holder), will, without reinvestment (except as provided in (d) below), provide cash which, together with the cash, if any, deposited with the Trustee at the same time, shall be sufficient to pay and discharge the entire indebtedness on all or such portion of the Bonds as the same become due not theretofore canceled by the Trustee or delivered to the Trustee for cancellation, for principal, Accreted Value, if applicable, and interest (and premium, if any) which have become due and payable, or to the Stated Maturity thereof or earlier Redemption Date, as the case may be, and (a) has paid or made arrangements satisfactory with the Trustee to pay, all fees and expenses (including, without limitation, counsel's fees and expenses) of the Trustee which have accrued or which the Trustee estimates will accrue prior to the final payment of all or such portion of the Bonds in full, (b) has furnished to the Trustee an Opinion of Bond Counsel to the effect that the deposit of such cash and Government Obligations is in compliance with the provisions hereof and will not adversely affect the exclusion of interest on all or such portion of the Bonds in gross income for purposes of Federal income taxation; if applicable, and (c) has made arrangements satisfactory to the Trustee for the giving of notice of redemption, if any, and (d) has delivered to the Trustee a report of an independent firm of nationally recognized certified public accountants or such other accountant verifying the sufficiency of the funds or Government Obligations deposited to pay principal of, Accreted Value of, if applicable, redemption premium, if any, and interest on all or such portion of the Bonds when due, if the amount deposited on the date of such deposit is not sufficient to pay the principal of, Accreted Value of, if applicable, redemption premium, if any, and interest on all or such portion of the Bonds when due, then the lien hereof, these presents and the Trust Estate and the security interests therein shall cease, determine and be void with respect to all or such portion of the Bonds. Upon the discharge of the lien hereof, these presents and the Trust Estate and the security interests therein ceasing, determining and being void as provided in the preceding sentence, the Trustee shall, upon receipt of evidence satisfactory to it that all conditions precedent to the satisfaction and discharge of this Indenture as to all or such portion of the Bonds have been complied with, cancel and discharge this Indenture and the security interests therein as to all or such portion of the Bonds, execute and deliver to the Authority such instruments in writing as shall be required to cancel and discharge this Indenture and the security interests therein as to all or such portion of the Bonds and apply any moneys and investments held in the Bond Fund and the Loan Fund in accordance with Sections 5.02, 5.07 or 5.08, respectively, and all moneys then held in the Bond Fund for the purpose of paying Bonds which have not yet been presented for payment to be held thereafter in

trust solely for the Holders of such Bonds pending the payment thereof to such Holders. If all or such portion of the Bonds will not be redeemed in whole within 60 days of such discharge, the Trustee shall give notice of such discharge to all Bondholders whose Bonds will not be redeemed within 60 days of such discharge.

8.02 Discharge of the Indenture. Notwithstanding the fact that the lien of this Indenture upon the Trust Estate may have been discharged and canceled in accordance with Section 8.01, this Indenture and the rights granted and duties imposed hereby, to the extent not inconsistent with the fact that the lien upon the Trust Estate may have been discharged and canceled, shall nevertheless continue and subsist until the principal of, Accreted Value of, if applicable, and premium, if any, and the interest on, all of the Bonds shall have actually been paid in full, all amounts owed to the Trustee shall have been paid in full, and the Trustee shall have applied in accordance with Sections 5.02 or 5.08, as applicable, and all funds theretofore held by the Trustee for payment of any Bonds not theretofore presented for payment, which funds shall be held in trust solely for the Holders of such Bonds pending their application in accordance herewith, have been applied in accordance herewith.

#### ARTICLE IX DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

9.01 Events of Default. Each of the following events is hereby defined as and declared to be and to constitute an “Event of Default” hereunder with respect to the Bonds:

(a) default in the due and punctual payment of any interest on any Bond when the same shall become due and payable; or

(b) default in the due and punctual payment of the principal of or premium on any Bond at its Maturity; or

(c) the failure of the Authority to observe and perform any of the covenants, conditions, agreements, or provisions contained herein, or in the Bonds, on the part of the Authority to be observed or performed (except obligations referred to in subsections (a) or (b) of this Section), and the continuation thereof for 30 days after written notice, specifying such default and requiring the same to be remedied, is given to the Authority and the Borrower by the Trustee, unless the Trustee shall agree in writing to an extension of such time period prior to its expiration.

9.02 Remedies. Subject to Section 9.9, upon the occurrence of an Event of Default, the Trustee shall have the power to proceed with any right or remedy available at law or in equity or by statute, as it may deem best, including any suit, action or special proceeding in equity or at law for the collection of amounts due and to become due hereunder and under the Bonds or the Loan Agreement or the performance of any covenant or agreement contained herein or in the Loan Agreement or for the enforcement of any proper legal or equitable remedy as the Trustee shall deem most effectual to protect the rights aforesaid, insofar as such may be authorized by law. The rights herein specified are to be cumulative to all other available rights, remedies or powers.

No delay or omission to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or shall be construed to be a waiver of any such Event of

Default or acquiescence therein; and every such right and remedy may be exercised from time to time and as often as may be deemed expedient.

No waiver of any Event of Default hereunder, whether by the Trustee or the Bondholders, shall extend to or shall affect any subsequent event of default or shall impair any rights or remedies consequent thereon.

9.03 Rights of Bondholders. Upon the occurrence of an Event of Default and if requested so to do by the Holders of more than fifty percent (50%) in aggregate principal amount and Accreted Value of Bonds then Outstanding and if indemnified as provided in Section 10.01(h), the Trustee, subject to the provisions of Section 9.04, shall be obligated to exercise such one or more of the rights and remedies conferred by this Article as the Trustee, being advised by Counsel, shall deem most expedient in the interests of the Bondholders.

9.04 Right of Bondholders to Direct Proceedings. Subject to Sections 9.9 and 10.01(h), anything herein to the contrary notwithstanding, the Holders of more than fifty percent (50%) in aggregate principal amount and Accreted Value of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions hereof, or for the appointment of a receiver or any other proceedings hereunder with respect to the Bonds.

9.05 Application of Moneys. Upon an Event of Default hereunder and if moneys held by the Trustee are insufficient to pay the principal of, Accreted Value, if applicable, premium, if any, and interest on the Bonds, all moneys on deposit in the Loan Fund and all moneys on deposit in the Cost of Issuance Fund shall be deposited in the Principal Account of the Bond Fund and all other moneys received by the Trustee pursuant to any right given or remedy or action taken under the provisions of this Article shall, after payment of all fees and expenses of the Trustee, including, without limitation, the costs and expenses of the proceedings resulting in the collection of such other moneys and of the related expenses, liabilities and advances incurred or made by the Trustee, be deposited in the Principal Account of the Bond Fund, and all such moneys shall be paid to the Trustee and applied by it to the Bonds as follows:

(a) Unless the principal or Accreted Value, as applicable, of all the Bonds shall have become due and payable, all such moneys shall be applied:

FIRST – to the payment to the Persons entitled thereto of all installments of interest then due on the Outstanding Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment of such installment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege;

SECOND – to the payment to the Persons entitled thereto of the unpaid principal and Accreted Value, as applicable, including mandatory redemption payments, of any of the Outstanding Bonds which shall have become due, in the order of their due dates, with interest on such Bonds at the rate last borne by the Bonds from the respective dates upon which they became due and, if the amount available shall not be sufficient to pay in full the principal and Accreted Value, as applicable, including mandatory redemption payments, which became due on

such Bonds on any particular date, together with such interest, then to the payment thereof ratably, according to the amount of principal and Accreted Value, as applicable, including mandatory redemption payments, due on such date, to the Persons entitled thereto; without any discrimination or privilege; and

THIRD – to the payment of any Additional Payments owed pursuant to the Loan Agreement.

(b) If the principal and Accreted Value, as applicable, including mandatory redemption payments, of all the Bonds shall have become due and payable, all such moneys shall be applied FIRST, to the payment of such principal, Accreted Value, as applicable, and the interest then due and unpaid on the Outstanding Bonds, without preference or priority of principal over Accreted Value, as applicable, or interest or of Accreted Value, as applicable, over principal or interest, or of interest over principal or Accreted Value, as applicable, or of any installment of interest over any other installment of interest, or of any such Bond over any other such Bond, ratably, according to the amounts due respectively for principal, Accreted Value, as applicable, including mandatory redemption payments, and interest to the Persons entitled thereto without any discrimination or privilege, and SECOND, to the payment of any Additional Payments owed with respect to the Bonds.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall, in its sole discretion, deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue or accrete, as applicable, provided that such amount of principal and Accreted Value, as applicable, is in fact paid on such date. The Trustee shall give such notice to the Holders of the Bonds as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment from such moneys to the Holder of any Bonds until such Bonds shall be presented to the Trustee.

Whenever all Bonds and the interest thereon and all expenses and charges of the Trustee have been paid with respect to the Bonds, any balance remaining in the Bond Fund shall be disposed of in the manner provided in Section 5.02(g).

9.06 Rights and Remedies Vested in Trustee. All rights of action and remedies (including the right to file proofs of claim) hereunder or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery of judgment shall, subject to the terms hereof, be for the benefit of the Holders of the Bonds.

9.07 Rights and Remedies of Bondholders. No Holder of a Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement hereof, for the execution of any trust hereof or for the appointment of a receiver or to enforce any other right or

remedy hereunder unless (a) a Default has occurred of which the Trustee has been notified as provided in subsection (e) of Section 10.01, or of which by said subsection it is deemed to have notice, (b) such Default shall have become an Event of Default and the Holders of more than fifty percent (50%) in aggregate principal amount and Accreted Value of Bonds then Outstanding shall have made written request to the Trustee and shall have offered reasonable opportunity to the Trustee either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and (c) such Bondholders have offered to the Trustee indemnity as provided in Section 10.01(h) and the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name. Such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts hereof, and to any action or cause of action for the enforcement hereof, or for the appointment of a receiver or for any other right or remedy hereunder; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien hereof by its, his or their action or to enforce any right or remedy hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of the Holders of all Bonds. Nothing herein contained shall, however, affect or impair the right of any Bondholder to enforce the payment of the principal of, and interest on, any Bond at and after the date such payment is due, or the obligation of the Authority or the Trustee to pay the principal of, and interest on, each of the Bonds issued hereunder to the respective Holders thereof at the time, place, from the source and in the manner expressed in the Bonds.

9.08 Termination of Proceedings. If the Trustee shall have proceeded to enforce any right or remedy hereunder by any action at law or in equity, by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Authority and the Trustee shall be restored to their former positions and rights hereunder with respect to the Trust Estate, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

9.09 Waivers of Events of Default.

(a) The Trustee shall waive any Event of Default hereunder and its consequences upon the written request of the holders of more than fifty percent (50%) in aggregate principal amount and Accreted Value of all Bonds then Outstanding, provided, however, that there shall not be waived

(1) any Event of Default pertaining to the payment of the principal of any Bond at its Maturity, or

(2) any Event of Default pertaining to the payment when due of the interest on any Bond unless prior to such waiver, all arrears of interest and all principal, including mandatory redemption payments, or purchase price payments in respect of which such Event of Default shall have occurred, with interest thereon (to the extent permitted by law) for the period from the occurrence of such Event of Default until paid in full at a rate per annum equal to the interest rate payable on the Bonds from time to time during such period in accordance with the terms of the Bonds, and all expenses of the Trustee in connection with such

Event of Default, shall have been paid or provided for, and in case of any such waiver, or in case any proceeding taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely to the Trustee, then and in every such case the Authority, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

The Trustee shall not have any discretion to waive any Event of Default hereunder and its consequences except in the manner and subject to the terms expressed above.

## ARTICLE X THE TRUSTEE

10.01 Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it hereby, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an Event of Default of which it is required to have notice under Section 10.01(e)(4) and after the curing of all such Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied agreements or obligations shall be read into this Indenture with respect to or against the Trustee. In case an Event of Default of which it is deemed or required to have notice under Section 10.01(e)(4) has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, or receivers and shall not be responsible for any misconduct or negligence on the part of any receiver, agent or attorney appointed with due care by it hereunder. The Trustee shall be entitled to advice of Counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Authority or the Borrower), approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds (except with respect to the authentication certificate of the Trustee endorsed on the Bonds), or for the recording or re-recording, filing or re-filing of this Indenture or the Loan Agreement or any other document, or for insuring the Trust Estate or for the validity of the execution hereof by the Authority or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds, or for the value of or title in and to the Trust Estate or any part of the Trust Estate or otherwise as to the maintenance of the security hereof, except that if the Trustee enters into possession of a part or all of the Trust Estate pursuant to any provision hereof it shall use due diligence in preserving the same, and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any agreements or conditions on the part of the

Authority or on the part of any Borrower under the Loan Agreement, except as hereinafter set forth; but the Trustee may require of the Authority or the Borrower full information and advice as to the performance of the agreements and conditions aforesaid and as to the condition of the Trust Estate.

(d) Except to the extent herein specifically provided, the Trustee shall not be accountable for the use of the proceeds of any of the Bonds. The Trustee, in its individual capacity, or as trustee under other indentures of trust, may in good faith buy, sell, own, hold or deal in any of the Bonds issued hereunder, and may join in any action which any Bondholder may be entitled to take with like effect as if such Person did not act in any capacity hereunder. The Trustee, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Authority or the Borrower, and may act as depository, trustee or agent for any committee or body of Bondholders in connection with any other indenture or similar agreement to which the Authority or the Borrower is a party and hold any bonds secured thereby or other obligations of the Authority as freely as if such Person did not act in any capacity hereunder.

(e) Except as is otherwise provided in subsection (a) above:

(1) The Trustee shall be protected in acting upon Opinions of Counsel and upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Trustee, pursuant hereto upon the request, authority or consent of any Person who at the time of making such request or giving such authority or consent is the Holder of any Bond, shall be conclusive and binding upon all future Holders of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(2) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon an Authority Certificate or upon a Borrower Certificate as sufficient evidence of the facts therein contained and prior to the occurrence of a Default of which the Trustee has been notified as provided in subsection (e)(4) of this Section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a Borrower Certificate or an Authority Certificate to the effect that a resolution in the form therein set forth has been adopted as conclusive evidence that such resolution has been adopted and is in full force and effect.

(3) The right of the Trustee to do things enumerated herein shall not be construed as a duty and the Trustee shall not be answerable for other than its gross negligence or willful misconduct. Further, the Trustee shall not have any liability with respect to, and the Authority hereby waives, releases and agrees not to sue for, any special, indirect or consequential damages suffered by the Authority in connection with claims related to or arising under this Indenture, the Loan Agreement or the Bonds.

(4) Unless a Responsible Officer of the Trustee shall be specifically notified in writing of a Default or an Event of Default by the Borrower, the Authority or the



Holders of more than fifty percent (50%) in aggregate principal amount and Accreted Value of Outstanding Bonds; the Trustee shall not be required to take notice or be deemed to have notice of such Default or Event of Default hereunder except (i) failure to pay the principal or Accreted Value, as applicable, of or interest on the Bonds when due, and (ii) an act of bankruptcy pursuant to which the Trustee has notice pursuant to Section 5.01 of the Loan Agreement. All notices or other instruments required to be delivered to the Trustee must, in order to be effective, be delivered at the principal corporate trust office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Default or Event of Default except as aforesaid.

(f) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(g) Notwithstanding anything elsewhere herein contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or the taking of any action whatsoever within the purview hereof, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that required by the terms hereof, as a condition of such action by the Trustee which the Trustee deems desirable for the purpose of establishing the right to the authentication of any Bonds, the withdrawal of any cash, the release of any property or the taking of any other action by the Trustee.

(h) Before taking any action hereunder (other than making payment on the Bonds when due) at the request or direction of any Bondholder, the Trustee may require that a satisfactory indemnity bond be furnished by the Holders of the Bonds (or other Person acceptable to the Trustee) for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from the gross negligence or willful misconduct of the Trustee, by reason of any action so taken.

(i) All moneys received by the Trustee for the Bonds shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required herein or by law. The Trustee shall be under no liability for interest on any moneys received hereunder except such as may be agreed upon.

(j) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

10.02 Fees, Charges and Expenses of Trustee. The Borrower shall pay and/or reimburse the Trustee for reasonable fees for its Ordinary Services rendered hereunder and all advances, Counsel fees and other Ordinary Expenses reasonably and necessarily made or incurred by the Trustee in connection with such Ordinary Services and, if it should become necessary that the Trustee perform Extraordinary Services, it shall be entitled to reasonable extra compensation from the Borrower therefor, and to reimbursement for reasonable and necessary Extraordinary Expenses in connection therewith; provided, that if such Extraordinary Services or Extraordinary

Expenses are occasioned by its gross negligence or willful misconduct, it shall not be entitled to compensation or reimbursement therefor. The Authority hereby grants to the Trustee a lien on and security interest in the Trust Estate for the Bonds to secure the payment of its reasonable fees and expenses as to the Bonds, provided that notwithstanding any provision hereof to the contrary, the Trustee shall have no lien upon or right to receive payment of any fees or expenses or other amounts from monies held for the payment of Bonds which have not been presented for payment under Section 5.02(e). Upon an Event of Default, such lien of the Trustee on the Trust Estate shall be a first lien.

#### 10.03 Notice by Trustee.

(a) If a Default occurs of which the Trustee is by Section 10.01(e)(4) required to take notice or if notice of a Default be given as in Section 10.01(e)(4) provided, then the Trustee shall give written notice thereof by first-class mail, postage prepaid, to the Authority, the Borrower and the Holders of all Bonds then Outstanding.

(b) At any time that the Bonds are rated by a Rating Agency, the Trustee shall promptly give notice to such Rating Agency, at such address as the Rating Agency shall have furnished to the Trustee, of:

- (1) any change in the identity of the Trustee;
  - (2) any amendments of or supplements of this Indenture, the Bonds or the Loan Agreement;
  - (3) any redemption of all the Bonds or any defeasance of all Bonds;
- and
- (4) any other information that the Rating Agency may reasonably request.

It is expressly understood and agreed that the Trustee shall have no liability for its failure to furnish any notice under this paragraph (b).

10.04 Intervention by Trustee. In any judicial proceeding to which the Authority is a party which, in the opinion of the Trustee, which may be based upon the advice of its Counsel, has a substantial bearing on the interest of the Bondholders, the Trustee may, upon being provided indemnity as set forth in Section 10.01(h), intervene on behalf of the Bondholders and shall do so if requested in writing by the Holders of more than fifty percent (50%) in aggregate principal amount and Accreted Value of the Outstanding Bonds. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction if such approval is required by law as a condition to such intervention.

10.05 Successor Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, merger, consolidation, sale or transfer to which it is a party, *ipso facto*, shall be and become successor Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other

matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

10.06 Resignation by the Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving written notice by first-class mail, postage prepaid, to the Authority, the Borrower, and each Bondholder, but such resignation shall take effect only upon the appointment of a successor Trustee; provided, however, that if a successor Trustee shall not have been appointed within 60 days from the date of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

10.07 Removal of the Trustee. The Trustee may be removed at any time by the Authority, by an instrument or concurrent instruments in writing delivered to the Trustee, the Borrower and the Bondholders, or by the Holders of more than fifty percent (50%) in aggregate principal amount and Accreted Value of the Outstanding Bonds by an instrument or concurrent instruments in writing delivered to the Trustee, the Authority and the Borrower; provided, however, that such removal shall take effect only upon the appointment of a Successor Trustee as provided in Section 10.08.

10.08 Appointment of Successor Trustee; Temporary Trustee. If the Trustee shall resign, be removed, be dissolved, be in course of dissolution or liquidation, or shall otherwise become incapable of acting hereunder or in case it shall be taken under the control of any public officer, officers or a receiver appointed by a court, a successor may be appointed by the Authority or by the Holders of more than fifty percent (50%) of the principal amount and Accreted Value of the Outstanding Bonds, by an instrument or concurrent instruments in writing signed by an Authorized Representative of the Authority or by the Bondholders. Every such Trustee appointed pursuant to the provisions of this Section 10.08 shall be, if there be such an institution willing, qualified and able to accept the trusts upon reasonable and customary terms in good standing, a bank with trust company powers having a combined capital surplus and undivided profits of not less than \$[100,000,000].

10.09 Concerning Any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Authority [and each Bondholder] an instrument in writing accepting such appointment hereunder and specifying its principal corporate trust office for the purpose of this Indenture, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Authority, or of its successor, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Authority be required by any successor Trustee in order to more fully and certainly vest in such successor the estates, properties, rights, powers and trusts hereby vested or intended to be vested in the predecessor any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by

the successor Trustee wherever required by applicable law or to continue the perfection of any lien or security interest created hereby.

10.10 Right of Trustee to Pay Taxes and Other Charges. If any tax, assessment or governmental or other charge upon any part of the Trust Estate is not paid as required herein, the Trustee may pay (with prior notice to the Authority of such payment) such tax, assessment or charge, without prejudice, however, to any rights of the Trustee or the Bondholders hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon (to the extent permitted by law) from the date of such payment until paid to the Trustee in full at a rate per annum equal to the Prime Rate, shall become so much additional indebtedness secured hereby, and the same shall be given a preference in payment over the principal of, premium, if any, and the interest on, the Bonds and shall be paid out of the revenues and receipts from the Trust Estate, if not otherwise caused to be paid; provided, however, that payments of any such tax, assessment or charge shall not have any such preference with respect to and shall not be paid from amounts held in the Principal or Interest Accounts in the Bond Fund. The Trustee shall not be under obligation to make any such payment unless it shall have been requested to do so by the Holders of more than fifty percent (50%) in aggregate principal amount and Accreted Value of the Bonds then Outstanding and shall have been provided with sufficient moneys for the purpose of making such payment. A copy of any request to the Trustee to make a payment hereunder shall also be sent to the Borrower.

10.11 Trustee Protected in Relying Upon Resolutions, etc.. The resolutions, opinions, certificates and other instruments provided for herein may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the release of property and the withdrawal of moneys hereunder.

10.12 Successor Trustee as Custodian of Funds. Upon a change in the office of Trustee, the predecessor Trustee which has resigned or has been removed shall cease to be the holder of the Rebate Fund, the Bond Fund and the Loan Fund, and the successor Trustee shall become such holder.

10.13 Trustee's Duties as Paying Agent. The Authority does hereby appoint as its agent the Trustee as the paying agent for the Bonds. The Trustee hereby accepts the duties and obligations imposed upon it hereunder:

(a) to hold all sums held by it for the payment of the principal of, premium, if any, or interest on Bonds in trust for the benefit of Owners until such sums shall be paid to such Owners or otherwise disposed of as herein provided; and

(b) to keep such books and records as shall be consistent with prudent industry practice, to make such books and records available for inspection by the Authority and the Borrower at all reasonable times.

10.14 Co-Trustee.

(a) In the event the Trustee determines at any time that it is necessary or desirable to appoint one or more co-trustees to exercise any of the rights, powers, or remedies granted to the Trustee hereunder, with the consent of the Authority, the Trustee may appoint an

additional Person or additional Persons to act as co-trustee or co-trustees hereunder by executing ~~an instrument of appointment for each such co-trustee~~ and by delivering such instrument of appointment to the co-trustee so appointed and the Authority. Any such instrument of appointment shall confer such rights, powers, duties, and obligations hereunder as the Trustee may deem necessary or desirable upon the co-trustee as joint tenant (or, if required by applicable law, as tenant-in-common) with the Trustee, except to the extent that, under applicable law, the Trustee is incompetent or unqualified to exercise any of such rights, powers, duties, and obligations, then such rights, powers, duties and obligations may be conferred upon, and be exercised and performed solely by, the co-trustee so appointed. If any written instrument shall be requested from the Authority by the co-trustee so appointed to more fully and certainly vest in such co-trustee such rights, powers, duties, and obligations, such instrument or instruments shall be executed, acknowledged, and delivered by the Authority.

(b) The Trustee, at any time by an instrument in writing delivered to a co-trustee and the Authority may, with or without cause, remove such co-trustee. In the event any co-trustee shall become incapable of acting, shall resign, or shall be removed, all the properties, rights, powers, duties and obligations of such co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment by the Trustee of a successor to such co-trustee.

## ARTICLE XI SUPPLEMENTAL INDENTURES

11.01 Supplemental Indentures Not Requiring Consent of Bondholders. The Authority and the Trustee may, without the consent of, or notice to, any of the Bondholders, enter into an indenture or indentures supplemental hereto which shall not be inconsistent with the terms and provisions hereof for any one or more of the following purposes, provided that in the opinion of the Trustee the change effected thereby is not to the prejudice of the interests of the Trustee or the Bondholders:

(a) to cure any ambiguity or formal defect or omission herein or between the terms and provisions hereof and the terms and provisions of any other instrument or document executed in connection herewith or with the issuance of the Bonds;

(b) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Bondholders or the Trustee;

(c) to subject to the lien and pledge hereof additional payments, revenues, properties or collateral;

(d) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar Federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States of America, including the Securities Act of 1933, and, if they so determine, to add hereto or to any indenture supplemental hereto such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar Federal statute;

(e) to evidence the appointment of a co-Trustee or the succession of a new Trustee hereunder;

(f) to effect any other supplement to this Indenture which, in the judgment of the Trustee, will not adversely affect the interests of the Bondholders;

(g) to provide for separate accounts within the Funds established pursuant to Article VII and VIII;

(h) to make any change to reflect any provision in the Code or the interpretations thereof by the Internal Revenue Service, provided that such change does not materially adversely affect the rights of any Bondholder; or

(i) to make any change not materially adversely affecting any Bondholder's rights requested by the Rating Agency in order to maintain any rating on the Bonds.

#### 11.02 Supplemental Indentures Requiring Consent of Bondholders.

(a) Exclusive of supplemental indentures covered by Section 11.01, and not otherwise, the Holders of not less than fifty-one percent in aggregate principal amount and Accreted Value of the Bonds Outstanding shall have the right, from time to time, to consent to and approve the execution by the Authority and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Authority for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained herein or in any supplemental indenture; provided, however, that nothing in this Section contained shall permit, or be construed as permitting, (1) the alteration of any optional or mandatory redemption provisions applicable to any Outstanding Bond or an alteration in the manner in which the Accreted Value is calculated which results in a reduction of such amounts, a change in the maturity date of the Bonds, or a change in the Original Principal Amount of any Capital Appreciation Bonds or, prior to the Conversion Date, any Convertible Capital Appreciation Bonds, (2) the creation of a lien ranking prior to or on a parity with the lien of this Indenture on the property conveyed pursuant to this Indenture or the deprivation of such lien, (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indenture without the consent of all Bondholders.

(b) If the Authority shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause written notice of the proposed execution of such supplemental indenture together with a copy of such proposed supplemental indenture or a summary thereof to be given by first class mail, postage prepaid, to the Holders of the Bonds at their addresses shown on the Trustee's books of registration. If, within 60 days following the mailing of such notice or such longer period as shall be prescribed by the Authority and specified in such notice, the Holders of not less than fifty-one percent in aggregate principal amount and Accreted Value of the Bonds then outstanding shall have consented to and approved the execution of such supplemental indenture as herein provided, no Holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or

restrain the Trustee or the Authority from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this section permitted and provided, this Indenture shall be modified and amended in accordance therewith.

11.03 Trustee Authorized to Join in Supplements; Reliance on Counsel. The Trustee and the Authority are authorized to join in the execution and delivery of any supplemental indenture permitted by this Article XI and, in so doing, each shall be fully protected by an Opinion of Counsel that such supplemental indenture is so permitted and has been duly authorized by the Authority and that all things necessary to make it a valid and binding supplemental indenture have been done. The Trustee shall not be required to enter into any supplemental indenture permitted by this Article XI if, in the sole judgment of the Trustee, such action might adversely affect its rights, remedies, privileges, protections or indemnities or might increase its liability in any respect.

## ARTICLE XII AMENDMENT OF LOAN AGREEMENT

12.01 Amendment of Loan Agreement. The Trustee and the Authority may, upon written request of the Borrower, consent to any amendment to the Loan Agreement without consent of or notice to Bondholders pursuant to the same conditions set forth in Section 11.01 with respect to any Supplemental Indenture and with notice and consent of Bondholders in accordance with Section 11.01.

## ARTICLE XIII MISCELLANEOUS

13.01 Severability. If any provision hereof shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

13.02 Payments Due or Acts to Occur on Saturdays, Sundays, and Holidays. Except as may otherwise be provided in this Indenture, in any case where the date of maturity of principal of and/or the interest of the Bonds or the date fixed for the redemption of any Bonds or the last day for performance of any act or the exercising of any right under the Indenture shall not be a Business Day, then such payment of principal and/or interest may be made or such act may be performed or right may be exercised on the next succeeding Business Day with the same force and effect as if made, performed or exercised on the date otherwise provided for under the Bonds or this Indenture.

13.03 Counterparts. This Indenture may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

13.04 Compliance Certificates and Opinions. Upon any application or request by the Authority to the Trustee to take any action under any provision of this Indenture, the Authority shall furnish to the Trustee an Authority Certificate stating that all conditions precedent, if any, provided for in this Indenture or the Loan Agreement relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such Counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of a Borrower Certificate and an Opinion of Counsel is specifically required by any provision of this Indenture or the Loan Agreement relating to such particular application or request, no additional certificate or opinion need be furnished. Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

13.05 Form of Documents Delivered to Trustee. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents. Any certificate or opinion of an officer of the Authority or an officer of the Borrower may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, Counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which such officer's certificate or opinion is based are erroneous. Any Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Authority or an officer or officers of the Borrower stating that the information with respect to such factual matters is in the possession of the Authority or such Borrower, unless such Counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous. Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument. An "application" for the authentication and delivery of Bonds, or the release of property, or the withdrawal of cash, under any provision of this Indenture, shall consist of, and shall not be deemed complete until the Trustee shall have been furnished with, all such documents, cash, Bonds, securities and other instruments as are required



by such provision to establish the right of the Authority or the Borrower to the transaction applied for, and the date of such application shall be deemed to be the date upon which such application shall be so completed.

#### 13.06 Actions of Bondholders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Bondholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Bondholders in person and delivered to the Trustee and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee, and, where it is hereby expressly required, to the Authority and the Borrower. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Action" of the Bondholders signing such instrument or instruments. Proof of execution of any such instrument shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee, the Authority and the Borrower if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by an officer of a corporation or a member of a partnership, on behalf of such corporation or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the persons executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The Trustee shall be entitled to rely on the Bond Register as to the identities and rights of the Owners of the Bonds.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Bond shall bind every future Holder of the same Bond and the Holder of every Bond issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee, the Authority or the Borrower in reliance thereon, whether or not notation of such action is made upon such Bond.

13.07 Rights Under the Loan Agreement. The Loan Agreement and duly executed counterparts of which will be retained by the Trustee, as required by Section 7.06, sets forth covenants and obligations of the Authority and the Borrower, including provisions that the Loan Agreement may not be effectively amended without the concurring written consent of the Trustee, as provided in Article XII, and reference is hereby made to the Loan Agreement for a detailed statement of said covenants and obligations of the Borrower under the Loan Agreement, and the Authority agrees that the Trustee, in its name or, to the extent permitted by law, in the name of the Authority, may enforce all rights of the Authority and all obligations of the Borrower under the Loan Agreement and any documents securing them (and waive the same, except for rights expressly granted to the Authority and not assigned to the Trustee hereunder) on behalf of the Bondholders, whether or not the Authority is in default hereunder.

13.08 Possession and Inspection of Loan Agreement. The Trustee shall retain possession of an executed copy of the Loan Agreement and or any other document securing the Loan, and release them only in accordance with the provisions of this Indenture.

13.09 Notices to Trustee and the Authority. Except as otherwise provided in this Indenture, any request, demand, authorization, direction, notice, consent, waiver or Action of Bondholders or other document provided or permitted by this Indenture shall be sufficient for any purpose under this Indenture and shall be deemed given when [mailed certified mail, return receipt requested, postage prepaid (with a copy to the other parties) at the following addresses (or such other address as may be provided by any party by notice)]:

To the Authority:     New Memphis Arena Public Building Authority of Memphis and  
  Shelby County, Tennessee  
  [ADDRESS]  
  Memphis, Tennessee [ZIP]  
  Attention: [\_\_\_\_\_]  
  Telephone: [\_\_\_\_\_]  
  Email: [\_\_\_\_\_]

with a copy to the Authority's Counsel:

Carpenter Law, PLLC  
Three Eight Six Beale Street  
Memphis, Tennessee 38103  
Attention: [\_\_\_\_\_]  
Telephone: [\_\_\_\_\_]  
Email: [\_\_\_\_\_]

To the Trustee:       Regions Bank  
  Corporate Trust Services  
  150 Fourth Avenue North, Suite 1500  
  Nashville, Tennessee 37219  
  Attention: Corporate Trust Service  
  Telephone: [\_\_\_\_\_]  
  Email: [\_\_\_\_\_]

Any notice given as provided above shall be deemed received upon the earlier of (i) the actual receipt by the party to whom such notice is addressed, as may be evidenced by the return receipt, or (ii) five days after mailing.

13.10 Notices to Bondholders; Waiver. Where this Indenture provides for notice to Bondholders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Bondholder at his address as it appears on the Bond Register, not later than the latest date, and not earlier than the earliest date, if any, prescribed for the first mailing of such notice. Any notice may be waived in writing by the Person entitled to receive such notice, either before or after the event. Waivers of notice by Bondholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

13.11 Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

13.12 Successors and Assigns. All covenants and agreements in this Indenture by the Authority and the Trustee shall bind their respective successors and assigns, whether so expressed or not.

13.13 Governing Law. This Indenture shall be construed in accordance with the laws of the State.

13.14 Benefit of Indenture. Nothing in this Indenture or in the Bonds, express or implied, shall give to any Person, other than the parties hereto, and their successors hereunder, the Borrower and the Holders of Bonds, any benefit or other legal or equitable right, remedy or claim under this Indenture.

13.15 Limitation of Liability. No recourse under or upon any obligation, covenant or agreement or in any Bond, or under any judgment obtained against the Authority or the Trustee, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director or officer, employee or agent as such, past, present, or future, of the Authority or the Trustee, either directly or through the Authority or the Trustee, or otherwise, for the payment for or to the Authority or the Trustee or any receiver thereof, or for or to the holder of any Bond, of any sum that may be due and unpaid by the Authority or the Trustee upon any such Bond. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, or officer, employee or agent as such, to respond by reason of any act or omission on his part or otherwise for the payment for or to the Authority or the Trustee or any receiver thereof, or for or to the Holder of any Bond, of any sum that may remain due and unpaid upon the Bonds or any of them, is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture and the issue of such Bonds.

13.16 Respecting the Loan Agreement. Certain of the covenants of the Authority hereunder will be assumed by the Borrower in the Loan Agreement, and while the Loan Agreement remains in full force and effect, the obligations contained in such covenants shall be the responsibility of the Borrower, or if the Loan Agreement is terminated pursuant to Article VI thereof, then such covenants are enforceable only to the extent of the revenues derived from such Loan Agreement, from the Trust Moneys held by the Trustee or otherwise from the Trust Estate but shall not constitute an obligation of the Authority, except to the extent of the Trust Estate. The rights and duties of the Authority given under this Indenture to the Borrower shall be applicable only while the Loan Agreement is in full force and effect.

*(signatures on following page)*

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be executed in their respective corporate names by their respective authorized officers, all as of the date first above written.

SEAL:

NEW MEMPHIS ARENA PUBLIC  
BUILDING AUTHORITY OF MEMPHIS  
AND SHELBY COUNTY, TENNESSEE

ATTEST:

\_\_\_\_\_  
[Secretary]

By: \_\_\_\_\_  
[Chairman]

REGIONS BANK  
as Trustee

By: \_\_\_\_\_  
[Authorized Signatory]

**EXHIBIT A  
FORM OF BOND**

No. R-\_\_

\$ \_\_\_\_\_

As provided in the Indenture referred to herein, until the termination of the system of Book-Entry-Only transfers through The Depository Trust Company (together with any successor securities depository appointed pursuant to the Indenture, "DTC") and notwithstanding any other provision of the Indenture to the contrary, a portion of the principal amount of this bond may be paid or redeemed without surrender hereof to the Paying Agent. DTC or a nominee, transferee or assignee of DTC as owner of this bond may not rely upon the principal amount indicated hereon as the principal amount hereof outstanding and unpaid. The principal amount hereof outstanding and unpaid shall for all purposes be the amount determined in the manner provided in the Indenture and indicated on the books of the Bond Trustee.

**UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE BOND TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUIRED BY AN AUTHORIZED REPRESENTATIVE OF DTC AND ANY PAYMENT IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSONS IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.**

**UNITED STATES OF AMERICA  
STATE OF TENNESSEE  
NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY  
OF MEMPHIS AND SHELBY COUNTY, TENNESSEE  
LOCAL GOVERNMENT PUBLIC IMPROVEMENT BOND  
(CITY OF MEMPHIS PROJECT), SERIES 2021  
[CURRENT INTEREST BOND][CONVERTIBLE CAPITAL APPRECIATION  
BOND][CAPITAL APPRECIATION BOND]**

|   |                      |   |                                    |              |
|---|----------------------|---|------------------------------------|--------------|
| [ACCRETION<br>RATE] /<br>[INTEREST<br>RATE] | <u>MATURITY DATE</u> | <u>[ACCRETED VALUE ON<br/>[CONVERSION]][MATURITY<br/>[DATE]</u> | <u>ORIGINAL<br/>ISSUE<br/>DATE</u> | <u>CUSIP</u> |
|---|----------------------|---|------------------------------------|--------------|

%

REGISTERED HOLDER: CEDE & CO.

[INITIAL] PRINCIPAL AMOUNT:

FOR VALUE RECEIVED, THE NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY OF MEMPHIS AND SHELBY COUNTY, TENNESSEE (the "Authority"), a public nonprofit corporation organized and existing under the laws of the State of Tennessee (the



“State”), and [a public instrumentality of the City of Memphis, Tennessee (the “Borrower,” and the County of Shelby, Tennessee the “County,”] hereby promises to pay, but solely from the sources hereinafter described and from no other source, to the registered holder named above, or registered assigns, on the maturity date specified above (or upon earlier redemption as set forth herein), upon the presentation and surrender hereof, the

[CURRENT INTEREST BONDS: principal sum specified above and to pay, solely from said sources, interest on such principal sum (computed on the basis of a 360-day year of twelve 30-day months) from the date hereof until the principal hereof is paid or duly provided for at the rates and on the dates provided herein. The principal of and premium, if any, on this Bond shall be payable at the corporate trust office in Nashville, Tennessee, of Regions Bank, an Alabama banking corporation, as trustee under the Indenture (hereinafter defined) (together with each successor trustee under the Indenture, the “Trustee”), or if a successor trustee is hereafter appointed, then at the principal corporate trust office of such successor, upon surrender of this Bond at such office. Interest on this Bond (other than Defaulted Interest, as hereinafter defined) is payable from the Interest Payment Date to which interest on this Bond has been paid or duly provided for next preceding the date of authentication hereof, unless (a) such date of authentication shall be prior to the first Interest Payment Date, in which case interest shall be computed from the date of original issue of Bond set forth above, or (b) such date of authentication shall be an Interest Payment Date to which interest on this Bond has been paid or duly provided for, in which case interest shall be computed from such Interest Payment Date, or (c) such date of authentication shall be after any Record Date and before the next succeeding Interest Payment Date, in which case interest shall be computed from the next succeeding Interest Payment Date.]

[CONVERTIBLE CAPITAL APPRECIATION BONDS: principal sum specified above, plus Accreted Interest thereon. The “Accreted Interest” is the amount of interest to accrue on the [principal amount] of this Bond from the dated date to [November 30], 20[\_\_\_], including all interest accruing thereto as a result of compounding semi-annually on each [June] 1 and [December] 1 prior to (but not including) [December] 1, 20[\_\_\_] (the “Conversion Date”), and the principal amount of this Bond plus any Accreted Interest thereon is the “Accreted Value.” In like manner, the Authority hereby promises to pay, solely from said sources, interest on such Accreted Value (computed on the basis of a 360-day year of twelve 30-day months) from the date hereof until the Accreted Value is paid or duly provided for at the rates and on the dates provided herein. The Accreted Value of and premium, if any, on this Bond shall be payable at the corporate trust office in Nashville, Tennessee, of Regions Bank, an Alabama banking corporation, as trustee under the Indenture (hereinafter defined) (together with each successor trustee under the Indenture, the “Trustee”), or if a successor trustee is hereafter appointed, then at the principal corporate trust office of such successor, upon surrender of this Bond at such office. Interest on this Bond (other than Defaulted Interest, as hereinafter defined) is payable from the Interest Payment Date to which interest on this Bond has been paid or duly provided for next preceding the date of authentication hereof, unless (a) such date of authentication shall be prior to the first Interest Payment Date, in which case interest shall be computed from the date of original issue of the Bond set forth above, or (b) such date of authentication shall be an Interest Payment Date to which interest on this Bond has been paid or duly provided for, in which case interest shall be computed from such Interest Payment Date, or (c) such date of authentication shall be after any Record Date and before the next succeeding Interest Payment Date, in which case interest shall be computed from the next succeeding Interest Payment Date. Prior to the





Conversion Date, interest on this Bond shall accrete from its dated date on each Accretion Date as set forth in the schedule attached to this Bond and shall be treated as accruing in equal daily amounts between Accretion Dates, payable at maturity or earlier redemption. On the Conversion Date, the Bonds shall, without any action necessitated on the part of the Authority, or any Holder, or any other Person, cease to be capital appreciation bonds and automatically convert to current interest bonds. On and after such Conversion Date and until maturity or prior redemption, the Bond shall bear interest at the rate provided herein (computed on the basis of a 360-day year of twelve 30-day months) on each Interest Payment Date, commencing [December] 1, 20[\_\_\_].]

[CAPITAL APPRECIATION BONDS: principal sum specified above, plus Accreted Interest thereon. The "Accreted Interest" is the amount of interest to accrue on the [principal amount] of this Bond from the dated date to the Maturity Date, and the principal amount of this Bond plus any Accreted Interest thereon is the "Accreted Value." In like manner, the Authority hereby promises to pay, solely from said sources, interest on such Accreted Value (computed on the basis of a 360-day year of twelve 30-day months) from the date hereof until the Accreted Value is paid or duly provided for at the rates and on the dates provided herein. The Accreted Value of and premium, if any, on this Bond shall be payable at the corporate trust office in Nashville, Tennessee, of Regions Bank, an Alabama banking corporation, as trustee under the Indenture (hereinafter defined) (together with each successor trustee under the Indenture, the "Trustee"), or if a successor trustee is hereafter appointed, then at the principal corporate trust office of such successor, upon surrender of this Bond at such office. Interest on this Bond (other than Defaulted Interest, as hereinafter defined) is payable from the Interest Payment Date to which interest on this Bond has been paid or duly provided for next preceding the date of authentication hereof, unless (a) such date of authentication shall be prior to the first Interest Payment Date, in which case interest shall be computed from the date of original issue of the Bond set forth above, or (b) such date of authentication shall be an Interest Payment Date to which interest on this Bond has been paid or duly provided for, in which case interest shall be computed from such Interest Payment Date, or (c) such date of authentication shall be after any Record Date and before the next succeeding Interest Payment Date, in which case interest shall be computed from the next succeeding Interest Payment Date. Interest on this Bond shall accrete from the dated date shown above on each Accretion Date as set forth in the schedule attached to this Bond and shall be treated as accruing in equal daily amounts between Accretion Dates, until payable at maturity or earlier redemption.]

All payments of interest shall be paid by check drawn upon the Trustee, and paid to the person in whose name this Bond is registered on the Bond Register maintained by the Trustee, as bond registrar and paying agent, as of the close of business on the Record Date (hereinafter defined) next preceding the relevant Interest Payment Date (hereinafter defined); provided, that on written request to the Trustee by any person who is the registered holder of Bonds in an aggregate [principal][Accreted Value] amount of \$1,000,000 or more received by the Trustee on or before fifteen days prior to such Record Date (which instructions shall remain in effect until revoked by subsequent written instructions), interest on such Bonds shall be payable by wire transfer of immediately available funds to an account at a bank located in the continental United States. The term "Record Date" means the fifteenth day of the month preceding any Interest Payment Date. The term "Interest Payment Date" means the first day of each [June] and [December] and the Maturity of this Bond; provided, however, if such scheduled Interest Payment Date is not a Business Day, then such interest shall be payable on the next succeeding Business Day calculated as though paid on the scheduled Interest Payment Date. The term



“Business Day” means with respect to the Bonds any day other than (a) a Saturday or Sunday, (b) a day on which banking institutions in New York City or any other city where the principal United States office of the Trustee is located are required or authorized by law (including executive order) to close or on which the principal office of the Trustee is closed for a reason not related to financial condition, or (c) a day on which The New York Stock Exchange is closed.

Any interest on any Bond which is payable but which is not punctually paid or duly provided for (“Defaulted Interest”) shall cease being payable to the Person in whose name such Bond is registered at the close of business on the Record Date and instead shall be payable to the Person in whose name such Bond is registered in the Bond Register at the close of business on a Special Record Date selected by the Trustee and which shall be at least 10 days but not more than 30 days before the date selected by the Trustee for payment of such Defaulted Interest. The Trustee shall give notice by mail of the Special Record Date and date for payment of Defaulted Interest at least 10 days before the Special Record Date.

The Bonds and interest thereon are not general obligations of the Authority but are limited obligations payable solely from the revenues and receipts derived from the Loan Agreement, which revenues and receipts are specifically pledged to such purposes in the manner and to the extent provided in this Indenture and in any Supplemental Indentures. The Bonds and interest thereon shall not be deemed to constitute a debt of the State or any political subdivision thereof (except to the extent the Authority is obligated to pay [principal][Accreted Value] of and premium, if any, and interest on the Bonds from the revenues and receipts pledged therefor in the Indenture and to the extent that the Borrower is obligated under the Loan Agreement), and neither the State nor any political subdivision thereof shall be obligated to pay the [principal][Accreted Value] of or premium, if any, or interest on the Bonds or other costs incident thereto except as provided in this sentence. Neither the full faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the [principal][Accreted Value] of or premium, if any, or interest on the Bonds or other costs incident thereto (except to the extent that the Borrower is obligated under the Loan Agreement). The Authority has no taxing power.

No covenant or agreement contained in this Bond shall be deemed to be a covenant or agreement of any officer, agent, or employee of the Authority in his individual capacity, and neither the members of the Authority nor any officer thereof executing this Bond shall be liable personally on this Bond or be subject to any personal liability or accountability by reason of the issuance of this Bond.

Except as otherwise provided herein or in the Indenture, as hereinafter defined, this Bond shall be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”), which will act as securities depository for the Bonds of the series of which this Bond is one. One Bond for each maturity of the Bonds shall be issued to DTC and immobilized in its custody. A book-entry system shall be employed, evidencing ownership of the Bonds, with transfers of beneficial ownership effected on the records of DTC and the DTC Participants, pursuant to rules and procedures established by DTC. So long as Cede & Co., as nominee for DTC, is the registered owner of the Bonds, the Authority and the Trustee shall treat Cede & Co. as the only owner of the Bonds for all purposes under the Indenture, including receipt of all principal and maturity amounts of, premium, if any, and interest on the Bonds, receipt of notices, voting and requesting or taking or not taking, or consenting to, certain



actions hereunder. Payments of principal and interest with respect to the Bonds, so long as DTC is the only owner of the Bonds, shall be paid directly to DTC or its nominee, Cede & Co. DTC shall remit such payments to DTC Participants, and such payments thereafter shall be paid by DTC Participants to the Beneficial Owners. Neither the Authority nor the Trustee shall be responsible or liable for payment by DTC or DTC Participants, for sending transaction statements or for maintaining, supervising or reviewing records maintained by DTC or DTC Participants. In the event that (1) DTC determines not to continue to act as securities depository for the Bonds or (2) the Authority determines that the continuation of the book-entry system of evidence and transfer of ownership of the would adversely affect its interests or the interests of the Beneficial Owners of the Bonds, the Authority may discontinue the book-entry system with DTC. If the Authority fails to identify another qualified securities depository to replace DTC, the Authority shall cause the Trustee to authenticate and deliver replacement Bonds in the form of fully registered Bonds to each Beneficial Owner. Neither the Authority nor the Trustee shall have any responsibility or obligations to any DTC Participant or any Beneficial Owner with respect to (i) the Bonds; (ii) the accuracy of any records maintained by DTC or any DTC Participant; (iii) the payment by DTC or any DTC Participant of any amount due to any Beneficial Owner in respect of the principal and interest on the Bonds; (iv) the delivery or timeliness of delivery by DTC or any DTC Participant of any notice due to any Beneficial Owner that is required or permitted under the terms of the Indenture to be given to Beneficial Owners; or (v) any consent given or other action taken by DTC, or its nominee, Cede & Co., as owner.

#### **Purpose; Pledge; Incorporation by Reference**

This Bond is one of the Authority's duly authorized Bonds (the "Bonds") of the Authority, in the aggregate principal amount of \$[\_\_\_\_\_] issued under and pursuant to Tennessee Code Annotated, Sections 12-10-101 *et seq.*, (the "Act"), a resolution (the "Resolution") adopted by the Authority on [\_\_\_\_], 2021, and an Indenture of Trust dated as of [June] 1, 2021, between the Authority and the Trustee (as further supplemented and amended from time to time, the "Indenture"), to make a loan to the Borrower pursuant to a Loan Agreement dated as of [June] 1, 2021, between the Authority and the Borrower (as further supplemented and amended from time to time, the "Loan Agreement"), for the purpose of financing the Costs of various public works projects of the Borrower (collectively the "Project")[, including interest on Bonds during construction of the Project and for two (2) years after the estimated date of completion of the Project,] and paying certain expenses incurred in connection with the issuance of Bonds, all as permitted under the Act. The Authority's Local Government Public Improvement [Current Interest][Convertible Capital Appreciation][Capital Appreciation] Bonds, Series 2021 (the "Bonds"), of which this Bond is one, are issued in the aggregate principal amount of \$\_\_\_\_\_ pursuant to the Resolution, the Act, and the Indenture for the purpose of providing a loan in such amount under the Loan Agreement.

The Bonds will be solely secured by a pledge and assignment to the Trustee pursuant to the Indenture of (i) all right, title and interest and privilege of the Authority now owned or hereafter acquired in, to and under the Loan Agreement and any agreement supplementing, extending or modifying the same, including, without limitation, all present and future rights of the Authority to make claim for, collect and receive any income, revenues, issues, profits, and other sums of money payable to or for the account of or receivable by the Authority under the Loan Agreement (whether payable pursuant to the Loan Agreement or otherwise), to bring actions and proceedings under the Loan Agreement or for the enforcement thereof, to pursue the



remedies provided in the Loan Agreement upon the occurrence of an event of default thereunder, and to do any and all things that the Authority is or may become entitled to do under the Loan Agreement, but excluding the rights of the Authority (a) to receive payment of the Authority's expenses and attorneys' fees, (b) to receive notices and other documents, (c) to indemnification and (d) to amounts payable by the Borrower in reimbursement to the Authority for certain payment of fees; (ii) all monies and securities (including the investment income therefrom) held by the Trustee in any of the funds or accounts established under the Indenture with respect to the Bonds (except the Additional Payments Account of the Bond Fund and the Rebate Fund), subject, however, to the application thereof to the uses and in the manner set forth in the Indenture; and (iii) all property which is by the express provisions of the Indenture required to be subject to the lien of the Indenture and any additional property that may, from time to time hereafter be subjected to the lien of the Indenture.

All moneys received by the Trustee with respect to the Loan Agreement or the Bonds (a) as provided in the Indenture be held and applied (other than the Additional Payments Account of the Bond Fund and the Rebate Fund), or required to be paid to the Trustee and whose disposition is not elsewhere provided for in the Indenture, including but not limited to the investment income of all Trust Funds (as defined in the Indenture) held by the Trustee under the Indenture; or (b) as payments under the Loan Agreement (except the right to receive payment of certain expenses and attorney's fees, to receive notices and certain other documents, to indemnification, and to receive amounts payable in reimbursement for certain payment of fees, if any (all such moneys being called "Trust Moneys")), shall be held by the Trustee as a part of the Trust Estate for the Bonds to which the Loan Agreement is pledged, and, upon the exercise by the Trustee of any remedy specified in the Indenture, such Trust Moneys shall be applied in accordance with the Indenture, except to the extent that the Trustee is holding in trust moneys and/or Government Obligations for the payment of any specified Bonds which are no longer deemed to be Outstanding under the provisions of the Indenture, which moneys and/or Government Obligations shall be applied only as provided in the Indenture. Prior to the exercise of any such remedy, all or any part of the Trust Moneys shall be held, invested, withdrawn, paid or applied by the Trustee, from time to time, as provided in the Indenture.

**Redemption**

*Optional Redemption.* The Bonds maturing before [December ]1, 20[\_\_\_], are not subject to optional redemption. The Bonds maturing on or after [December ]1, 20[\_\_\_], are subject to redemption prior to maturity upon a Borrower Request at any time on or after [December ]1, 20[\_\_\_], out of amounts deposited in the Optional Redemption Fund, in whole or in part from time to time in any order of maturity determined by the Borrower, on any date, at a redemption price equal to one hundred percent (100%) of the [principal amount][Accreted Value] of Bonds to be redeemed, plus accrued interest thereon to the date of redemption.

*Mandatory Sinking Fund Redemption.* [The Bonds maturing on [December ]1, 20[\_\_\_], and [December ]1, 20[\_\_\_], are subject to mandatory sinking fund redemption, prior to maturity, in part, on [December ]1 of the respective years and in the respective principal amounts set forth below, at a redemption price equal to the principal amounts of Bonds, plus accrued interest to the date of redemption.

| <u>% Series</u> | <u>Bonds Maturing</u> | <u>% Series</u> | <u>Bonds Maturing</u> |
|-----------------|-----------------------|-----------------|-----------------------|
|-----------------|-----------------------|-----------------|-----------------------|





| <u>Year</u> | <u>Principal Amount</u> | <u>Year</u> | <u>Principal Amount</u> |
|-------------|-------------------------|-------------|-------------------------|
|             | 1, xxxx                 |             | 1, xxxx                 |

**Notice of Redemption**

The Trustee shall cause notice of the call for redemption identifying the Bonds to be redeemed to be sent not less than [30][20] days prior to the redemption date by first-class mail postage prepaid to the Holder hereof to be redeemed at his address as it appears on the registration books of the Trustee. Failure to give any such notice shall not affect the validity of any proceedings for the redemption of any Bonds with respect to which no such failure has occurred. Any notice mailed as provided herein shall conclusively be presumed to have been given whether or not actually received by the Holder. All Bonds called for redemption shall cease to bear interest on the specified redemption date, provided funds for their redemption are on deposit at the place of payment on the date fixed for redemption.

**Payment of Bonds Upon Redemption**

Upon redemption of all or any portion of this Bond, payment of the applicable redemption price shall be made only upon surrender of this Bond. If, on the redemption date, sufficient moneys shall be held by the Trustee to effect such redemption in accordance with the Indenture, then interest shall cease to accrue on all Bonds or portions thereof so called for redemption.

**Events of Default**

The Holder hereof shall have no right to enforce the provisions of the Indenture or to take any action with respect to any Event of Default (as defined in the Indenture), or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

**Transfer and Exchange of Bonds**

Subject to the express limitations set forth herein and in the Indenture, the registered Holder of this Bond may register the transfer of this Bond on the Bond Register kept by the Trustee as bond registrar, upon surrender thereof at the principal corporate trust office of the Trustee, with a written instrument of transfer in a form reasonably satisfactory to the Trustee duly executed by the registered holder hereof or his attorney duly authorized in writing. Upon payment of any required tax or other governmental charge and surrender thereof at the principal corporate trust office of the Trustee, this Bond may at the option of the registered Holder hereof, be exchanged for an equal aggregate [principal amount][Accreted Value] of Bonds of any other Authorized Denomination, in the manner and subject to the conditions provided in the Indenture.

**Tennessee Taxation Exemption**



This Bond and the income therefrom are exempt from all present, state, county and municipal taxes in Tennessee except (a) inheritance, transfer and estate taxes, (b) Tennessee excise taxes on interest on this Bond during the period this Bond is held or beneficially owned by any organization or entity, other than a sole proprietorship or general partnership, doing business in the State, and (c) State franchise taxes by reason of the inclusion of the book value of this Bond in the Tennessee franchise tax base of any organization or entity, other than a sole proprietorship or general partnership, doing business in the State.

### **General**

Reference is hereby made to the Indenture, copies of which are on file in the office of the Authority and to all of the provisions of which any holder of this Bond by acceptance hereof thereby assents, for definitions of terms; a description of and the nature and extent of the security for the Bonds issued or to be issued under the Indenture, including this Bond; the revenues, income and other moneys of the Authority pledged to the payment of the interest on and principal of the Bonds and the priorities of the lien of the Bonds on such revenues, income and other moneys; the nature and extent and manner of enforcement of the pledge; the terms and conditions upon which the Bonds are issued; the conditions upon which the Indenture may be amended or supplemented with or without the consent of the holders of the Bonds; the rights and remedies of the Holder hereof with respect hereto; the rights, duties and obligations of the Authority and the Trustee under the Indenture; the terms and provisions upon which the liens, pledges, charges, trusts, assignments and covenants of the Authority made in the Indenture may be discharged at or prior to the maturity or redemption of this Bond, and this Bond thereafter shall no longer be secured by the Indenture or be deemed to be outstanding thereunder, if moneys or certain specified securities shall have been deposited with the Trustee sufficient and held in trust solely for the payment hereof; and for the other terms and provisions thereof.

This Bond shall not be entitled to any benefit under the Indenture or be valid or become obligatory for any purpose until this Bond shall have been authenticated by endorsement, executed by the manual signature of a duly authorized signatory of the Trustee, of the Trustee's certificate of authentication hereon.

It is hereby certified and recited that all conditions, acts and things required by law and the Indenture to exist, to have happened and to have been performed precedent to the issuance of this Bond exist, have happened and have been performed in due time, form and manner as required by law and the Indenture.



04.22.2021 DRAFT

IN WITNESS WHEREOF, as provided by the Act, the NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY OF MEMPHIS AND SHELBY COUNTY, TENNESSEE, has caused this Bond to be executed in its name and on its behalf by the signatures of its President and Secretary, all as of the dated date specified above.

NEW MEMPHIS ARENA PUBLIC  
BUILDING AUTHORITY  
OF MEMPHIS AND SHELBY COUNTY,  
TENNESSEE

By: \_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary



**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the within-mentioned Indenture.

Authentication Date: \_\_\_\_\_, 20\_\_.

REGIONS BANK, as Bond Trustee

By: \_\_\_\_\_  
Authorized Officer





**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

\_\_\_\_\_

(Name and Address of Assignee)

the within Bond and does hereby irrevocably constitute and appoint

\_\_\_\_\_, Attorney, to transfer the said Bond on

the Bond Register thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed: \_\_\_\_\_

**NOTICE:** The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever. Furthermore, such signature must be guaranteed by a member firm of a Medallion Program acceptable to the Bond Trustee.



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This Preliminary Official Statement and any information contained herein are subject to completion and amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of, the Series 2017 Bonds in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

**DAC Bond®**

**PRELIMINARY OFFICIAL STATEMENT DATED [\_\_\_\_\_] , 2021**

**NEW ISSUE - BOOK-ENTRY ONLY**

**RATINGS: See "RATINGS" herein.**

*This cover page contains limited information for quick reference only. It is not a summary of the matters relating to the Series 2021 Bonds (as defined herein). Potential investors must read the entire Official Statement (including the cover page and all appendices attached hereto) to obtain information essential to the making of an informed investment decision.*

**\$\_[\_\_\_\_\_]\***

**NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY  
OF MEMPHIS AND SHELBY COUNTY, TENNESSEE**

**LOCAL GOVERNMENT PUBLIC IMPROVEMENT  
CAPITAL APPRECIATION BONDS  
(CITY OF MEMPHIS PROJECT), SERIES 2021**

**Dated: Date of Delivery** Due: June 1, as shown on the inside front cover page

**Tax Treatment:** *[To be provided by Co-Bond Counsel]*

**Authority for Issuance:** This Official Statement relates to the issuance and sale by the New Memphis Arena Public Building Authority of Memphis and Shelby County, Tennessee (the "Issuer") of the Issuer's \$\_[\_\_\_\_\_] \* Local Government Public Improvement Capital Appreciation Bonds (City of Memphis Project), Series 2021 (the "Series 2021 Bonds"). The Series 2021 Bonds are being issued by the Issuer pursuant to, among other things, that certain Trust Indenture (the "Indenture"), to be dated as of [\_\_\_\_\_] , 2021, between the Issuer and Regions Bank, as Trustee (the "Trustee"). See "SECURITY AND SOURCES OF PAYMENT" herein and "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

**Terminology:** All capitalized terms used in this Official Statement and not otherwise defined herein will have the meanings ascribed to such terms in the Indenture. See "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

**Purpose:** Pursuant to the Indenture, the proceeds of the Series 2021 Bonds will be used to, among other things, provide funds to make a loan

(the "Loan") to the City of Memphis, Tennessee (the "City") pursuant to the Loan Agreement dated as of [\_\_\_\_\_] 2021 (the "Loan Agreement"), between the Issuer and the City. The City will use the proceeds of the Loan, together with other money, to: (i) finance the Costs of various public works projects of the City (collectively the "Project")[, **including interest on the Series 2021 Bonds during construction of the Project and for [two (2) years] after the estimated date of completion of the Project**], and (ii) pay certain expenses incurred in connection with the issuance of Series 2021 Bonds, all as permitted under the provisions of Sections 12-10-101, *et seq.*, of the Tennessee Code Annotated (as the same may from time to time be amended, the "Act"). See "THE PROJECT," "PLAN OF FINANCING" and "ESTIMATED SOURCES AND USES OF FUNDS" herein.

**Book-Entry Only System:** The Series 2021 Bonds will be dated their date of delivery and will be issued only in fully registered form, without coupons, in authorized denominations of \$5,000 or any integral multiple thereof. The Series 2021 Bonds initially will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), which will act as securities depository for the Series 2021 Bonds. Purchases of beneficial ownership interests in the Series 2021 Bonds will be made in book-entry form only and purchasers will not receive physical delivery of certificates representing their beneficial ownership interests in the Series 2021 Bonds unless the book-entry only system is discontinued. See "THE SERIES 2021 BONDS" and "BOOK-ENTRY ONLY SYSTEM" herein.

**Payment Dates:** The Series 2021 Bonds will be payable at the Stated Maturity dates set forth on the inside front cover page of this Official Statement. Interest on the Series 2021 Bonds will not be paid prior to the Stated Maturity of the Series 2021 Bonds, but will accrete from the date of their delivery and be compounded on each June 1 and December 1, commencing [\_\_\_\_\_] 1, 20[\_\_\_\_]\*, and will be payable only at Stated Maturity. The amount of the Series 2021 Bonds payable at each Stated Maturity will be the Accreted Value of such Series 2021 Bonds on such Stated Maturity date. The "Accreted Value" for each Stated Maturity is the total principal and interest as set forth on the inside cover page of this Official Statement and in the Accretion Table for the Series 2021 Bonds set forth in APPENDIX F hereto for such Stated Maturity date. Payments due under the Series 2021 Bonds will be made to purchasers of beneficial interests in the Series 2021 Bonds by DTC Participants (as defined herein). See "THE SERIES 2021

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\* Preliminary, subject to change.

BONDS" herein and "APPENDIX F – ACCRETION TABLE" hereto.

**Security:**

The Series 2021 Bonds are limited obligations of the Issuer payable solely from the revenues and receipts derived from the Loan Agreement pledged to the Series 2021 Bonds, which revenues and receipts are specifically pledged to such purpose in the manner and to the extent provided in the Indenture. Pursuant to the Loan Agreement, the City has pledged its full faith and credit to the payment of obligations under the Loan Agreement in an amount sufficient to pay the Accreted Value of and the premium, if any, on the Series 2021 Bonds when due. The City's payments and prepayments payable to the Issuer under the Loan Agreement (excluding Unassigned Rights) have been assigned by the Issuer to the Trustee as part of the Trust Estate to secure payment of the Series 2021 Bonds. Pursuant to the Indenture, the Trust Estate is pledged to the payment of the Accreted Value of and premium, if any, on the Series 2021 Bonds. See "SECURITY AND SOURCES OF PAYMENT" and "CERTAIN INVESTMENT CONSIDERATIONS" herein and also "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT", "APPENDIX B – GENERAL INFORMATION REGARDING THE CITY OF MEMPHIS, TENNESSEE" and "APPENDIX C – AUDITED FINANCIAL STATEMENTS OF THE CITY OF MEMPHIS, TENNESSEE FOR THE FISCAL YEAR ENDED JUNE 30, 2020" attached hereto.

THE SERIES 2021 BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT TO THE EXTENT THAT THE CITY IS OBLIGATED UNDER THE LOAN AGREEMENT), AND THE SERIES 2021 BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER (EXCEPT TO THE EXTENT THAT THE CITY IS OBLIGATED UNDER THE LOAN AGREEMENT). NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE ACCRETED VALUE OF OR PREMIUM, IF ANY, ON THE SERIES 2021 BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, MORTGAGE, OBLIGATION OR AGREEMENT OF ANY

KIND WHATSOEVER THAT MAY BE UNDERTAKEN BY THE ISSUER (EXCEPT TO THE EXTENT THAT THE CITY IS OBLIGATED UNDER THE LOAN AGREEMENT). NO BREACH BY THE ISSUER OF ANY SUCH PLEDGE, MORTGAGE, OBLIGATION OR AGREEMENT SHALL IMPOSE ANY LIABILITY, PECUNIARY OR OTHERWISE, UPON THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OR ANY CHARGE UPON THEIR GENERAL CREDIT OR TAXING POWER (EXCEPT TO THE EXTENT THAT THE CITY IS OBLIGATED UNDER THE LOAN AGREEMENT). THE ISSUER HAS NO TAXING POWER, AND THE SERIES 2021 BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER.

**Redemption:**

The Series 2021 Bonds are subject to redemption prior to maturity, as described herein. See "THE SERIES 2021 BONDS – Redemption Provisions" herein.

*The Series 2021 Bonds are being offered when, as, and if issued by the Issuer and received by the Underwriters (as defined herein) subject to prior sale and to withdrawal or modification of the offer without notice and subject to the approving opinions of Carpenter Law, PLLC, Memphis, Tennessee, and Butler Snow LLP, Memphis, Tennessee, as Co-Bond Counsel to the City. Certain legal matters will be passed upon for the City by Jennifer Sink, Chief Legal Officer / City Attorney. Certain legal matters will also be passed upon for the City by Bass, Berry & Sims PLC, Nashville, Tennessee, and Bruce Turner, PLLC, Memphis, Tennessee, as Co-Disclosure Counsel. Certain legal matters will be passed upon for the Underwriters by [Underwriter's Counsel Name], Memphis, Tennessee, as Underwriters' Counsel. ComCap Partners, Memphis, Tennessee, and PFM Financial Advisors LLC, Memphis, Tennessee, are serving as Co-Financial Advisors to the City for the issuance of the Series 2021 Bonds. The Series 2021 Bonds are expected to be delivered through the book-entry only system of DTC on or about \_\_\_\_\_, 2021.*

**BofA Securities, Inc.**

**[Insert Co-Manager Names]**

Dated: \_\_\_\_\_, 2021



**MATURITIES, PRINCIPAL AMOUNTS, ACCRETED VALUES,  
PRICES OR YIELDS AND CUSIPS†**

\$[ ]\*

**New Memphis Arena Public Building Authority  
of Memphis and Shelby County, Tennessee**

**Local Government Public Improvement Capital Appreciation Bonds  
(City of Memphis Project), Series 2021**

| <b>Stated Maturity<br/>(June 1)*</b> | <b>Original<br/>Principal<br/>Amount*</b> | <b>Accreted<br/>Value at<br/>Maturity</b> | <b>Yield to<br/>Maturity</b> | <b>Initial CUSIP<br/>No.†</b> |
|--------------------------------------|---|---|------------------------------|-------------------------------|
| 2027                                 | \$  |   |                              |                               |
| 2028                                 |   |   |                              |                               |
| 2029                                 |   |   |                              |                               |
| 2030                                 |   |   |                              |                               |
| 2031                                 |   |   |                              |                               |
| 2032                                 |   |   |                              |                               |
| 2033                                 |   |   |                              |                               |
| 2034                                 |   |   |                              |                               |
| 2035                                 |   |   |                              |                               |
| 2036                                 |   |   |                              |                               |
| 2037                                 |   |   |                              |                               |
| 2038                                 |   |   |                              |                               |
| 2039                                 |   |   |                              |                               |
| 2040                                 |   |   |                              |                               |
| 2041]                                |   |   |                              |                               |

\$[ ]\* Original Principal Amount - \_\_\_% Term Bond, Due [ ] 1, 20[ ]\*,  
Accreted Value at Maturity \$ \_\_\_\_\_ Initial CUSIP No. \_\_\_\_\_

† Copyright, American Bankers Association (the "ABA"). Initial CUSIP data herein are provided by CUSIP Global Services, which is managed on behalf of the ABA by S&P Global Market Intelligence, a division of S&P Global Inc. The CUSIP numbers listed above are being provided solely for the convenience of purchasers of the Series 2021 Bonds only at the time of issuance of the Series 2021 Bonds, and the Issuer makes no representation with respect to such numbers nor undertakes any responsibility for their accuracy now or at any time in the future. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series 2021 Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such maturity or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the Series 2021 Bonds.

\* Preliminary, subject to change.

**NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY  
OF MEMPHIS AND SHELBY COUNTY, TENNESSEE**

**Board of Directors**

**[David Levine, Chairman]**

**CITY OF MEMPHIS, TENNESSEE  
ELECTED OFFICIALS**

**Mayor**

Jim Strickland

**City Council**

Frank Colvett, Jr., Chairman

Jamita Swearengen, Vice Chair

J. Ford Canale

Chase Carlisle

Michalyn Easter-Thomas

Edmund Ford, Sr.

Cheyenne Johnson

Martavious Jones

Rhonda Logan

Worth Morgan

Patrice Robinson

JB Smiley, Jr.

Dr. Jeff Warren

**CONSULTANTS TO THE ISSUER AND THE CITY**

**Co-Bond Counsel to the City**

Carpenter Law, PLLC  
Memphis, Tennessee

Butler Snow LLP  
Memphis, Tennessee

**General Counsel to the Issuer**

Carpenter Law, PLLC  
Memphis, Tennessee

**Co-Disclosure Counsel to the City**

Bruce Turner, PLLC  
Memphis, Tennessee

Bass Berry & Sims PLC  
Nashville, Tennessee

**Co-Financial Advisors to the City**

ComCap Partners  
Memphis, Tennessee

PFM Financial Advisors, LLC  
Memphis, Tennessee

**External Auditors to the City**

Banks, Finley, White & Co.  
Memphis, Tennessee

This Official Statement does not constitute a contract among the Issuer, the City or the Underwriters and any one or more owners of the Series 2021 Bonds, nor does it constitute an offer to sell or the solicitation of an offer to buy the Series 2021 Bonds in any jurisdiction to any person to whom it is unlawful to make such an offer in such jurisdiction.

No dealer, salesman or any other person has been authorized by the Issuer, the City or the Underwriters to give any information or to make any representations, other than those contained in this Official Statement, in connection with the offering of the Series 2021 Bonds, and if given or made, such information or representations must not be relied upon as having been authorized by the Issuer, the City or any other person. The information and expressions of opinion in this Official Statement are subject to change without notice, and this Official Statement speaks only as of its date. Neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create the implication that there has been no change in the matters described herein since the date hereof. Except as otherwise indicated, the information contained in this Official Statement, including in the appendices attached hereto, has been obtained from representatives of the Issuer and the City and from public documents, records and other sources considered to be reliable.

THIS PRELIMINARY OFFICIAL STATEMENT IS IN A FORM DEEMED FINAL BY THE ISSUER FOR PURPOSES OF RULE 15c2-12 ISSUED UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, EXCEPT FOR CERTAIN INFORMATION PERMITTED TO BE OMITTED PURSUANT TO RULE 15c2-12(b)(1).

IN CONNECTION WITH THE OFFERING OF THE SERIES 2021 BONDS, THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2021 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

THE SERIES 2021 BONDS HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR HAS THE INDENTURE BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE SERIES 2021 BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF THE SECURITIES LAWS OF THE STATES, IF ANY, IN WHICH THE SERIES 2021 BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN CERTAIN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE SERIES 2021 BONDS OR THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

In making an investment decision, investors must rely on their own examination of the Issuer, the City and the terms of the offering, including the merits and risks involved. The Series 2021 Bonds have not been recommended by any federal or state securities commission or regulatory authority. Any representation to the contrary may be a criminal offense.

The order and placement of information in this Official Statement, including the appendices attached hereto, are not an indication of relevance, materiality or relative importance and this Official Statement, including the appendices attached hereto, must be read in its entirety. The captions and headings in this Official Statement are for convenience only and in no way define, limit or describe the scope or intent, or affect the meaning or construction, of any provision or section in this Official Statement.

References to website addresses presented herein, if any, are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such websites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for any purpose, including for purposes of Rule 15c2-12 promulgated by the Securities and Exchange Commission.

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## OFFICIAL STATEMENT

relating to

\$[ ]\*

### NEW MEMPHIS ARENA PUBLIC BUILDING AUTHORITY OF MEMPHIS AND SHELBY COUNTY, TENNESSEE

### LOCAL GOVERNMENT PUBLIC IMPROVEMENT CAPITAL APPRECIATION BONDS (CITY OF MEMPHIS PROJECT), SERIES 2021

## INTRODUCTION

### General

The purpose of this Official Statement, which includes the cover page and the appendices attached hereto, is to provide certain information in connection with the issuance and sale by the New Memphis Arena Public Building Authority of Memphis and Shelby County, Tennessee (the "Issuer") of its \$[ ]\* Local Government Public Improvement Capital Appreciation Bonds (City of Memphis Project), Series 2021 (the "Series 2021 Bonds"), pursuant to, among other things, that certain Trust Indenture (the "Indenture"), to be dated as of [ ], 2021, between the Issuer and Regions Bank, as Trustee (the "Trustee"). The proceeds of the Series 2021 Bonds will be loaned by the Issuer to the City pursuant to that certain Loan Agreement to be dated as of [ ], 2021, between the City and the Issuer (the "Loan Agreement"). See "SECURITY AND SOURCES OF PAYMENT" herein and "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

*This introduction is not a summary of this Official Statement and is intended only for quick reference. It is only a brief description of and guide to, and is qualified in its entirety by reference to, the more complete and detailed information contained in the entire Official Statement, including the cover page and the appendices attached hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement and of the documents summarized or described herein, if necessary. The offering of the Series 2021 Bonds to potential investors is made only by means of the entire Official Statement, including the appendices attached hereto. No person is authorized to detach this Introduction from this Official Statement or to otherwise use it without the entire Official Statement, including the appendices attached hereto.*

All capitalized terms used herein and not otherwise expressly defined herein shall have the respective meanings set forth in "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND

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\* Preliminary, subject to change.

## SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

### **The Issuer**

The Issuer is a public nonprofit corporation organized under the laws of the State of Tennessee (the "State") created under the provisions of Sections 12-10-101, *et seq.*, of the Tennessee Code Annotated (as the same may from time to time be amended, the "Act"). The Issuer was created pursuant to State law by the City of Memphis (the "City") and Shelby County (the "County") for the original purpose of acquiring, constructing, equipping, leasing, and disposing of the FedEx Forum Arena Complex, the area's downtown arena. Pursuant to the Act, the Issuer is also authorized to issue and sell its bonds for the purpose of financing, acquiring, erecting, extending, improving, equipping or repairing any project (as defined in the Act), including related expenses, and for any other authorized purpose under the Act. The Issuer's board of directors consists of no more than fifteen members who are duly qualified electors of the City and the County. Board member terms are staggered, and except where otherwise necessary to provide for staggered terms, each term is for six years. All members are jointly appointed by the City Mayor and the County Mayor, and confirmed by both the Memphis City Council and the Shelby County Commission. See "THE ISSUER" herein.

### **The City**

The City is a municipal corporation organized under the laws of the State. The City is located on the east bank of the Mississippi River in the southwest corner of the State. The City is the State's largest city not having a metropolitan form of government and is the county seat of the County. For information regarding the economics, demographics and governance of the City, see "THE CITY" herein. See also "APPENDIX B – GENERAL INFORMATION REGARDING THE CITY OF MEMPHIS, TENNESSEE" and "APPENDIX C – AUDITED FINANCIAL STATEMENTS OF THE CITY OF MEMPHIS, TENNESSEE FOR THE FISCAL YEAR ENDED JUNE 30, 2020" attached hereto.

### **Authority for Issuance**

The Series 2021 Bonds are being issued in accordance with the provisions of the Act, the Indenture, and resolutions adopted and approved by the Issuer and the City, authorizing, among other things, the execution and delivery of the Indenture and the Loan Agreement and the issuance and sale of the Series 2021 Bonds. See "THE SERIES 2021 BONDS – Authority for Issuance" herein.

### **Purpose of the Series 2021 Bonds**

The proceeds of the Series 2021 Bonds will be loaned to the City and will be used to: (i) finance the Costs of various public works projects of the City (collectively the "Project")], **including interest on the Series 2021 Bonds during construction of the Project and for [two (2) years] after the estimated date of completion of the Project]**, and (ii) pay certain expenses incurred in connection with the issuance of Series 2021 Bonds, all as permitted under the provisions of the Act. See "THE PROJECT," "PLAN OF FINANCING" and "ESTIMATED SOURCES AND USES OF FUNDS" herein.



## **Description of the Series 2021 Bonds**

The Series 2021 Bonds will be dated their date of delivery, be issued in the Original Principal Amount for each Stated Maturity and have the Accreted Value at Maturity, all as set forth on the inside cover page of this Official Statement. The Series 2021 Bonds will be issued as capital appreciation bonds paying no current interest but accreting in value at an interest rate which, when applied to the Original Principal Amount of the Series 2021 Bonds issued for each Stated Maturity and compounded semiannually on each June 1 and December 1 (an "Interest Payment Date"), produces a total Accreted Value for such Stated Maturity as shown on the inside cover of this Official Statement. The Accreted Value of the Series 2021 Bonds shall be payable in lawful money of the United States of America at their Stated Maturity. In calculating the Accreted Value of the Series 2021 Bonds, interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

The Accreted Value of any Series 2021 Bond on any date shall be computed in accordance with the applicable Accretion Table set forth in "APPENDIX F – ACCRETION TABLE." The Accreted Value for any Series 2021 Bond with respect to any date other than a date stated in the Accretion Table shall be determined conclusively by the Underwriter by interpolating such Accreted Value, using the straight line method, by reference to the Accreted Value for the date listed in the Accretion Table which is immediately prior to and immediately subsequent to such date, and the number of calendar days elapsed since the date listed which is immediately prior to such date. All references herein (i) to interest on any Series 2021 Bond shall, unless the context clearly indicates otherwise, refer to the excess of the Accreted Value over the Original Principal Amount of such Series 2021 Bond, as of any relevant date; (ii) to principal of the Series 2021 Bonds, shall be construed to mean the Original Principal Amount thereof; and (iii) to principal of and accrued interest on the Series 2021 Bonds, or words of similar import, shall be construed to mean the Accreted Value of the Series 2021 Bonds as of the relevant date.

The Series 2021 Bonds will be issued only in fully registered form, without coupons, in authorized denominations of \$5,000 or any integral multiple thereof and initially will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), which will act as securities depository for the Series 2021 Bonds. Purchases of beneficial ownership interests in the Series 2021 Bonds will be made in book-entry form only and purchasers will not receive physical delivery of certificates representing their beneficial ownership interests in the Series 2021 Bonds unless the book-entry only system is discontinued. See "BOOK-ENTRY ONLY SYSTEM" herein.

The Series 2021 Bonds are subject to redemption prior to maturity as more fully described herein. See "THE SERIES 2021 BONDS - Redemption Provisions" herein.

For a more complete description of the Series 2021 Bonds, see "THE SERIES 2021 BONDS" herein.

## **Security and Sources of Payment**

The Series 2021 Bonds are not general obligations of the Issuer but are limited obligations of the Issuer payable solely from the revenues and receipts derived from the Loan Agreement

pledged to the Series 2021 Bonds, which revenues and receipts are specifically pledged to such purpose in the manner and to the extent provided in the Indenture and in the Loan Agreement. The Series 2021 Bonds and interest thereon shall not be deemed to constitute a debt or a pledge of the full faith and credit of the Issuer or the State or any political subdivision thereof (except to the extent that the City is obligated under the Loan Agreement). The Issuer shall not be obligated to pay the Accreted Value of or premium, if any, on the Series 2021 Bonds or other costs incident thereto except from the revenues and receipts pledged therefor, and neither the full faith and credit nor the taxing power, if any, of the Issuer or the State or any political subdivision thereof (except to the extent that the City is obligated under the Loan Agreement) is pledged to the payment of the Accreted Value of and premium, if any, on the Series 2021 Bonds or other costs incident thereto. The Issuer has no taxing power. Payment of the Series 2021 Bonds is not secured by a mortgage lien or other security interests in the Project or any portion thereof or any other assets of the Issuer or the City other than the Trust Estate.

The City has pledged its full faith and credit to the payment of its obligations under the Loan Agreement in an amount sufficient to pay the Accreted Value of and premium, if any, on the Series 2021 Bonds when due.

See "SECURITY AND SOURCES OF PAYMENT" and "CERTAIN INVESTMENT CONSIDERATIONS" herein and "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT", "APPENDIX B – GENERAL INFORMATION REGARDING THE CITY OF MEMPHIS, TENNESSEE" and "APPENDIX C – AUDITED FINANCIAL STATEMENTS OF THE CITY OF MEMPHIS, TENNESSEE FOR THE FISCAL YEAR ENDED JUNE 30, 2020" attached hereto.

THE SERIES 2021 BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT TO THE EXTENT THAT THE CITY IS OBLIGATED UNDER THE LOAN AGREEMENT), AND THE SERIES 2021 BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER (EXCEPT TO THE EXTENT THAT THE CITY IS OBLIGATED UNDER THE LOAN AGREEMENT). NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE ACCRETED VALUE OF OR PREMIUM, IF ANY, ON THE SERIES 2021 BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, MORTGAGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER THAT MAY BE UNDERTAKEN BY THE ISSUER (EXCEPT TO THE EXTENT THAT THE CITY IS OBLIGATED UNDER THE LOAN AGREEMENT). NO BREACH BY THE ISSUER OF ANY SUCH PLEDGE, MORTGAGE, OBLIGATION OR AGREEMENT SHALL IMPOSE ANY LIABILITY, PECUNIARY OR OTHERWISE, UPON THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OR ANY CHARGE UPON THEIR GENERAL CREDIT OR TAXING POWER (EXCEPT TO THE EXTENT THAT THE CITY IS OBLIGATED UNDER THE LOAN AGREEMENT). THE ISSUER HAS NO TAXING POWER, AND THE SERIES 2021 BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER.

See "SECURITY AND SOURCES OF PAYMENT" and "CERTAIN INVESTMENT CONSIDERATIONS" herein and "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

### **Trustee, Paying Agent and Registrar**

Regions Bank, Nashville, Tennessee, will serve as Trustee and as paying agent and registrar for the Series 2021 Bonds (the "Paying Agent and Registrar").

### **Continuing Disclosure**

The Issuer has determined that no financial or operating data concerning the Issuer is material to any decision to purchase, hold, or sell the Series 2021 Bonds, and the Issuer will not provide any such information. The City will undertake all responsibility for providing continuing disclosure with respect to the Series 2021 Bonds, and the Issuer will have no liability to the holders of the Series 2021 Bonds or any other person with respect to the obligations undertaken by the City under the Disclosure Agreement (as defined herein).

In order to assist the Underwriters (as defined herein) in complying with Rule 15c2-12(b)(5) of the Securities and Exchange Commission (the "SEC") promulgated pursuant to the Securities Exchange Act of 1934, as in effect on the date hereof (the "Rule"), simultaneously with the issuance of the Series 2021 Bonds, the City will enter into a Continuing Disclosure Agreement (the "Disclosure Agreement") with Digital Assurance Certification, L.L.C. ("DAC") for the benefit of the Beneficial Owners (as defined herein), under which the City will provide continuing disclosure with respect to the Series 2021 Bonds. The City has designated DAC as the initial disclosure dissemination agent in the Disclosure Agreement. The annual continuing disclosure report and notices of certain enumerated events (as described in the Disclosure Agreement) will be filed by DAC, on behalf of the City, with the repository designated by the SEC, presently the Municipal Securities Rulemaking Board (the "MSRB"), through the Electronic Municipal Market Access system ("EMMA") in an electronic format prescribed by the MSRB. See "CONTINUING DISCLOSURE" herein and "APPENDIX D – FORM OF CONTINUING DISCLOSURE AGREEMENT" attached hereto.

### **Other Information**

This Official Statement speaks only as of its date, and the information contained herein is subject to change.

This Official Statement and the appendices attached hereto contain brief descriptions of, among other matters, the Issuer, the City, the Series 2021 Bonds, the security and sources of payment for the Series 2021 Bonds, the Indenture, the Loan Agreement and the Disclosure Agreement. Such descriptions and information do not purport to be comprehensive or definitive. The summaries of various constitutional provisions, statutes, the Indenture, the Loan Agreement, the Series 2021 Bonds, the Disclosure Agreement and other documents are intended as summaries only and are qualified in their entirety by reference to such documents. References herein to the Series 2021 Bonds are qualified in their entirety to the form thereof included in the Indenture. Copies of the Indenture, the Loan Agreement, the Disclosure Agreement and other relevant

documents and information are available, upon written request and payment of a charge for copying, mailing and handling, from Mr. André D. Walker, Deputy Chief Financial Officer of the City, 125 North Main Street, Room 368, Memphis, Tennessee 38103, (901) 636-6324.

### THE ISSUER

The Issuer was created by the City and the County as a public building authority under the Act for the original purpose of acquiring, constructing, equipping, leasing, and disposing of the FedEx Forum Arena Complex. Under the Act, public building authorities may, among other things, acquire, improve, operate and manage a wide variety of projects. Pursuant to the Act, the Issuer is also authorized to issue and sell its bonds for the purpose of financing various projects, including related expenses, and for any other authorized purpose under the Act.

The Issuer's board of directors consists of no more than fifteen members who are duly qualified electors of the City and the County, one of whom shall be a State senator and one of whom shall be a State representative. Director terms are staggered, and except where otherwise necessary to provide for staggered terms, each term is for six years. All directors are jointly appointed by the City Mayor and the County Mayor and confirmed by both the Memphis City Council and the Shelby County Commission. Pursuant to the Act, directors serve without compensation, except that they shall be reimbursed for their actual expenses in and about the performance of their duties.

The present members of the board of directors of the Issuer and their respective offices are as follows:

| <b>Name</b>          | <b>Office</b>    |
|----------------------|------------------|
| <b>[David Levine</b> | <b>Chairman]</b> |

Except for the information contained under the captions "THE ISSUER" and "LITIGATION - The Issuer," the Issuer has not provided any of the information contained in this Official Statement. The Issuer is not responsible for and does not certify as to the accuracy or sufficiency of the disclosures made herein or any other information provided by the City or any other person. While the Issuer has no reason to believe that such information is incomplete or inaccurate, the Issuer has not independently investigated or confirmed the accuracy or completeness thereof. The Issuer makes no representation or warranty whatsoever concerning the

creditworthiness of the City and no such representation or warranty is to be inferred from the issuance of the Series 2021 Bonds or the other transactions described or contemplated herein. The Issuer's role is limited to the issuance of the Series 2021 Bonds.

Neither the members of the board of directors of the Issuer nor any person executing the Series 2021 Bonds are liable personally on the Series 2021 Bonds by reason of the issuance thereof.

The Issuer has no taxing power.

## THE CITY

The City is located on the east bank of the Mississippi River in the southwest corner of the State. The City is the State's largest city not having a metropolitan form of government and is the county seat of the County. The City currently occupies a land area of approximately 315 square miles and has an estimated population of 651,073, according to the 2020 Comprehensive Annual Financial Report of the City (the "2020 Audited Financial Statements").

The City was incorporated as a city in 1826. The City operated under a commission form of government from 1909 until January 1, 1968. At that time, a mayor-council form of government was established. The City Council is composed of thirteen representative citizens who are elected for four-year terms. Six council members are elected at large in multi-member districts, the territorial boundaries of which are determined by dividing the City in half with each multi-member district having three council member numbered positions. Single member districts, numbered 1-7, elect the remaining seven council members. The City Council elects its own chairperson, exercises legislative powers, approves budgets and establishes the tax rate. The Mayor is elected to a four-year term. The Mayor carries out the policies of the City and, with City Council approval, appoints City board members, officers and division directors. The Mayor may veto an action of the City Council, but a simple majority can override any veto.

The current fiscal year of the City is the 12-month period beginning on July 1 and ending on June 30 (a "Fiscal Year").

For additional information regarding the City, see "APPENDIX B – GENERAL INFORMATION REGARDING THE CITY OF MEMPHIS, TENNESSEE" and "APPENDIX C – AUDITED FINANCIAL STATEMENTS OF THE CITY OF MEMPHIS, TENNESSEE FOR THE FISCAL YEAR ENDED JUNE 30, 2020" attached hereto.

## PLAN OF FINANCING

The proceeds of the Series 2021 Bonds will be loaned to the City and will be used to: (i) finance the Costs of various public works projects of the City (collectively the "Project") [including interest on the Series 2021 Bonds during construction of the Project and for [two (2) years] after the estimated date of completion of the Project,] and (ii) pay certain expenses incurred in connection with the issuance of Series 2021 Bonds, all as permitted under the Act. See "ESTIMATED SOURCES AND USES OF FUNDS" herein.

## ESTIMATED SOURCES AND USES OF FUNDS

The proceeds of the Series 2021 Bonds are expected to be applied as follows:

**Sources:**

|  |    |
|--|----|
| Par Amount of Series 2021 Bonds              | \$ |
| [Net] Original Issue Discount / Bond Premium | \$ |
| Total Sources:                               | \$ |

**Uses:**

|  |    |
|--|----|
| <b>[Deposit to Interest Account to pay capitalized interest]</b> | \$ |
| Deposit to Loan Fund to pay Costs of the Project                 | \$ |
| Costs of Issuance <sup>(1)</sup>                                 | \$ |
| Total Uses:  | \$ |

<sup>(1)</sup> Includes, without limitation, the Underwriters' discount, legal and advisory fees, printing costs and other costs associated with the issuance of the Series 2021 Bonds.

## THE SERIES 2021 BONDS

### Authority for Issuance

The Series 2021 Bonds are being issued by the Issuer pursuant to, among other things, the Act and the Indenture. See "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

### General Description of the Series 2021 Bonds

The Series 2021 Bonds will be dated their date of delivery, be issued in the Original Principal Amount for each Stated Maturity and have the Accreted Value at Maturity, all as set forth on the inside cover page of this Official Statement. The Series 2021 Bonds will be issued as capital appreciation bonds paying no current interest but accreting in value at an interest rate which, when applied to the Original Principal Amount of the Series 2021 Bonds issued for each Stated Maturity and compounded semiannually on an Interest Payment Date, produces a total Accreted Value for such Stated Maturity as shown on the inside cover of this Official Statement. The Accreted Value of the Series 2021 Bonds shall be payable in lawful money of the United States of America at their Stated Maturity. In calculating the Accreted Value of the Series 2021 Bonds, interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

The Accreted Value of any Series 2021 Bond on any date shall be computed in accordance with the applicable Accretion Table set forth in "APPENDIX F – ACCRETION TABLE." The Accreted Value for any Series 2021 Bond with respect to any date other than a date stated in the Accretion Table shall be determined conclusively by the Underwriter by interpolating such Accreted Value, using the straight line method, by reference to the Accreted Value for the date listed in the Accretion Table which is immediately prior to and immediately subsequent to such

date, and the number of calendar days elapsed since the date listed which is immediately prior to such date.

The Series 2021 Bonds are subject to redemption prior to maturity. For a discussion of applicable redemption provisions, see "THE SERIES 2021 BONDS – Redemption Provisions" herein.

The Series 2021 Bonds will be issued only in fully registered form, without coupons, in authorized denominations of \$5,000 or any integral multiple thereof and initially will be registered in the name of Cede & Co., as nominee of DTC, which will act as securities depository for the Series 2021 Bonds. Purchases of beneficial ownership interests in the Series 2021 Bonds will be made in book-entry form only and purchasers will not receive physical delivery of certificates representing the beneficial ownership interests in the Series 2021 Bonds unless the book-entry only system is discontinued. Transfers of ownership interests in the Series 2021 Bonds will be accomplished by book entries made by DTC and, in turn, by the DTC Participants who act on behalf of the indirect participants of DTC and the Beneficial Owners (as defined herein) of the Series 2021 Bonds.

Unless the City and the Paying Agent and Registrar agree otherwise, so long as DTC or its nominee is the registered owner of the Series 2021 Bonds at such securities depository, payments due under the Series 2021 Bonds will be made by wire transfer to DTC or its nominee, Cede & Co., as registered owner of the Series 2021 Bonds, which will in turn remit such payments to the DTC Participants for subsequent disbursement to the Beneficial Owners of the Series 2021 Bonds. Transfers of such payments to DTC Participants will be the responsibility of DTC. Transfers of such payments to Beneficial Owners of the Series 2021 Bonds by DTC Participants will be the responsibility of such participants and other nominees of such Beneficial Owners. If the book-entry only system is discontinued, the Series 2021 Bonds will be delivered as described in the Indenture, the Beneficial Owners or their nominees will become the registered owners of the Series 2021 Bonds and interest on the Series 2021 Bonds will be payable and ownership of the Series 2021 Bonds may be transferred as described in the Indenture. See "BOOK-ENTRY ONLY SYSTEM" herein.

## **Redemption Provisions**

Optional Redemption\*. [To be inserted.]

Mandatory Sinking Fund Redemption. [To be inserted.]

Partial Redemption. If less than all the Series 2021 Bonds are to be redeemed, the particular Series 2021 Bonds or portions thereof to be redeemed shall be selected by the Trustee by lot or in such other manner as the Trustee shall deem fair, which shall be deemed to include pro rata redemption of Series 2021 Bonds within each Stated Maturity and mandatory sinking fund payments, and which may provide for the selection for redemption of portions (equal to Authorized Denominations) of the principal of Series 2021 Bonds; provided that after any partial redemption of the Series 2021 Bonds, all Series 2021 Bonds that remain Outstanding shall be in Authorized

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\* Preliminary, subject to change.

Denominations. No portion of a Series 2021 Bond may be redeemed that would result in a Series 2021 Bond having a principal amount that is less than the minimum Authorized Denomination.

*Notice of Redemption.* The Trustee shall cause notice of the call for any such redemption identifying the Series 2021 Bonds to be redeemed to be sent not less than 30 days or more than 60 days prior to the Redemption Date by first-class mail postage prepaid, to the Owner of each such Series 2021 Bond to be redeemed at her or his address as it appears on the registration books of the Trustee. Failure to give any notice specified herein or any defect in any such notice, shall not affect the validity of any proceedings for the redemption of any Series 2021 Bonds with respect to which no such failure has occurred. Any notice mailed as provided herein shall conclusively be presumed to have been given whether or not actually received by any Holder. All Series 2021 Bonds called for redemption shall cease to bear interest on the specified Redemption Date, provided funds for their redemption are on deposit at the place of payment on the date fixed for redemption.

If at the time of the giving of any notice of optional or mandatory redemption there shall not be on deposit with the Trustee moneys sufficient to redeem all the Series 2021 Bonds called for redemption, the notice of redemption shall state that the redemption of such Series 2021 Bonds is conditional upon and subject to deposit of moneys with the Trustee sufficient to redeem all such Series 2021 Bonds not later than the opening of business on the Redemption Date, and that such notice shall be of no effect if such moneys are not on deposit.

### **Registration and Transfer Provisions**

The Issuer shall cause books for the registration of the Series 2021 Bonds and for the registration of transfer of the Series 2021 Bonds as provided in the Indenture to be kept by the Trustee, which is constituted and appointed the bond registrar for the Series 2021 Bonds. Pursuant to the Indenture, the Trustee agrees to keep such books for registration of the Series 2021 Bonds and for registration of transfer of the Series 2021 Bonds.

Subject to the express limitations contained in the Indenture, any Holder of a Series 2021 Bond, in person or by her or his duly authorized attorney, may register the transfer of such Bond on the Bond Register, upon surrender thereof at the principal corporate trust office of the Trustee, together with a written instrument of transfer executed by the Holder or the Holder's duly authorized attorney. Upon surrender for registration of transfer of any Series 2021 Bond, the Authority shall execute and the Trustee shall authenticate and deliver in the name of the designated transferee or transferees a new Series 2021 Bond or Series 2021 Bonds of the same Stated Maturity, aggregate principal amount and tenor as the Series 2021 Bond surrendered and of any Authorized Denomination.

Series 2021 Bonds may be exchanged at the principal corporate trust office of the Trustee for a like aggregate Accreted Value of Series 2021 Bonds of the same Stated Maturity, interest rate, and tenor as the Series 2021 Bonds being exchanged and of any Authorized Denomination. The Issuer shall execute and the Trustee shall authenticate and deliver Series 2021 Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously then Outstanding.



Such registrations of transfers or exchanges of Series 2021 Bonds shall be without charge to the Holders of such Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Holder of the Series 2021 Bond requesting such registration of transfer or exchange as a condition precedent to the exercise of such privilege. The Trustee shall not be required (i) to transfer or exchange any Series 2021 Bond during the period from a Record Date to an Interest Payment Date or from the Business Day prior to a Special Record Date to the date for payment of Defaulted Interest, or (ii) to make any exchange or registration of transfer of any Series 2021 Bonds called for redemption in whole or in part.

The Person in whose name any Series 2021 Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of, or on account of, either principal or interest shall be made only to or upon the order of such Person or her or his duly authorized attorney, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2021 Bond to the extent of the sum or sums so paid.

All Series 2021 Bonds issued upon any transfer or exchange of Series 2021 Bonds shall be the valid and binding limited obligations of the Issuer, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Series 2021 Bonds surrendered upon such transfer or exchange.

### **BOOK-ENTRY ONLY SYSTEM**

The information in this section concerning DTC and DTC's book-entry system has been obtained from DTC and the Issuer does not make any representation or warranty or take any responsibility for the accuracy or completeness of such information.

DTC will act as securities depository for the Series 2021 Bonds. The Series 2021 Bonds will be issued as fully-registered securities registered in the name of Cede & Co., DTC's partnership nominee, or such other name as may be requested by an authorized representative of DTC. One fully-registered Series 2021 Bond certificate will be issued for each maturity of the Series 2021 Bonds as set forth on the inside front cover page of this Official Statement, each in the Original Principal Amount of such maturity, and will be deposited with DTC.

DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for U.S. and non-U.S. equity issues, corporate and municipal debt issues and money market instruments that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between accounts of Direct Participants. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly-owned

subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants" and, together with the Direct Participants, the "DTC Participants"). The DTC Rules applicable to its Participants are on file with the SEC. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Series 2021 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2021 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2021 Bond (a "Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2021 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2021 Bonds, except in the event that use of the book-entry system for the Series 2021 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2021 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2021 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2021 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2021 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Series 2021 Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2021 Bonds, such as redemptions, tenders, defaults, and proposed amendments to the security documents. For example, Beneficial Owners of Series 2021 Bonds may wish to ascertain that the nominee holding the Series 2021 Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Series 2021 Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such series or maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2021 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Series 2021 Bonds are credited on the record date, as identified in a listing attached to the Omnibus Proxy.

Payments of the Accreted Value of and premium, if any, on the Series 2021 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer or the Paying Agent and Registrar on the payment date in accordance with their respective holdings shown on DTC's records. Payments by Direct Participants or Indirect Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Direct Participant or Indirect Participant and not of DTC, the Paying Agent and Registrar or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, premium, if any, and interest on the Series 2021 Bonds, as applicable, to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer and/or the Paying Agent and Registrar, disbursement of such payments to Direct Participants will be the responsibility of DTC and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct Participants and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Series 2021 Bonds at any time by giving reasonable notice to the Issuer or the Paying Agent and Registrar. Under such circumstances, in the event that a successor depository is not obtained, Series 2021 Bonds certificates are required to be printed and delivered.

The Issuer may decide to discontinue use of the system of book-entry only transfers through DTC (or a successor securities depository). In that event, Series 2021 Bonds certificates will be printed and delivered to the Holders of the Series 2021 Bonds.

THE ABOVE INFORMATION CONCERNING DTC AND DTC'S BOOK-ENTRY SYSTEM HAS BEEN OBTAINED FROM SOURCES THAT THE ISSUER AND THE UNDERWRITERS BELIEVE TO BE RELIABLE, BUT THE ISSUER AND THE UNDERWRITERS TAKE NO RESPONSIBILITY FOR THE ACCURACY THEREOF. NEITHER THE ISSUER NOR THE PAYING AGENT AND REGISTRAR WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DIRECT PARTICIPANTS, INDIRECT PARTICIPANTS, BENEFICIAL OWNERS OR OTHER NOMINEES OF SUCH BENEFICIAL OWNERS FOR (A) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT; (B) DISTRIBUTION OF CERTIFICATES REPRESENTING AN OWNERSHIP INTEREST OR OTHER CONFIRMATION OF BENEFICIAL OWNERSHIP INTERESTS IN THE SERIES 2021

BONDS; (C) THE PAYMENT BY DTC OR BY ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE ACCRETED VALUE OR REDEMPTION OR PURCHASE PRICE OF ANY SERIES 2021 BONDS; (D) THE DELIVERY OF ANY NOTICE BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT; (E) THE ELECTION OF THE DIRECT PARTICIPANTS, THE INDIRECT PARTICIPANTS OR THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE SERIES 2021 BONDS; OR (F) ANY CONSENT GIVEN OR ANY OTHER ACTION TAKEN BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT.

So long as Cede & Co. is the registered owner of the Series 2021 Bonds, as nominee for DTC, references herein to the registered owners of the Series 2021 Bonds shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Series 2021 Bonds.

## SECURITY AND SOURCES OF PAYMENT

### General

The Series 2021 Bonds are limited obligations of the Issuer secured by an assignment and pledge of the Trust Estate, consisting primarily of the payments and prepayments payable by the City under and pursuant to the Loan Agreement. Pursuant to the Loan Agreement, the City has pledged its full faith and credit to the payment of its obligations under the Loan Agreement in an amount sufficient to pay the Accreted Value of and the premium, if any, on the Series 2021 Bonds when due.

See "CERTAIN INVESTMENT CONSIDERATIONS" herein and "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT", "APPENDIX B – GENERAL INFORMATION REGARDING THE CITY OF MEMPHIS, TENNESSEE" and "APPENDIX C – AUDITED FINANCIAL STATEMENTS OF THE CITY OF MEMPHIS, TENNESSEE FOR THE FISCAL YEAR ENDED JUNE 30, 2020" attached hereto.

All moneys received by the Trustee with respect to the Loan Agreement or the Series 2021 Bonds, (a) as provided to be held and applied under the Indenture (other than the Additional Payments Account of the Bond Fund and the Rebate Fund), or required to be paid to the Trustee and whose disposition is not otherwise specifically provided for in the Indenture, including but not limited to the investment income of all Trust Funds held by the Trustee under the Indenture; or (b) as payments under the Loan Agreement (except for the right to receive payment of certain expenses and attorney's fees, to receive notices and certain other documents, to indemnification, and to receive amounts payable in reimbursement for certain payment of fees (the "Unassigned Rights") (collectively, the "Trust Moneys") shall be held by the Trustee as a part of the Trust Estate for the Series 2021 Bonds to which the Loan Agreement is pledged, as and to the extent provided in the Indenture, and, upon the exercise by the Trustee of any remedy specified in the Indenture, such Trust Moneys shall be applied in accordance with the Indenture, except to the extent that the Trustee is holding in trust moneys and/or Government Obligations for the payment of any specified Series 2021 Bonds which are no longer deemed to be Outstanding under the provisions of the

Indenture, which moneys and/or Government Obligations shall be applied only as provided in the Indenture.

**The Series 2021 Bonds, are not general obligations of the Issuer but are limited obligations of the Issuer payable solely from the revenues and receipts derived from the Loan Agreement pledged to the Series 2021 Bonds, which revenues and receipts are specifically pledged to such purpose in the manner and to the extent provided in the Indenture. The Series 2021 Bonds and interest thereon shall not be deemed to constitute a debt or a pledge of the full faith and credit of the Issuer, the State, or any political subdivision thereof (except to the extent that the City is obligated under the Loan Agreement). The Issuer shall not be obligated to pay the Accreted Value of or premium, if any, on the Series 2021 Bonds or other costs incident thereto except from the revenues and receipts pledged therefor, and neither the full faith and credit nor the taxing power, if any, of the Issuer, the State, or any political subdivision thereof (except to the extent that the City is obligated under the Loan Agreement) is pledged to the payment of the Accreted Value of or premium, if any, on the Series 2021 Bonds or other costs incident thereto. The Issuer has no taxing power, and the Series 2021 Bonds do not now and shall never constitute a charge against the general credit of the Issuer. Payment of the Series 2021 Bonds is not secured by a mortgage lien or other security interests in the Project or any portion thereof or any other assets of the Issuer or the City other than the Trust Estate.**

In the case of a Loan Default by the City under the Loan Agreement consisting of the failure to timely make Loan Repayments, and upon receipt of indemnity satisfactory to it for its fees and expenses, the Trustee is authorized by the Indenture to take all actions to enforce the remedies of the Issuer set forth in the Loan Agreement.

See "CERTAIN INVESTMENT CONSIDERATIONS" herein and "APPENDIX A DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

### **Trust Estate**

Pursuant to the Indenture and for the purpose of securing the payment of the Series 2021 Bonds and the performance of all covenants and conditions therein contained, the Issuer grants to the Trustee, and its successors in trust, a lien on and a security interest in the following described property, rights, privileges and interests with respect to the Series 2021 Bonds (which, collectively, are hereinafter referred to as the "Trust Estate"):

(a) All right, title and interest and privilege of the Issuer now owned or hereafter acquired in, to and under the Loan Agreement and any agreement supplementing, extending or modifying the same, including, without limitation, all present and future rights of the Issuer to make claim for, collect and receive Loan Repayments and any other income, revenues, issues, profits, insurance proceeds and other sums of money payable to or for the account of or receivable by the Issuer under the Loan Agreement (whether payable pursuant to the Loan Agreement or otherwise), to bring actions and proceedings under the Loan Agreement or for the enforcement thereof, to pursue the remedies provided in the Loan Agreement upon the occurrence of an event

of default thereunder, and to do any and all things that the Issuer is or may become entitled to do under the Loan Agreement, but excluding the Unassigned Rights;

(b) All monies and securities (including the investment income therefrom) held by the Trustee in any of the funds or accounts established under the Indenture (except the Additional Payments Account of the Bond Fund and the Rebate Fund), subject, however, to the application thereof to the uses and in the manner set forth in the Indenture; and

(c) All property which is by the express provisions of the Indenture required to be subject to the lien thereof and any additional property that may, from time to time, by delivery or by writing of any kind, be subjected to the lien thereof, by the Issuer or by anyone on its behalf, for the benefit of Owners of the Bonds thereunder, and the Trustee is authorized to receive the same at any time as additional security thereunder.

### **Priority of Right, Lien and Privilege under the Indenture**

The Series 2021 Bonds rank and have a right of payment from the Trust Estate equal to each other.

### **Flow of Funds Under the Indenture**

All Trust Moneys, including but not limited to payments to be received by the Trustee under the Loan Agreement (excluding the Unassigned Rights), will be held by the Trustee as part of the Trust Estate pursuant to the terms of the Indenture until disbursed as provided therein. **[Pursuant to the assignment and pledge of payments under the Loan Agreement set forth in the Indenture, the Issuer will direct the City to make such payments to the Trustee when and as the same become due and payable by the City under the Loan Agreement.]**

Under the Indenture, there is established with the Trustee a special trust fund known as the "Bond Fund." There shall be established within the Bond Fund: a Principal Account, an Interest Account and an Additional Payments Account, which Fund and Accounts are more fully described as follows:

(a) *Principal Account.* There shall be credited to the Principal Account, as and when received, each Loan Repayment representing a payment of principal under the Loan Agreement, including the Optional Prepayment Price, received by the Trustee under and pursuant to any of the provisions of the Indenture or the Loan Agreement which is required, or which is accompanied by directions that such payment is, to be credited to the Bond Fund. All income derived from the investment of such amounts as realized shall be transferred to the Additional Payments Account.

(b) *Interest Account.* There shall be credited to the Interest Account, as and when received, each Loan Repayment representing a payment of interest, including capitalized interest, under the Loan Agreement received by the Trustee under and pursuant to any of the provisions of the Indenture or the Loan Agreement. Any funds remaining in the Interest Account after a Maturity Date shall be credited to the next Loan Repayment representing a payment of interest. All income derived from the investment of such amounts as realized shall be transferred to the Additional Payments Account. There shall also be credited to the Interest Account the interest earnings

realized from the Loan Fund as set forth in the Indenture unless directed to be retained in the Loan Fund or transferred to the Cost of Issuance Fund as set forth in the Indenture.

(c) Additional Payments Account. There shall be credited to the Additional Payments Account, when and as received, (i) all portions of Loan Repayments constituting Additional Payments received by the Trustee under and pursuant to any of the provisions of the Indenture or the Loan Agreement, (ii) interest earnings from the Accounts in (a) and (b) above, and (iii) interest earnings realized from the Loan Fund as set forth in the Indenture, after the required deposit to the Interest Account unless directed to be retained in the Loan Fund or transferred to the Cost of Issuance Fund as set forth in the Indenture. All income derived from the investment of such amounts shall be retained in the Additional Payments Account. To the extent the amounts set forth in (i) through (iii) exceed the amount necessary to pay the Additional Payments next coming due, the Trustee, upon written direction of the City, may transfer such excess to the Interest Account and/or Principal Account.

The Trustee shall disburse, from time to time, sufficient moneys from the Bond Fund as specified below to pay the Accreted Value of and premium if any, on the Series 2021 Bonds as the same become due and payable.

Funds for the payment of the Accreted Value of and premium, if any, on the Series 2021 Bonds shall be derived from the following sources: (i) funds for the payment of interest on the Series 2021 Bonds shall be disbursed by the Trustee from the Interest Account; and (ii) funds for the payment of the Original Principal Amount of and premium, if any, on the Series 2021 Bonds shall be disbursed by the Trustee from the Principal Account [upon Maturity of such Series of Bonds]. Funds for payment of Additional Payments shall be disbursed by the Trustee from the Additional Payments Account when due.

If any Series 2021 Bond shall not be presented for payment at Maturity, provided moneys sufficient to pay such Series 2021 Bond shall have been made available to the Trustee, all liability of the Issuer to the Holder thereof for the payment of such Series 2021 Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such moneys, subject to the provisions of the Indenture, without liability for interest thereon, for the benefit of the Holder of such Series 2021 Bond, who shall thereafter be restricted exclusively to such moneys for any claim of whatever nature on her or his part thereunder or on, or with respect to, such Series 2021 Bond. All moneys paid over to the Trustee for the account of the Bond Fund (except the Additional Payments Account) under any provision of the Indenture, shall be held (subject to the provisions of the Indenture) in trust by the Trustee for the benefit of the Holders of the Series 2021 Bonds. Any moneys remaining in the Interest Account, the Principal Account, and the Additional Payments Account after payment of the Series 2021 Bonds and payment of the fees, charges and expenses of the Trustee which have accrued and which will accrue and all other items required to be paid under the Indenture with respect to the Series 2021 Bonds shall be paid to the City.

Under the Loan Agreement, the City has covenanted to pay directly to the Trustee when due Additional Payments in amounts sufficient to pay the fees, costs and expenses of the Trustee, the Issuer, the Rebate Analyst, the Bond Counsel, and the Rating Agencies, if any, including, without limitation, fees and expenses of their respective counsel. Such Additional Payments shall

not be treated or considered as Trust Moneys for any purpose of the Indenture, and the Trustee may on its own behalf enforce such covenant against the City. Additional Payments will be deposited by the Trustee to the Additional Payments Account in the Bond Fund as collected and shall be disbursed by the Trustee as set forth in the Loan Agreement upon receipt of an invoice therefor.

### **Other Funds**

Loan Fund. There is established with the Trustee a separate trust fund to be known as the "Loan Fund." Proceeds from the sale of the Series 2021 Bonds in the amount of \$[ ] shall be deposited in the Loan Fund. The Trustee shall use moneys within the Loan Fund solely to pay the Cost of the Project, to redeem all or a portion of the Series 2021 Bonds, to pay interest on the Series 2021 Bonds as set forth in the Indenture and to the extent permitted by the Act. Before any payment shall be made from the Loan Fund, there shall be filed with the Trustee pursuant to the Loan Agreement a requisition appropriately completed and signed by an Authorized Borrower Representative in the form attached to the Loan Agreement.

The balance of any moneys remaining in the Loan Fund upon completion of the Project shall be deposited in the Principal Account of the Bond Fund and applied by the Trustee to the redemption of the Series 2021 Bonds on the first redemption date occurring after such completion, at the optional or mandatory redemption price [and/or shall be deposited in the Interest Account of the Bond Fund, for payment of interest when due, as directed by the City].

Cost of Issuance Fund. There is established with the Trustee a separate trust fund to be known as the "Cost of Issuance Fund." Moneys in the Cost of Issuance Fund shall be used to pay the costs of issuing the Series 2021 Bonds. Such costs shall be paid on the date of original authentication and delivery of the Series 2021 Bonds, upon the submission of requisitions to the Trustee stating the amount to be paid, to whom it is to be paid and the reason for such payment, each such requisition to include a certificate signed by an Authorized Authority Representative stating that the amount of such requisition is justly due and owing and has not been the subject of another requisition which has been paid and is a proper expense of issuing the Series 2021 Bonds. Moneys in the Cost of Issuance Fund shall be invested as directed by the City and all earnings on moneys in the Cost of Issuance Fund shall be credited to the Cost of Issuance Fund as received.

Rebate Fund. There is established with the Trustee a separate fund to be known as the "Rebate Fund." The Trustee is authorized and directed to receive and hold in the Rebate Fund (i) all payments made by the City pursuant to the Loan Agreement in connection with rebate amounts owed to the United States under Section 148(f)(2) of the Internal Revenue Code of 1986, as amended, and Section 1.148-3 of the Treasury Regulations issued thereunder, and (ii) all earnings on investment of such payments and earnings on reinvestment of such investment earnings. If required, not later than 60 days after each Computation Date the Trustee shall pay to the United States on behalf of the Issuer the amount on deposit in the Rebate Fund. Moneys and securities held by the Trustee in the Rebate Fund shall not be deemed funds of the Issuer and are not pledged or otherwise subject to any security interest in favor of the Bondholders to secure the Series 2021 Bonds or any other obligation.



### **Limited Obligations of the Issuer; General Obligation of the City Pursuant to Loan**

The Series 2021 Bonds are limited obligations of the Issuer payable solely from and secured by an assignment and pledge of the Trust Estate.

THE SERIES 2021 BONDS AND THE INTEREST THEREON DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT TO THE EXTENT THAT THE CITY IS OBLIGATED UNDER THE LOAN AGREEMENT), AND THE SERIES 2021 BONDS AND THE INTEREST THEREON DO NOT NOW AND SHALL NEVER CONSTITUTE A DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING, WITHOUT LIMITATION, THE CITY AND THE COUNTY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER (EXCEPT TO THE EXTENT THAT THE CITY IS OBLIGATED UNDER THE LOAN AGREEMENT). NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF INCLUDING, WITHOUT LIMITATION, THE CITY AND THE COUNTY, SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE SERIES 2021 BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, MORTGAGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER THAT MAY BE UNDERTAKEN BY THE ISSUER (EXCEPT TO THE EXTENT THAT THE CITY IS OBLIGATED UNDER THE LOAN AGREEMENT). NO BREACH BY THE ISSUER OF ANY SUCH PLEDGE, MORTGAGE, OBLIGATION OR AGREEMENT SHALL IMPOSE ANY LIABILITY, PECUNIARY OR OTHERWISE, UPON THE STATE OR ANY POLITICAL SUBDIVISION THEREOF INCLUDING, WITHOUT LIMITATION, THE CITY AND THE COUNTY, OR ANY CHARGE UPON THEIR GENERAL CREDIT OR TAXING POWER (EXCEPT TO THE EXTENT THAT THE CITY IS OBLIGATED UNDER THE LOAN AGREEMENT). THE ISSUER HAS NO TAXING POWER, AND THE BONDS AND THE INTEREST THEREON DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER.

As provided herein, pursuant to the Loan Agreement, the City has pledged its full faith and credit to the payment of obligations under the Loan Agreement in an amount sufficient to pay the Accreted Value of and the premium, if any, on the Series 2021 Bonds when due. The City's payments and prepayments payable to the Issuer under the Loan Agreement (excluding Unassigned Rights) have been assigned by the Issuer to the Trustee as part of the Trust Estate to secure payment of the Series 2021 Bonds.

### **FISCAL OVERVIEW**

The following is a fiscal overview of the City, which includes: (a) audited condensed financial results for Fiscal Year 2020; (b) a summary of the audited General Fund for Fiscal Years ended June 30, 2016 through 2020; (c) audited total fund balances/retained earnings trends for Fiscal Years ended June 30, 2016 through 2020; and (d) a statement of debt and net debt ratios. For additional financial information relating to the City, see "APPENDIX C – AUDITED FINANCIAL STATEMENTS OF THE CITY OF MEMPHIS, TENNESSEE FOR THE FISCAL YEAR ENDED JUNE 30, 2020" attached hereto. See also "CERTAIN INVESTMENT

CONSIDERATIONS – COVID-19" herein for additional information on the impact of COVID-19 to the City's financial condition.

### **Condensed Financial Results**

For Fiscal Year 2020, the audited net operating results for the General Fund revenues/other financing sources were approximately [\$732,973,000] and expenditures/other financing uses were approximately [\$742,824,000]. **[The result was a decrease of approximately \$9,851,000 in the General Fund total fund balance from Fiscal Year 2019.]**

In Fiscal Year 2020, General Fund revenues were higher than the amount of such revenues in Fiscal Year 2019, primarily as a result of greater than expected revenue from current property taxes. Current property taxes as a percentage of General Fund revenues remained steady over the previous year at 36%.

With 68% of the City's expense budget dedicated to personnel expenditures for the provision of City services, employment, healthcare and retirement costs are a constant source of concern. For retirement costs, Tennessee state laws required the City to significantly increase annual contributions to the pension fund, specifically requiring the City to pay the full Actuarially Determined Contribution ("ADC") by the year 2020.

In Fiscal Year 2020, total General Fund expenditures increased by 2%. This increase was due to \$8.4 million in emergency COVID-19 related expenditures for various divisions.

The City adopted a \$708,700,000 General Fund operating budget for Fiscal Year 2021, with a planned Use of General Fund Balance of approximately \$53,444,169, which includes the Use of Restricted Fund Balance (CARES Act funds (as defined herein)) of \$15,500,000, Use of Assigned Fund Balance of \$20,000,000 and Use of Unassigned Fund Balance of \$17,944,169.

The City has established a goal of maintaining at least a 10% unassigned fund balance, as a percent of General Fund expenditures. The City exceeded its goal for Fiscal Year 2020 at 11% but does not expect to meet its goal for Fiscal Year 2021.

The following table presents a summary of the City's audited General Fund for the Fiscal Years ended June 30, 2016 through 2020.

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**SUMMARY OF GENERAL FUND<sup>(1)</sup>**  
**Fiscal Years Ended June 30**  
**(In Thousands of Dollars)**

|                                | <b>2016</b>       | <b>2017</b>       | <b>2018</b>       | <b>2019</b>       | <b>2020</b>       |
|--------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Beginning Fund Balance         | \$ 132,266        | \$ 145,373        | \$ 147,383        | \$ 141,201        | \$ 135,992        |
| Revenues and Other Sources     | 652,341           | 665,007           | 706,450           | 718,423           | 736,657           |
| Expenditures and Other Uses    | (639,234)         | (662,997)         | (712,632)         | (725,494)         | (745,653)         |
| Adjustments                    | -                 | -                 | -                 | 1,862             | 2,829             |
| Ending Fund Balance            | <u>\$ 145,373</u> | <u>\$ 147,383</u> | <u>\$ 141,201</u> | <u>\$ 135,992</u> | <u>\$ 129,825</u> |
| Ending Unassigned Fund Balance | <u>\$ 94,674</u>  | <u>\$ 95,343</u>  | <u>\$ 98,283</u>  | <u>\$ 91,541</u>  | <u>\$ 79,047</u>  |

<sup>(1)</sup> Numbers include the Life Insurance Fund and the Park Special Services Fund.

Source: City of Memphis, Tennessee.

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The following table presents the City's total fund balances/retained earnings trends for the Fiscal Years ended June 30, 2016 through 2020.

**TOTAL FUND BALANCES / RETAINED EARNINGS TRENDS<sup>(1)</sup>**  
**Fiscal Years Ended June 30**  
**(In Thousands of Dollars)**

|   | 2016              | 2017              | 2018              | 2019              | 2020              |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|
| <b>General Fund</b>                       |                   |                   |                   |                   |                   |
| Restricted                                | \$ 7,210          | \$ 8,281          | \$ 10,768         | \$ 12,725         | \$ 13,912         |
| Assigned                                  | 43,489            | 43,759            | 32,150            | 31,726            | 36,866            |
| Unassigned                                | 94,674            | 95,343            | 98,283            | 91,541            | 79,047            |
| <b>Total General Fund</b>                 | <b>\$ 145,373</b> | <b>\$ 147,383</b> | <b>\$ 141,201</b> | <b>\$ 135,992</b> | <b>\$ 129,825</b> |
| <b>All other Governmental Funds</b>       |                   |                   |                   |                   |                   |
| Restricted                                | \$ 62,616         | \$ 46,688         | \$ 54,815         | \$ 52,711         | \$ 147,551        |
| Committed                                 | 43,083            | 63,954            | 261,003           | 217,353           | 108,959           |
| Unassigned                                | 794               | -                 | -                 | -                 | -                 |
| <b>Total All Other Governmental Funds</b> | <b>\$ 106,493</b> | <b>\$ 110,642</b> | <b>\$ 315,818</b> | <b>\$ 270,064</b> | <b>\$ 256,510</b> |
| <b>Total Governmental Funds</b>           | <b>\$ 251,866</b> | <b>\$ 258,025</b> | <b>\$ 457,019</b> | <b>\$ 406,056</b> | <b>\$ 386,335</b> |
| Enterprise                                | \$ 484,357        | \$ 482,988        | \$ 520,027        | \$ 553,972        | \$ 570,541        |
| Internal Service Funds                    | 20,254            | 23,105            | 17,563            | 15,611            | 15,163            |
| <b>Total Proprietary Funds</b>            | <b>\$ 504,611</b> | <b>\$ 506,093</b> | <b>\$ 537,590</b> | <b>\$ 569,583</b> | <b>\$ 585,704</b> |
| <b>Total Funds</b>                        | <b>\$ 756,477</b> | <b>\$ 764,118</b> | <b>\$ 994,609</b> | <b>\$ 975,639</b> | <b>\$ 972,039</b> |

<sup>(1)</sup> Numbers may not add due to rounding.

<sup>(2)</sup> Enterprise does not include the Memphis Light, Gas and Water Division ("MLGW").

Source: City of Memphis, Tennessee.

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## Statement of Debt

The following table presents the City's total direct and overlapping debt and the related debt ratios as of **[October 15, 2020]**.

### STATEMENT OF DEBT<sup>(1)</sup> As of **[October 15, 2020]** **[To be updated]** (Unaudited)

|   |                               |
|---|-------------------------------|
| <b>Direct Debt</b>  |                               |
| General Improvement Bonds <sup>(2)</sup>                                | \$1,274,985,000               |
| Appropriation Obligations <sup>(3)</sup>                                | 48,597,801                    |
| General Obligation Commercial Paper                                     | 75,000,000                    |
| <b>Total Direct Debt</b>  | <u>\$1,398,582,801</u>        |
| Less: Self Supporting Debt <sup>(4)</sup>                               | (188,903,186)                 |
| <b>Net Direct Debt</b>  | <u>\$1,209,679,615</u>        |
| Plus: City's Share of Shelby County Net Overlapping Debt <sup>(5)</sup> | 540,289,000                   |
| <b>Net Direct and Overlapping Debt</b>                                  | <u><u>\$1,749,968,615</u></u> |

### DEBT RATIOS

|   | <u>Net Direct Debt</u> | <u>Net Direct and Overlapping Debt</u> |
|---|------------------------|--|
| Net Debt Per Capita <sup>(6)</sup>          | \$1,858                | \$2,688                                |
| Net Debt/Assessed Valuation <sup>(7)</sup>  | 9.53%                  | 13.79%                                 |
| Net Debt/Appraised Valuation <sup>(8)</sup> | 3.02%                  | 4.37%                                  |

(1) This Statement of Debt does not include settlement obligations, tax increment financings, bond premiums and discount or the following outstanding revenue bonds, as they are payable solely from net revenues derived from the respective systems or projects: (a) the City's Sanitary Sewerage Bonds, (b) the City's Storm Water System Revenue Bonds (c) the City's Electric System Revenue Bonds, (d) the City's Water System Revenue Bonds, (e) the City's Gas System Revenue Bonds, (f) the Memphis-Shelby County Airport Authority Revenue Bonds, (g) the Memphis-Shelby County Airport Authority Special Facility Revenue Bonds, and (h) the City's Storm Water System Revenue Bonds. This Statement of Debt also does not include the following bonds, as they are not general obligations of the City but rather are required to be paid solely from Non-Tax Revenues (as defined herein) appropriated by the City for such payments: (i) the Series 2017A EDGE Bonds (as defined herein); and (ii) the Sports Authority Senior Lien Bonds (as defined herein).

(2) Excludes the Series 2020A Bonds.

(3) Includes capital leases, including the 2015 QECB Bonds (as defined herein) and the Series 2017 QECB Bonds (as defined herein) (\$16,405,301), the City's portion of the Port Commission Electrolux Bonds (as defined herein) (\$15,547,500) and the Stadium Project Bonds (as defined herein) (\$16,645,000).

(4) This Statement of Debt is prepared to reflect that the portion of the General Improvement Bonds, Series 2018, issued to finance improvements to the Convention Center (\$171,345,000), certain capital leases (\$9,585,231) and 47.9% of the Stadium Project Bonds (\$7,972,955) are considered to be self-supporting.

(5) Net Debt outstanding for the County as of June 30, 2020, was approximately \$868,633,000 of which approximately \$540,289,000, or 62.2%, is applicable to the City.

(6) The City's estimated population was 651,073, as reported in the 2020 Financial Statements.

(7) The City's assessed valuation was approximately \$12,694,209,000 for the Fiscal Year ended June 30, 2020, as reported in the 2020 Financial Statements.

(8) The City's appraised valuation was approximately \$40,073,124,000 for the Fiscal Year ended June 30, 2020, as reported in the 2020 Financial Statements.

Source: City of Memphis, Tennessee, except as noted above.

## OUTSTANDING GENERAL OBLIGATION DEBT

### General Improvement Bonds

The following table presents the outstanding par amount of the City's general obligation bonds (the "Outstanding General Improvement Bonds") prior to the issuance and delivery of the Series 2021 Bonds.

### Outstanding General Improvement Bonds As of [\_\_\_\_\_, 2021][To be updated]

| Bond Name   | Outstanding Par Amount        | Final Maturity Date |
|---|-------------------------------|---------------------|
| General Improvement Bonds, Series 2020A   | \$24,470,000                  | December 1, 2030    |
| General Improvement Refunding Bonds, Series 2020                                      | 214,675,000                   | June 1, 2045        |
| General Improvement Bonds, Series 2018  | 299,165,000                   | June 1, 2048        |
| General Improvement Bonds, Series 2016  | 62,455,000                    | May 1, 2041         |
| General Improvement Refunding Bonds, Series 2015C                                     | 67,845,000                    | April 1, 2045       |
| General Improvement Refunding Bonds, Series 2015B<br>(Federally Taxable)              | 54,390,000                    | April 1, 2025       |
| General Improvement Refunding Bonds, Series 2015A                                     | 76,820,000                    | April 1, 2026       |
| General Improvement Refunding Bonds, Series 2014B                                     | 185,610,000                   | April 1, 2044       |
| General Improvement Refunding Bonds, Series 2014A                                     | 68,075,000                    | November 1, 2025    |
| General Improvement and Refunding Bonds, Series 2012B                                 | 1,465,000                     | April 1, 2024       |
| General Improvement and Refunding Bonds, Series 2012A                                 | 71,050,000                    | April 1, 2042       |
| General Improvement and Refunding Bonds, Series 2011                                  | 67,045,000                    | May 1, 2036         |
| General Improvement Bonds, Series 2010F<br>(Recovery Zone Economic Development Bonds) | 11,160,000                    | July 1, 2034        |
| General Improvement Bonds, Series 2010C<br>(Direct Payment Build America Bonds)       | 55,280,000                    | July 1, 2032        |
| General Improvement Bonds, Series 2010B<br>(Direct Payment Build America Bonds)       | 39,950,000                    | May 1, 2030         |
| <b>Total Outstanding General Improvement Bonds</b>                                    | <b><u>\$1,274,985,000</u></b> |                     |

Source: City of Memphis, Tennessee.

**[The City has authorized but not yet issued additional general obligation [refunding] bonds in an [approximate] amount [of][not to exceed] \$\_\_\_\_\_ for the purpose of [financing certain public works projects in the City][paying the principal of outstanding General Obligation Commercial Paper (as hereinafter defined) at their respective maturities][achieving debt service savings].]**

## General Obligation Commercial Paper

In addition to the Outstanding General Improvement Bonds, the City is authorized to issue, from time to time, its general obligation commercial paper (the "General Obligation Commercial Paper"), pursuant to an initial resolution duly adopted by the City Council on March 24, 2020, in a maximum aggregate principal amount outstanding at any time of not to exceed \$150,000,000 to finance, on an interim basis, the cost of all or any of the public works projects of the City or paying at maturity other General Obligation Commercial Paper.

General Obligation Commercial Paper is currently outstanding in the aggregate principal amount of [\$150,000,000]. **[A portion of the proceeds of the Series 2021 Bonds may be used to pay the principal of such outstanding General Obligation Commercial Paper at their respective maturities.]** Any outstanding interest on the General Obligation Commercial Paper will be paid from other available moneys of the City. The City expects to issue additional General Obligation Commercial Paper in the future.

## ADDITIONAL OBLIGATIONS

### Contingent Obligations

As of the date of this Official Statement, the City has the following outstanding contingent obligations payable from the hereinafter defined Non-Property Tax Revenues (collectively, the "Contingent Obligations"). "Non-Property Tax Revenues" include the City's legally available revenues, other than ad valorem tax revenues, on deposit in the City's General Fund.

Sports Authority Senior Lien Bonds. The Memphis and Shelby County Sports Authority, Inc. (the "Sports Authority") issued certain senior lien bonds (the "Sports Authority Senior Lien Bonds"), the proceeds of which were used to finance and refinance the acquisition, construction and equipping of a multi-purpose arena that is the home of the National Basketball Association's franchise known as the Memphis Grizzlies (the "FedExForum"). Pursuant to an interlocal agreement by and among the City and the County and the Sports Authority (the "Interlocal Agreement"), in the event the revenues pledged to the support of the Sports Authority Senior Lien Bonds prove to be insufficient to pay debt service on the Sports Authority Senior Lien Bonds in any bond year (ending on October 31), the County and the City have covenanted to timely appropriate from legally available non-ad valorem tax revenues, not later than October 31 of the Fiscal Year ending June 30 following the date of such deficit, sufficient money to replenish draws from the debt service reserve fund relating to the Sports Authority Senior Lien Bonds (the "Senior Lien Bonds Reserve Fund") used to make scheduled debt service on the Sports Authority Senior Lien Bonds in the prior bond year.

Principal and interest on the Sports Authority Senior Lien Bonds are payable from (a) seat rental fees derived from the FedExForum, (b) certain sales tax rebate revenues to the City and to the County, (c) City hotel/motel tax revenues derived from certain hotel/motel taxes imposed by the City, (d) County hotel/motel tax revenues derived from certain hotel/motel taxes imposed by the County, (e) certain payments in lieu of taxes from MLGW, and (f) certain car rental taxes collected in the County.

The obligation of the County and the City to replenish draws on the Senior Lien Bonds Reserve Fund is apportioned on an equal basis (i.e., 50% by the City and 50% by the County) but is not a joint obligation. The Interlocal Agreement provides that the maximum amount of the County's or City's respective replenishment obligation relating to the Sports Authority Senior Lien Bonds is the debt service payments on not to exceed one-half of a maximum of \$230,000,000 in principal amount of Sports Authority Senior Lien Bonds. The Sports Authority initially issued \$202,290,000 in aggregate principal amount of Sports Authority Senior Lien Bonds (leaving \$27,710,000 of authorized but unissued Sports Authority Senior Lien Bonds for which the City and County would have a replenishment obligation under the Interlocal Agreement). As of June 2, 2021, the Sports Authority Senior Lien Bonds were outstanding in an aggregate principal amount of \$118,235,000 and the maximum annual contingent obligation of the City to replenish draws from the Senior Lien Bonds Reserve Fund was \$7,262,500. The obligation to replenish the Senior Lien Bonds Reserve Fund is not a general obligation of the City but rather is required to be paid solely from Non-Property Tax Revenues appropriated by the City for such payments. The final maturity of the Sports Authority Senior Lien Bonds is November 1, 2028.

As of the date of this Official Statement, the City has not been called upon to make a payment under the Interlocal Agreement. HOWEVER, THE CITY CAN OFFER NO ASSURANCE AS TO WHETHER THERE WILL BE FUTURE CALLS ON THE CITY TO MAKE A PAYMENT UNDER THE INTERLOCAL AGREEMENT. No feasibility report with respect to the FedExForum was prepared.

Series 2017 EDGE Bonds. Pursuant to a Trust Indenture dated as of June 1, 2017 (the "EDGE Indenture"), the Economic and Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (also known as "EDGE") issued its \$36,215,000 TDZ Revenue Refunding Bonds, Series 2017A (Federally Taxable) (the "Series 2017A EDGE Bonds"), its \$87,725,000 TDZ Revenue Refunding Bonds, Series 2017B (the "Series 2017B EDGE Bonds"), and its \$34,300,000 TDZ Revenue Refunding Bonds, Series 2017C (Federally Taxable) (the "Series 2017C EDGE Bonds" and, together with the Series 2017A EDGE Bonds and the Series 2017B EDGE Bonds, the "Series 2017 EDGE Bonds"). The Series 2017B EDGE Bonds and the Series 2017C EDGE Bonds are hereinafter referred to, collectively, as the "Series 2017 EDGE Non-Property Tax Revenue Supported Bonds." The proceeds of the Series 2017 EDGE Bonds were used by EDGE to fund a loan to the City under a loan agreement, dated June 1, 2017 (the "EDGE Loan Agreement"), the proceeds of which loan, together with certain other funds of the City, were used to: (a) refund and defease certain prior obligations of the City incurred in connection with the financing of a portion of the costs associated with the redevelopment of the Pyramid Arena, the acquisition and renovation of certain properties in the center city area of the City adjacent to the Pyramid Arena and the acquisition of the interest of the County in the Renasant Convention Center; and (b) pay certain costs of issuance related to the Series 2017 EDGE Bonds. The Series 2017 EDGE Bonds are payable primarily from distributions of state and local sales and use taxes in a tourist development zone which includes the Pyramid Arena, the Pinch District of the City and the Renasant Convention Center (the "TDZ Revenues"). The Series 2017A EDGE Bonds, and any other senior bonds subsequently issued under the EDGE Indenture, are payable solely from TDZ Revenues and have a right of payment from the TDZ Revenues superior to that of the Subordinated EDGE Bonds (hereinafter defined).



Pursuant to the EDGE Loan Agreement, in the event the TDZ Revenues prove to be insufficient to pay debt service on the Series 2017 EDGE Non-Property Tax Revenue Supported Bonds and any other subordinate bonds subsequently issued under the EDGE Indenture (the "Subordinated EDGE Bonds"), the City has covenanted and agreed to appropriate from legally available non-ad valorem tax revenues, on or prior to the time required in the EDGE Loan Agreement, sufficient money to pay the principal of, premium, if any, and interest payable on the Subordinated EDGE Bonds. As of June 2, 2021, the Subordinated EDGE Bonds were outstanding in an aggregate principal amount of \$122,025,000. The City's obligation to pay the principal of, premium, if any, and interest on the Subordinated EDGE Bonds in the event the TDZ Revenues are insufficient is not a general obligation of the City but, rather, is required to be paid solely from Non-Property Tax Revenues appropriated by the City for such payments. The final maturity of the Series 2017 Non-Property Tax Revenue Supported Bonds is November 1, 2030.

As of the date of this Official Statement, the City has not been called upon to make any payment of Non-Property Tax Revenues under the EDGE Loan Agreement. HOWEVER, THE CITY CAN OFFER NO ASSURANCE AS TO WHETHER THERE WILL BE ANY FUTURE CALL ON THE CITY TO MAKE A PAYMENT FROM ITS NON-PROPERTY TAX REVENUES UNDER THE EDGE LOAN AGREEMENT.

**Pending Contingent Obligations - Series 2021 EDGE Bonds.** The City anticipates that EDGE will issue [up to \$\_\_] million of revenue bonds (the "Series 2021 EDGE Bonds") to fund a portion of the costs of the Memphis Fairgrounds – Liberty Park redevelopment in the City, including the costs of financing the construction a 230,000 square-foot sports and events center, site preparation for a proposed private development and various campus improvements. The Series 2021 EDGE Bonds are anticipated to be paid primarily from the proceeds of incremental state and local sales taxes collected within a Tourism Development Zone ("Liberty Park TDZ") approved by the State and encompassing the Fairgrounds – Liberty Park development. In the event of a shortfall in the Liberty Park TDZ revenues, the Series 2021 EDGE Bonds would be payable from appropriations of the City's Non-Property Tax Revenues.]

**Additional Contingent Obligations.** The City expects to fund, from time to time, special projects related to economic development which largely will be payable from specific dedicated revenues. To the extent the City elects to fund all or a portion of such projects, the City may incur additional debt which may be supported by Non-Property Tax Revenues.

For more information regarding the Contingent Obligations, see Note V.C to the 2020 Audited Financial Statements, which is available through EMMA.

### **Unconditional Obligations**

As of the date of this Official Statement, the City has the following outstanding non-contingent obligations payable from Non-Property Tax Revenues (collectively, the "Unconditional Obligations").

**Port Commission Electrolux Bonds.** The Memphis and Shelby County Port Commission (the "Port Commission"), the State, the County, the City, and the Memphis and Shelby County

Industrial Development Board entered into a Site Location and Development Agreement dated December 15, 2010 (the "Development Agreement"), whereby each committed to support the development of a new appliance manufacturing and assembly facility, warehouse and distribution facility and regional headquarters facility for Electrolux Home Products, Inc. (the "Electrolux Development") located in the City and the County, within the Port Commission's boundaries and jurisdiction. The City and the County agreed to match funds of the State to subsidize or assist in the Electrolux Development.

The Port Commission issued its \$40,795,000 Development Revenue Bonds, Series 2011 (the "Port Commission Electrolux Bonds") on September 7, 2011. The Port Commission Electrolux Bonds are secured, in part, by all of the Port Commission's right, title and interest in an interlocal agreement by and among the Port Commission, the County and the City under which the City and the County covenanted to timely appropriate from legally available non-ad valorem tax revenues sufficient money to pay scheduled debt service on the Port Commission Electrolux Bonds.

The obligation of the City and the County to support the payment of debt service on the Port Commission Electrolux Bonds is apportioned on an equal basis (i.e., 50% by the City and 50% by the County). The maximum amount of the City's or the County's respective support obligation under the Development Agreement is equal to the debt service payments on not to exceed \$22,000,000 of the principal amount of the Port Commission Electrolux Bonds. As of June 2, 2021, the Port Commission Electrolux Bonds were outstanding in an aggregate principal amount of \$29,740,000, the City's portion of which is \$14,870,000, and the maximum annual debt service due on the Port Commission Electrolux Bonds and payable by the City is \$1,401,075. The obligation of the City and the County to support the payment of debt service on the Port Commission Electrolux Bonds is not a general obligation of the County or the City. The obligation of the City is required to be paid solely from Non-Property Tax Revenues appropriated by the City for such payments.

The Electrolux Development was completed and the facility commenced operations, including the production of appliances, in June 2013. **[Electrolux Home Products, Inc., announced that it expects to close the Electrolux Development in 2021.]** The City's obligations with respect to the Port Commission Electrolux Bonds will continue after closure of the Electrolux Development.

*Stadium Project Bonds.* Pursuant to an Indenture of Trust, dated as of March 1, 2014, the Memphis Center City Revenue Finance Corporation (the "Corporation") issued its \$17,925,000 Sports Facility Revenue Bonds, Series 2014A (Stadium Project) and its \$5,720,000 Sports Facility Revenue Bonds, Series 2014B (Stadium Project) (Federally Taxable) (collectively, the "Stadium Project Bonds"). The proceeds of the Stadium Project Bonds were used to, among other things, provide funds for the purpose of (a) acquiring the Memphis Redbirds Baseball Foundation's interest in and to a AAA minor league baseball stadium and related facilities, known as AutoZone Park (the "Stadium") and certain real property owned by the City on and adjacent to which the Stadium is located (the "Site") in connection with the sale of the Memphis Redbirds franchise and the lease of the Stadium to an affiliate of the St. Louis Cardinals and (b) making a capital contribution for certain improvements to the Stadium and the Site. The Stadium Project Bonds are secured by an assignment and pledge of, among other things, rents payable by the lessee of the

Stadium, certain sales tax rebates and other payments to the Corporation (collectively, the "Other Payments") and amounts payable by the City (the "Lease Payments") to the Corporation pursuant to that certain Sublease Agreement, dated as of March 1, 2014, between the Corporation and the City (the "Financing Lease"). The City covenanted and agreed to timely appropriate from legally available non-ad valorem tax revenues sufficient money to pay the Lease Payments after taking into account the credits against such Lease Payments, including the Other Payments. As of June 2, 2021, the Stadium Project Bonds were outstanding in the aggregate principal amount of \$15,290,000 and the maximum annual debt service due and payable is \$2,487,754. The obligation of the City to make the Lease Payments is not a general obligation of the City but rather is required to be paid solely from Non-Property Tax Revenues appropriated by the City for such payments after taking into account the credits against such Lease Payments, including the Other Payments.

During Fiscal Year 2021, the City made a payment under the Financing Lease in the amount of \$1,391,177. Such amount represented 67.5% of the Stadium Project Bond debt service for the year, which was higher than the City's historical payments of 3% to 14% of annual debt service on the Stadium Project Bonds. Due to the COVID-19 pandemic, the 2020 Minor League Baseball season was cancelled, resulting in a significant decrease in revenues available to pay debt service on the Stadium Project Bonds. The City was required under the Financing Lease to cover the shortage in revenues.

2015 QECB Bonds. Pursuant to an Indenture of Trust, dated as of February 18, 2015, the Corporation issued its \$8,316,000 Memphis Center City Revenue Finance Corporation, Qualified Energy Conservation Bonds, Series 2015A (Federally Taxable) (the "Series 2015A QECB Bonds"). In addition, pursuant to an Indenture of Trust, dated as of April 29, 2015, the Corporation issued its \$2,015,300 Memphis Center City Revenue Finance Corporation, Qualified Energy Conservation Bonds, Series 2015B (Federally Taxable) (the "Series 2015B QECB Bonds") and \$340,700 Memphis Center City Revenue Finance Corporation, Qualified Energy Conservation Bonds, Series 2015C (Federally Taxable) (the "Series 2015C QECB Bonds" and together with the Series 2015A QECB Bonds and the Series 2015B QECB Bonds, the "2015 QECB Bonds"). The proceeds of the 2015 QECB Bonds were used to, among other things, provide funds for loans to certain developers under the City's Green Communities Program, which was established to finance loans and grants to eligible participants for energy conservation installations and improvements to designated facilities. The 2015 QECB Bonds are secured by amounts payable by the City (the "2015 QECB Payments") pursuant to certain lease agreements between the Corporation and the City. The City covenanted and agreed to timely appropriate from legally available non-ad valorem tax revenues sufficient money to pay the 2015 QECB Payments after taking into account indirect subsidy payments received from the U.S. Treasury on account of the 2015 QECB Bonds being qualified energy conservation bonds under Section 54D of the Internal Revenue Code of 1986, as amended (the "2015 Subsidy Payments"). As of June 2, 2021, the QECB Bonds were outstanding in the aggregate principal amount of \$4,033,200 and the maximum annual debt service due and payable was \$1,218,578. The obligation of the City to make the 2015 QECB Payments is not a general obligation of the City but rather is required to be paid solely from Non-Property Tax Revenues appropriated by the City for such payments after taking into account the 2015 Subsidy Payments.

**Pending Unconditional Obligations – Series 2021A EDGE Bonds.** The City anticipates making application to EDGE for the issuance by EDGE of up to \$[ ] million of revenue

**bonds (the "Series 2021A EDGE Bonds") to fund a portion of the costs of making improvements to the FedEx Forum Arena, AutoZone Park baseball stadium, the Historic Melrose development and multifamily affordable housing facilities. The Series 2021A EDGE Bonds are anticipated to be payable from annual appropriations of the City's Non-Property Tax Revenues.]**

*Additional Unconditional Obligations.* The City expects to fund, from time to time, special projects related to economic development which largely will be payable from specific dedicated revenues. To the extent the City elects to fund all or a portion of such projects, the City may incur additional debt which may be supported by Non-Property Tax Revenues.

For more information regarding the Unconditional Obligations see Note IV.G to the 2020 Audited Financial Statements, which is available through EMMA.

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## **Tax Increment Financing**

The City expects to participate, from time to time, in tax increment financings ("TIFs") related to economic development. In a TIF, an instrumentality of the City or the County (e.g. EDGE or the Community Redevelopment Agency ("CRA")) will issue its tax increment financing bonds and grant the proceeds to a developer to incentivize the completion of an economic development project. The City, and in some cases the County, agree to divert all or a portion of the incremental real and personal property tax revenues related to the project to the payment of debt service on the tax increment financing bonds. As of the date of this Official Statement, the City is obligated to divert certain incremental real and personal property taxes to the payment of debt service on the following TIFs:

EDGE – Graceland TIF. In 2017, EDGE issued approximately \$95 million of bonds to incentivize the development of a 450-room hotel and other tourist facilities located on the Graceland campus – the former home of Elvis Presley. The bonds are payable from (i) City and County incremental property taxes collected on Graceland properties, (ii) a 5% sales tax surcharge levied on sales made on the Graceland campus and (iii) certain incremental state and local sales taxes collected within the “tourism development zone” comprising the Graceland campus. The City's obligation to divert incremental property taxes to the payment of the bonds expires in 2035.

EDGE – UNDC-Highland Strip TIF. In 2016, EDGE issued approximately \$21 million of bonds to incentivize the development along South Highland Street, between Poplar Avenue and Park Avenue, in the City. The bonds are payable from City and County incremental property taxes collected on properties within the redevelopment area. The City's obligation to divert incremental property taxes to the payment of the bonds expires in 2036.

EDGE – Parkside at Shelby Farms TIF. EDGE approved a resolution authorizing a TIF for the development of parts of Shelby Farms in 2016 and amended the resolution in 2017. To date, the TIF has not been activated and no bonds have been issued for this TIF. EDGE plans to borrow not to exceed \$96,400,000, (which represents the total amount necessary to pay for the planned improvements, the cost of financing the planned improvements and related eligible costs) through the issuance and sale of notes, bonds or other obligations of EDGE. Proceeds will be used to make developments and improvements to public promenades, public open spaces, pedestrian connections to the Greenline and an improved Gateway along Mullins Station Road, which is an important cornerstone for the community. The planned development will include a 130-room hotel, approximately 33,000 square feet of commercial space, office space and approximately 1,700 structured parking spaces. In addition, approximately 1,400 multi-family residential units will be included in the development, but are not part of the project. The EDGE obligations will be payable from TIF revenues collected within the redevelopment area.

CRA – Highland Row TIF. In 2016, the CRA issued approximately \$12.5 million of bonds for the Highland Row TIF to incentivize a project which includes a mixed-use development with structured parking. The project was substantially complete as of December 2017. The bonds are payable from City and County incremental property taxes collected on properties within the redevelopment area. The City's obligation to divert incremental property taxes to the payment of the bonds expires in 2038.

CRA – Uptown TIF. The CRA approved a pay-as-you-go TIF for use in and around the Uptown area in 2001. The TIF has been actively used in the rehabilitation of the neighborhoods around Uptown and St. Jude Hospital. In 2017, the City approved an extension and expansion of the TIF with a cap of \$95 million. The TIF was similarly expanded, with the cap raised by an additional \$30 million, in 2019. There are no bonds issued for the TIF. Projects funded by the TIF are payable from City and County incremental property taxes collected on properties within the redevelopment area. The City's obligation to divert incremental property taxes to the TIF expires in 2032.

CRA – Binghampton TIF. This pay-as-you-go TIF was approved by the CRA in 2017 to finance development in the Binghampton neighborhood. The TIF has been actively used in the rehabilitation of the Binghampton neighborhood. The TIF has a cap of \$26 million. There are no bonds issued for the TIF. Projects funded by the TIF are payable from City and County incremental property taxes collected on properties within the redevelopment area. The City's obligation to divert incremental property taxes to the TIF expires in 2048.

For more detailed descriptions of the TIF and payments in lieu of taxes ("PILOTs") programs offered within the City, see Note IV.C to the 2020 Audited Financial Statements in "APPENDIX C – AUDITED FINANCIAL STATEMENTS OF THE CITY OF MEMPHIS, TENNESSEE FOR THE FISCAL YEAR ENDED JUNE 30, 2020" attached hereto.

### **City of Memphis Retirement System**

Employees of the City participate in the City's retirement system, which provides retirement as well as death and disability benefits. The City's retirement system is described below.

GASB 68. In the Fiscal Year ended June 30, 2015, the City adopted the new statement of financial accounting standards issued by the Governmental Accounting Standards Board (GASB) Statement No 68, Accounting and Financial Reporting for Pension Plans. Statement No. 68, Accounting and Financial Reporting for Pension Plans, revises and establishes new financial reporting requirements for most governments that provide their employees with pension benefits. Statement No. 68 is effective for financial statements for the Fiscal Years beginning after June 15, 2014. Prior to implementing GASB 68, employers participating in a cost-sharing plan recognized annual pension expense equal to their contractually required contribution to the plan. Pension liabilities resulted from the difference between contributions required and contributions made. GASB 68 requires employers to recognize a liability as employees earn their pension benefits. For the first time, employers participating in cost-sharing plans will recognize their proportionate share of the collective pension amounts for all benefits provided through the plans. Pension amounts to be recognized by employers include the net pension liability, deferred outflows of resources, deferred inflows of resources and pension expense. The employer's proportionate share of the collective net pension liability will appear on the face of the employer's accrual-based financial statements along with the employers' other long-term liabilities.

General. The City of Memphis Retirement System (the "City Retirement System") is a single employer public employee retirement system administered by a Board of Administration (the "Board") under the direction of the Mayor. The Board has established and given authority to a Pension Investment Committee to exercise authority and control of investments solely in the

interest of participants of the City Plan and their beneficiaries. The Pension Investment Committee consists of seven members: the Chief Financial Officer, the Deputy Finance Director, the City Treasurer, the Comptroller, the Investment Manager, a Senior Investment Analyst and a citizen member. Additionally, the Board executes its policies with the aid of external investment advisors. Separate financial statements are available and can be obtained from The City of Memphis, Human Resources Division, 125 North Main Street, Memphis, Tennessee 38103.

The City Retirement System pension trust fund accounts for the activity of the City Retirement System and separate retirement systems are operated by MLGW and the Memphis Library System. A small portion of the hourly rate employees are covered under the Social Security program instead of the retirement systems. In addition to being governed under the Social Security program, certain employees receive a contribution paid by the City to a 457 Deferred Compensation Plan.

Substantially all permanent full-time salaried employees of the City (excluding component units) are required to participate in either of three contributory defined benefit pension plans, which are the 1948 Plan for salaried employees hired prior to July 1, 1978 (the "1948 Plan"), the 1978 Plan for salaried employees hired after June 30, 1978, but prior to July 1, 2016 (the "1978 Plan"), and the 2016 Plan for salaried employees hired after June 30, 2016 (the "2016 Plan" and, together with the 1948 Plan and the 1978 Plan, the "Plans"). All non-grandfathered employees in the 1978 Plan began to participate in the 2016 Plan on July 1, 2016. For this purpose, a non-grandfathered employee is any employee with less than 7 1/2 years of service as of July 1, 2016. The 2016 Plan is a new hybrid plan using a hybrid defined benefit formula that includes both a market based cash balance component and a defined contribution component. For more information about the 2016 Plan, see "ADDITIONAL OBLIGATIONS – Pension Plan Reform – *Pension Ordinance*" herein.

The Plans provide retirement benefits as well as death and disability benefits. Retirement benefits vest after ten years of service. Under the applicable ordinances of the City, trust assets are reported in one trust fund and not segregated between the Plans. Permanent, full-time employees in job classifications covered by contract with the Social Security Administration are not participants of the City Retirement System, as they are covered under the Federal Insurance Contribution Act (Social Security).

At June 30, 2020, there were [12,662] participants in the City Retirement System, [4,696] of whom were retirees and beneficiaries who are currently receiving benefits, [718] of whom were disabled participants receiving benefits, [1,126] of whom were terminated employees entitled to benefits but not yet receiving same, [3,105] of whom were fully vested active employees and [3,017] of whom were non-vested active employees. As of the Fiscal Year ended June 30, 2020, the City Retirement System had a net position of approximately [\$2,262,361,000].

*Actuarial Methods and Assumptions.* The City obtains annually an actuarial valuation of the City Retirement System for the purpose of calculating the necessary information for accounting and reporting requirements in accordance with Governmental Accounting Standards. The actuarial asset valuation method is the Entry Age Normal Actuarial Cost Method. This method determines a normal cost rate as a fixed percentage of compensation for each active participant. The current year's normal cost is the participant's compensation multiplied by the normal cost rate. Annual contributions in this amount, from the date the participant entered the Plans (or would have

entered, if the Plans had always been in effect and the participant had entered at the earliest possible date) until retirement; would be sufficient to provide for the actuarial present value of the participant's plan benefits. The total normal cost is the sum of the normal costs for all active participants. Significant actuarial assumptions include: (a) a rate of return on the investment of present and future assets of 7.5% per year for GASB 67 and GASB 68 purposes; (b) projected future salary increases on a scale that varies by age and service with a weighted average of 4.25% per year; (c) results from a May, 2014, experience study based on 10 years of census data (between 2003 through 2012); (d) no COLA increases; and (e) measurement and valuation date as of June 30, 2020.

Mortality rates for general employees are based on the Fully Generational RP-2014 Mortality Table for males and females with 1-year set forward. Police and Fire mortality rates are based on the Fully Generational RP-2014 Mortality Table with Blue Collar adjustment for males and females and a 1-year set forward. Disabled employees' rates are based on the Fully Generational RP-2014 Disabled Mortality Table with a 3-year set back.

The discount rate used to measure the total pension liability was 7.5% as of July 1, 2020, and is equal to the long-term expected return on plan investments. The projection of cash flows used to determine the discount rate assumed that City contributions would be made at the actuarially calculated amount computed in accordance with the current funding policy adopted by the City, which requires payment of the normal cost and amortization of the unfunded actuarially accrued liability in level dollar installments over 30 years utilizing a closed-period approach. Pursuant to the Public Employee Defined Benefit Act (as defined herein), the City phased into funding 100% of the actuarially calculated amount over a 5-year period beginning with the Fiscal Year commenced July 1, 2015. Based on this assumption, the Plan's fiduciary net position was projected to be available to make all projected future benefit payments of current plan members.

The following presents the net pension liability of the City calculated using the discount rate of 7.5%, as well as what the City's net pension liability would be if it were calculated using a discount rate that is 1 percentage point lower (6.5%) or 1 percentage point higher (8.5%) than the current rate:

|                       | 1% Decrease (6.5%)       | Current Rate (7.5%)      | 1% Increase (8.5%)        |
|-----------------------|--------------------------|--------------------------|---------------------------|
| Net pension liability | \$778,084 <sup>(1)</sup> | \$480,124 <sup>(1)</sup> | \$ 229,756 <sup>(1)</sup> |

<sup>(1)</sup> In thousands of dollars.

Plan Description. General employees in the 1948 Plan must contribute 5% of compensation. Under the 1948 Plan, general employees may retire after completion of 25 years of service or, if earlier, after age 60 and the completion of 10 years of service. General employees in the 1978 Plan must contribute 8% of compensation. Under the 1978 Plan, general employees may retire after completion of 25 years of service or, if earlier, after meeting either of the following: (a) after age 65 and the completion of 5 years of service, or (b) after age 60 and the completion of 10 years of service. Fire and Police employee contributions range from 5% to 8% of compensation, depending on the plan and date of hire. Police officers and firefighters under the 1948 Plan and the 1978 Plan may retire after completion of 25 years of service or, if earlier, after



age 55 and the completion of 10 years of service. Elected and appointed participants hired prior to November 1, 2004, may retire after 12 years of service. The employer contribution is 6% of compensation, as required by the Pension Ordinance (as defined herein). Any difference in the actual employer contribution and the ADC affects the unfunded liability, which is amortized over future years.

*Schedule of Employer Contributions.* The Plans' funding policy provided for actuarially determined periodic contributions at rates of 5% per annum for General city employees and up to 7% for Police and Fire employees. The City is required to contribute the remaining amounts necessary to fund the Plans using the actuarial basis specified by statute. The City is also required to appropriate funds for the trust fund as necessary to pay all costs and expenses of the Plans. The employer contribution is 6% of compensation, as determined by the Pension Ordinance. Employer contributions as a percentage of annual payroll for the year ended June 30, 2020, were 14.5%. For the Fiscal Year ended June 30, 2020, the City Retirement System reported total employer and plan member contributions of approximately \$54,194,000 and \$17,884,000, respectively. Benefits paid to plan members totaled approximately \$191,109,000 during the Fiscal Year ended June 30, 2020. Cost of living increases are determined annually by the City Council as part of the budgeting process.

The schedule of employer contributions for the two years ended June 30, 2020, is as follows (numbers in thousands):

**Schedule of Contributions  
City Retirement System<sup>(1)</sup>**

| Year<br>Ending<br>June 30 | Actuarially<br>Determined<br>Contribution <sup>(2)</sup><br>(a) | Actual<br>Employer<br>Contributions<br>(b) | Contribution<br>Excess/(Deficiency)<br>(c) = (b) – (a) | Actual<br>Covered<br>Employee<br>Payroll <sup>(3)</sup><br>(d) | Contributions<br>as a<br>Percentage of<br>Covered<br>Payroll<br>(b) / (d) |
|---------------------------|---|--|--|--|---|
| 2019                      | \$62,499  | \$58,896                                   | \$(3,603)  | \$338,373  | 17.4%   |
| 2020                      | 53,719  | 54,194                                     | 475  | 372,817  | 14.5  |

(1) This schedule was prepared prospectively to satisfy the requirements of GASB 68.

(2) The actuarially determined contribution is based on a discount rate assumption of 7.50%.

(3) Actual Covered Employee Payroll is defined under GASB 82 to be payroll on which contributions to a pension plan are based. Because pensionable pay is used to determine contributions under City Retirement System, pensionable pay is shown, instead of gross payroll. Actual covered employee payroll is for the year immediately preceding the valuation date.

Source: 2020 Audited Financial Statements.

*Pension Expense.* The pension expenses of the City under GASB 68 for Fiscal Year ended [June 30, 2020], were as follows (numbers in thousands):

|  |          |
|--|----------|
| Employer Service Cost                      | \$ 269   |
| Interest Cost                              | 5,022    |
| Expected Return on Assets                  | (3,927)  |
| Changes of Benefit Terms                   | -        |
| Recognition of Deferred (Inflows)/Outflows | 1,373    |
| Total collective pension expense           | \$ 2,737 |

Source: Note V.F to the 2020 Audited Financial Statements.

*Net Pension Liability.* Following is five-year trend information relating to net pension liability for the City Retirement System (numbers in thousands):

**City Retirement System  
Net Pension Liability**

| Year<br>Ending<br>June 30 | Total<br>Pension<br>Liability<br>(a) | Net<br>Fiduciary<br>Position<br>(b) | Net<br>Pension<br>Liability<br>(c) = (a) - (b) | Fiduciary Net<br>Position as<br>% of Total<br>Pension<br>Liability<br>(b) / (a) | Actual<br>Covered<br>Employee<br>Payroll <sup>(1)</sup><br>(d) | Net Pension<br>Liability as a<br>Percentage of<br>Covered<br>Payroll<br>(c) / (d) |
|---------------------------|--------------------------------------|-------------------------------------|--|---|--|---|
| 2016                      | \$2,618,812                          | \$2,091,586                         | \$527,226                                      | 79.9%   | \$300,123  | 175.7%  |
| 2017                      | 2,680,855                            | 2,261,585                           | 419,270  | 84.4  | 336,505  | 124.6   |
| 2018 <sup>(2)</sup>       | 2,664,367                            | 2,343,781                           | 320,586  | 88.0  | 333,171  | 96.2  |
| 2019                      | 2,773,138                            | 2,337,399                           | 435,739  | 84.3  | 338,373  | 128.8   |
| 2020                      | 2,742,485                            | 2,262,361                           | 480,124  | 82.5  | 372,817  | 128.8   |

- (1) The Actual Covered Employee Payroll is defined under GASB 82 to be payroll on which contributions to a pension plan are based. As pensionable pay is used to determine contributions under the plan, pensionable pay is shown above starting June 30, 2016. Prior to June 30, 2016, the gross payroll is shown consistent with the requirements prior to the release of GASB 82. Note, actual covered employee payroll is for the year immediately preceding the valuation date.
- (2) Subsequent to the issuance of the Audited Financial Statements of the City of Memphis, Tennessee, for the Fiscal Year Ended June 30, 2018, an error was discovered in the reporting of the net fiduciary position. Thus, the data presented in this table for 2018 is restated.

Source: 2020 Audited Financial Statements.

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The following is a five-year historical summary of principal valuation results for the City Retirement System:

**HISTORICAL SUMMARY OF PRINCIPAL VALUATION RESULTS**

Fiscal Years 2016-2020  
(In Thousands of Dollars)

|   | 2016        | 2017        | 2018        | 2019        | [2020]     |
|---|-------------|-------------|-------------|-------------|------------|
| <b>Annual Funding:</b>                                      |             |             |             |             |            |
| Annual Required Contribution                                | \$ 73,913   | \$ 58,185   | \$ 62,433   | \$ 62,499   | \$ 53,719  |
| Percent of Anticipated Payroll                              | 17.3%       | 16.5%       | 16.5%       | 16.8%       | %          |
| <b>Government Accounting Standards Board Statement #27:</b> |             |             |             |             |            |
| End of Year Net Pension Obligation                          | \$ 527,226  | \$ 419,270  | \$ 320,586  | \$ 435,739  | \$ 480,124 |
| <b>Assets at beginning of plan year:</b>                    |             |             |             |             |            |
| Market Value of Assets                                      | \$2,200,549 | \$2,091,586 | \$2,261,585 | \$2,388,109 | \$         |
| <b>Participation at beginning of plan year:</b>             |             |             |             |             |            |
| Number of participants:                                     |             |             |             |             |            |
| Active Participants   | 5,691       | 5,710       | 5,858       | 5,941       |            |
| Terminated Vested Participants                              | 704         | 798         | 867         | 958         |            |
| Retiree and Beneficiary Participants                        | 4,046       | 4,133       | 4,180       | 4,243       |            |
| Disabled Participants                                       | 642         | 632         | 664         | 684         |            |
| DROP Participants   | 302         | 294         | 265         | 259         |            |
| TOTAL   | 11,385      | 11,567      | 11,834      | 12,085      |            |
| Covered payroll of Active Participants <sup>(1)</sup>       | \$ 300,123  | \$ 336,505  | \$ 333,171  | \$ 338,373  | \$         |
| Annual benefits in pay status                               | 169,585     | 171,489     | 174,803     | 180,447     |            |
| Average attained age for active participants                | 44.2        | 44.0        | 43.9        | 43.5        |            |

(1) The actual covered employee payroll is defined under GASB 82 to be payroll on which contributions to a pension plan are based. As pensionable pay is used for determining contributions under the plan, pensionable pay is shown above starting June 30, 2016. Prior to June 30, 2016 the gross payroll is shown consistent with the requirements prior to the release of GASB 82.

Source: 2020 Audited Financial Statements.

**Pension Plan Reform**

Public Employee Defined Benefit Act. The Tennessee "Public Employee Defined Benefit Financial Security Act of 2014" (the "Public Employee Defined Benefit Act") was signed into law on May 22, 2014, and was codified as Title 9, Chapter 3, Part 5, Tennessee Code Annotated. In order to improve financial security of public defined benefit plans, the Public Employee Defined Benefit Act, among other things, requires each political subdivision which has established and maintains, directly or indirectly, a defined benefit pension plan for the benefit of its employees not administered by the Tennessee Consolidated Retirement System to: (a) adopt a resolution delineating a funding policy for financing the obligations under the pension plan for Fiscal Years beginning after June 15, 2015 (the "Funding Policy Resolution"); (b) utilize the level dollar amortization method for financing the unfunded accrued liability beginning no later than the plan Fiscal Year commencing after June 15, 2020; and (c) annually make a payment to the pension plan of no less than 100% of the actuarially determined annual required contribution that incorporates both the normal cost of benefits and the amortization of the pension plan's unfunded accrued liability (the "ADC"), provided however, the affected political subdivision may make a payment of more than 100% of the ADC. If the political subdivision fails to fund the ADC, the Public

Employee Defined Benefit Act permits the State Commissioner of the Department of Finance and Administration, at the direction of the Comptroller of the Treasury, to withhold such amount or part of such amount from any state-shared taxes that are otherwise apportioned to such political subdivision. The money withheld from state-shared taxes will be paid to the political subdivision's pension plan. Notwithstanding the foregoing, if the political subdivision is unable to meet the annual funding progress percentage it may submit a plan of correction to the State Treasurer for consideration. If the State Treasurer determines the plan of correction is sufficient to comply with the requirements of the Public Employee Defined Benefit Act, the State Treasurer will submit the plan of correction to the state funding board for approval.

The Public Employee Defined Benefit Act further provides that (a) for all affected employees of the political subdivision hired on or after the later of the effective date of the Public Employee Defined Benefit Act or the date that the funding plan is authorized by the political subdivision's governing body, the political subdivision may freeze, suspend or modify benefits, employee contributions and plan terms and design on a prospective basis; and (b) for any pension plan that is funded below 60%, the affected political subdivision may not establish benefit enhancements unless approved by the State Treasurer.

*Pension Ordinance.* In order to comply with the Public Employee Defined Benefit Act's requirements to improve the financial security and actuarial soundness of the City's Retirement Plans, the City Council adopted Ordinance No. 5573 (the "Pension Ordinance") on December 16, 2014. Pursuant to the Pension Ordinance, the City's previously existing defined benefit plan was closed, as of July 1, 2016, to employees who then had 7.5 years or less of service. Such employees and all subsequently hired employees are subject to the 2016 Plan, which is a hybrid plan consisting of a market based cash balance plan (the "Market Based Plan") and a 401(a) defined contribution plan (the "401(a) Plan"). Currently, general employees in the 1978 Plan must contribute 8% of compensation and Fire and Police employee contributions range from 6.2% to 8% of compensation, depending on the date of hire. The employer contribution is 6% of compensation. Under the Market Based Plan, employees will contribute 2% of compensation and the employer contribution is 3% - 16% of compensation, depending on years of service, position and status as a General or Fire and Police employee. Under the 401(a) Plan, employees will contribute 6% of compensation and the employer contribution is 1.5% of compensation. The City currently expects that the 2016 Plan will reduce its ADC and will mitigate the exposure of the Plan's participants to increased funding costs caused by reduction in the value of plan assets due to adverse market conditions.

For the Fiscal Year ended June 30, 2020, the City contributed \$53.7 million to fund 100% of its ADC, as required by the Public Employee Defined Benefit Act.

*2019 Sales Tax Referendum.* On October 3, 2019, pursuant to § 67-6-706(a) and § 67-6-707 of the Tennessee Code Annotated, the citizens of the City voted to increase the local option sales tax rate in the City by one-half of a percent, from 2.25% to 2.75%, to fund the restoration of pensions and benefits for police and firefighters hired prior to July 1, 2016 to the levels in the 1978 Plan, and to restore the health care benefits in effect as of July 1, 2014, for police and fire employees (the "Voter Approved Ordinance"). The Voter Approved Ordinance became effective January 1, 2020. Though the stated purpose of the Voter Approved Ordinance is to fund the restoration of such benefits, the City is not obligated to use the increased tax proceeds for that

purpose.

### **City of Memphis Other Post-Employment Benefits (OPEB) Plan**

In the Fiscal Year ended June 30, 2017, the City adopted the new statement of financial accounting standards issued as the Governmental Accounting Standards Board (GASB) Statement No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans* ("GASB 74") and also adopted the early implementation of Governmental Accounting Standards Board (GASB) Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions* ("GASB 75"). GASB 74 established new accounting and financial reporting requirements for governments whose employees are provided with OPEB, as well as for certain nonemployer governments that have a legal obligation to provide financial support for OPEB provided to the employees of other entities. GASB 74 replaces GASB Statements No. 43 and No. 57. The primary objective of GASB 75 is to improve accounting and financial reporting by state and local governments for postemployment benefits other than pension. GASB 75 replaces the requirements of GASB Statements No. 45 and No. 57 and establishes standards for recognizing and measuring liabilities, deferred outflows of resources, deferred inflows of resources and expenses / expenditures.

*Plan Description.* The City's OPEB Plan (the "OPEB Plan") is a single-employer plan for GASB accounting purposes. This Plan provides medical and life insurance benefits to eligible retired City of Memphis General, Police, Fire and Airport Authority employees and their dependents based on firmly-established past practices. At June 30, 2020, the number of active participants in the OPEB Plan was 7,145. There were 4,995 inactive participants eligible, of which 2,904 were enrolled. Eligibility for OPEB benefits is based on two pension options: normal retirement or disability retirement. Requirements for eligibility under the OPEB Plan are as follows:

**General Employees – 1948 Plan Participants**

Normal – Age 60 and 10 years of service, or 25 years of service

Disability – Non-Line of Duty, 5 years of service

**General Employees – 1978 Plan Participants**

Normal – Age 60 and 10 years of service, or age 65 and 5 years of service, or 25 years of service

Disability – Non Line-of-Duty, 5 years of service

**General Employees 2012 and 2016 Plan Participants**

Normal – Age 65 and 5 years of service, or 25 years of service

Disability – Non Line-of-Duty, 5 years of service

**Police and Fire (Uniform) 1948 Plan Participants**

Normal – Age 55 and 10 years of service, or 25 years of service

Disability – Line-of-Duty, no service requirement

Police and Fire (Uniform) 1978, 2012 and 2016 Plan Participants

Normal – Age 55 and 10 years of service, or 25 years of service

Disability – Line-of-Duty, no service requirement

Spouses of eligible retirees may receive postretirement medical benefits. Surviving widowed spouses are eligible if receiving a pension payment from the City of Memphis and coverage was in force prior to the retiree's death. Working spouses with available coverage elsewhere do not receive postretirement medical benefits.

Actuarial Methods and Assumptions. The City retained PricewaterhouseCoopers LLP ("PwC") to perform an actuarial valuation of the OPEB Plan for the purpose of calculating accounting results in accordance with GASB 74 and GASB 75) for the Plan's fiscal year ending December 31, 2019, and the City's Fiscal Year ended June 30, 2020, respectively. GASB 74 and GASB 75 require that each significant assumption reflect the best estimate of the City's future experience solely with respect to that assumption. The valuation year spanned from July 1, 2019 to June 30, 2020. The date of the census data used for that valuation was July 1, 2020.

For the July 1, 2020, actuarial valuation, the Entry Age Normal Actuarial Cost Method was used. This method determines a normal cost rate as a fixed percentage of compensation for each active participant. The current year's normal cost is the participant's compensation multiplied by the normal cost rate. Annual contributions in this amount, from the date the participant entered the plan (or would have entered, if the plan had always been in effect and the participant had entered at the earliest possible date) until retirement, would be sufficient to provide for the actuarial present value of the participant's plan benefits. The total normal cost is the sum of the normal costs for all active participants.

Summary of Plan Provisions. With respect to medical benefits, effective January 1, 2015, the City amended the OPEB Plan to grandfather the following participants:

- Post-65 Medicare A only eligible inactive
- Post-65 Medicare B only eligible inactive
- Post-65 Non-Medicare A and B eligible inactive
- Pre-65 deceased line-of-duty beneficiaries inactive
- Pre-65 disabled line-of-duty inactive

The remaining participants are non-grandfathered. Previously the non-grandfathered participants Pre-65 coverage was Access Only for a Preferred Provider Organization (PPO/Basic) or a Point of Service Plan (POS/Premier). Post 65-coverage was through a variety of Medicare plans, including the Medicare Supplemental Plan, Prescription Drug Plans (PDPs) and Medicare Advantage plans for Medicare-eligible retirees. The City subsidized 25% and paid for costs in excess of the required retiree premiums.

The per capita claims cost for the self-insured preferred and premier plans were developed by PwC based on the historical 2018 – July 2020 claims experience for the City's retired participants, adjusted for future assumed enrollment and plan design provisions. This assumption is set using prior year costs and expected effects of aging on the per capita cost curve.

Funding Policy. The contribution requirements of the plan members and the City are established by and may be amended by the City. The City pays for medical costs in excess of required retiree premiums and may elect through adoption of the City's annual budget ordinance to contribute an amount in excess of the total annual benefit payments to a qualified trust for the purpose of funding future OPEB benefits. The City's receipt of Medicare Part D prescription drug subsidies is included in operating income.

In the Fiscal Year ended June 30, 2009, the City adopted and established an OPEB Trust for the exclusive purpose of pre-funding and providing for payment of OPEB benefits under the OPEB Plan. At June 30, 2020, the value of the trust assets within the OPEB Fund was approximately \$4,223,000. The current Fiscal Year includes interest at 2.66% at the beginning of the year on the total OPEB liability and service cost offset by a half-year of interest on benefit payments. For the Fiscal Year ended June 30, 2020, the net investment return was \$190,000, compared to the expected return on assets of \$0.

Schedule of Contributions. Actuarial valuations of an on-going plan involve estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. Examples include assumptions about future employment, mortality and the health care cost trend. Amounts determined regarding the funded status of the plan and the contractual contribution of the employer are subject to continual revision as actual results are compared to past expectations and new estimates are made about the future. The City is contractually required to pay benefits as they come due and make Health Reimbursement Arrangement ("HRA") contributions to participants enrolled in OneExchange or an allowable plan.

The Schedule of Contributions under GASB 74 and GASB 75, presented as Exhibit RSI-4 in the Required Supplementary Information section of the 2020 Audited Financial Statements, is presented for those years for which it is available and was prepared prospectively from the OPEB Plan's fiscal year ending June 30, 2020, for GASB 75 purposes. The City is contractually required to pay benefits as they come due and to make HRA contributions to participants enrolled in an allowable plan. The actual covered payroll of approximately \$410,167,000 represents the total covered payroll for the prior calendar year, increased at a salary scale of [4.25]%. For calendar year 2020, the average salary was \$55,144. The net OPEB liability as a percentage of covered payroll was 162.5% for the year ending June 30, 2020.

Calculations of total OPEB liability, plan fiduciary net position and net OPEB liability are presented below. For more information regarding these calculations and the schedule of contributions, see Exhibit RSI-1, Exhibit RSI-2 and Exhibit RSI-3 of the 2020 Audited Financial Statements.

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**Schedule of Changes in Net OPEB Liability and Related Ratios under GASB 74 and GASB 75<sup>1</sup>**  
 Fiscal Year Ended June 30, 2020  
 (In Thousands of Dollars)

**Total OPEB Liability**

|  |            |
|--|------------|
| Total OPEB Liability - beginning balance | \$ 304,554 |
| Total Service Cost                       | 4,176      |
| Interest Cost <sup>2</sup>               | 8,437      |
| Experience (Gains)/Losses                | (2,264)    |
| Assumption Changes <sup>3</sup>          | 21,629     |
| Changes of Benefit Terms <sup>4</sup>    | 346,334    |
| Net Benefit Payments <sup>5</sup>        | (12,678)   |
| Total OPEB Liability - ending balance    | \$ 670,188 |

**OPEB Plan Fiduciary Net Position**

|   |          |
|---|----------|
| OPEB Fiduciary Net Position - beginning balance | \$ 4,015 |
| Employer Contribution <sup>6</sup>              | 12,263   |
| Employee Contribution                           | 1,807    |
| Investment Return                               | 190      |
| Benefit Payments <sup>7</sup>                   | (7,222)  |
| Administrative Expenses                         | (7,263)  |
| Fiduciary Net Position - ending balance         | \$ 3,790 |

**Net OPEB Liability**

|                        |            |
|------------------------|------------|
| Total OPEB Liability   | \$ 670,188 |
| Net Fiduciary Position | 3,790      |
| Net OPEB Liability     | \$ 666,398 |

|   |            |
|---|------------|
| Fiduciary Net Position as a Percent of Total OPEB Liability | 0.6%       |
| Actual Covered Employee Payroll <sup>8</sup>                | \$ 410,167 |
| Net OPEB Liability as a Percent of Covered Payroll          | 162.5%     |

- (1) This Schedule was prepared to satisfy the requirement to show information regarding the net OPEB liability and related ratios. It was prepared prospectively from the OPEB Plan's fiscal year ended June 30, 2020, for GASB 75 purposes.
- (2) For the fiscal year ended June 30, 2020, includes interest at 2.79% on the beginning of year Total OPEB Liability and service cost offset by a half year of interest on benefit payments.
- (3) Assumption changes for the fiscal year ended June 30, 2020, reflect changes to the mortality, turnover, retirement, salary scale, per capita costs and discount rate assumptions.
- (4) Benefit term changes were reflected, which include the plan amendments effective January 1, 2021 as well as the impact of changing the participation assumptions.
- (5) Depicts paid claim, including administrative expenses less retiree contributions.
- (6) Includes employer contributions and transfers from other funds.
- (7) Includes benefits paid less Medicare D subsidies and pharmacy Rx rebates received.
- (8) Actual covered employee payroll represents the total payroll for the prior calendar year, increased by the salary scale. Where a salary amount was not provided, an average salary of the participants for the year was assumed. For calendar year 2020, the average salary was \$55,144.

Source: 2020 Audited Financial Statements.



Changes in Plan Provisions. The following changes have been made to the provisions of the OPEB Plan.

- Effective March 1, 2017, the City changed the medical coverage options for the majority of non-disabled retirees and future retirees. The new coverage provides a specified HRA amount to each participant, where the amount varies based on the retiree's coverage election. Pre-65 line-of-duty disabled and grandfathered post-65 retirees with Medicare are still eligible to elect the plan sponsor's self-insured medical plans.
- Effective July 1, 2017, the City required all participants eligible to receive Medicare Part B coverage to enroll in Medicare Part B. The City then agreed to pay the cost of any Medicare Part B penalties for those participants who were not previously enrolled in Medicare Part B but were eligible.
- Effective January 1, 2018, the City made plan design changes to the self-insured Premier and Preferred plans that are offered to pre-65 line-of-duty disabled and grandfathered post-65 retirees who do not have Medicare. In addition, effective January 1, 2018, the City switched third party administrators from Cigna to BCBS of Tennessee. This change impacts the administrative fee component of the claims cost.

There have been no other changes in plan provisions since the end of the 2016 calendar year.

### **Compensated Absence Liabilities**

Governmental Accounting Standards require recognition of the liability for compensated absences which have been earned and are reasonably expected to be paid to existing employees. The City has recognized the non-current portion of this liability for City employees in the amount of approximately \$90,144,000 as of June 30, 2020. See Note II.A to the 2020 Audited Financial Statements in "APPENDIX C – AUDITED FINANCIAL STATEMENTS OF THE CITY OF MEMPHIS, TENNESSEE FOR THE FISCAL YEAR ENDED JUNE 30, 2020" attached hereto.

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## PRINCIPAL AND INTEREST REQUIREMENTS

The following table presents the principal and interest payment requirements with respect to the Outstanding General Improvement Bonds prior to the issuance and delivery of the Series 2021 Bonds.

**Long-Term Debt Service Schedule<sup>(1)(2)</sup>**  
(In Thousands of Dollars)

| Fiscal Year  | Existing Debt Service <sup>(3)(4)</sup> |          |       | Series 2021 Bonds |                   |           | Total Debt Service <sup>(4)</sup> |           |           |
|--------------|---|----------|-------|-------------------|-------------------|-----------|-----------------------------------|-----------|-----------|
|              | Principal                               | Interest | Total | Initial Principal | Compound Interest | Total     | Principal                         | Interest  | Total     |
| 2021         |   |          |       | \$                | \$                | \$        | \$                                | \$        | \$        |
| 2022         |   |          |       |                   |                   |           |                                   |           |           |
| 2023         |   |          |       |                   |                   |           |                                   |           |           |
| 2024         |   |          |       |                   |                   |           |                                   |           |           |
| 2025         |   |          |       |                   |                   |           |                                   |           |           |
| 2026         |   |          |       |                   |                   |           |                                   |           |           |
| 2027         |   |          |       |                   |                   |           |                                   |           |           |
| 2028         |   |          |       |                   |                   |           |                                   |           |           |
| 2029         |   |          |       |                   |                   |           |                                   |           |           |
| 2030         |   |          |       |                   |                   |           |                                   |           |           |
| 2031         |   |          |       |                   |                   |           |                                   |           |           |
| 2032         |   |          |       |                   |                   |           |                                   |           |           |
| 2033         |   |          |       |                   |                   |           |                                   |           |           |
| 2034         |   |          |       |                   |                   |           |                                   |           |           |
| 2035         |   |          |       |                   |                   |           |                                   |           |           |
| 2036         |   |          |       |                   |                   |           |                                   |           |           |
| 2037         |   |          |       |                   |                   |           |                                   |           |           |
| 2038         |   |          |       |                   |                   |           |                                   |           |           |
| 2029         |   |          |       |                   |                   |           |                                   |           |           |
| 2040         |   |          |       |                   |                   |           |                                   |           |           |
| 2041         |   |          |       |                   |                   |           |                                   |           |           |
| 2042         |   |          |       |                   |                   |           |                                   |           |           |
| 2043         |   |          |       |                   |                   |           |                                   |           |           |
| 2044         |   |          |       |                   |                   |           |                                   |           |           |
| 2045         |   |          |       |                   |                   |           |                                   |           |           |
| 2046         |   |          |       |                   |                   |           |                                   |           |           |
| 2047         |   |          |       |                   |                   |           |                                   |           |           |
| 2048         |   |          |       |                   |                   |           |                                   |           |           |
| <b>Total</b> |   |          |       | <b>\$</b>         | <b>\$</b>         | <b>\$</b> | <b>\$</b>                         | <b>\$</b> | <b>\$</b> |

<sup>(1)</sup> Excludes debt service on the General Obligation Commercial Paper.

<sup>(2)</sup> Totals may not add due to rounding.

<sup>(3)</sup> [As of October 15, 2020.]

<sup>(4)</sup> Does not include subsidy payments for the City's General Improvement Bonds, Series 2010B (Direct Payment Build America Bonds), General Improvement Bonds, Series 2010C (Direct Payment Build America Bonds) or General Improvement Bonds, Series 2010F (Recovery Zone Economic Development Bonds).

Source: City of Memphis, Tennessee.

## **CERTAIN INVESTMENT CONSIDERATIONS**

### **General**

The purchase of the Series 2021 Bonds is subject to a number of investment considerations. The following is a discussion of certain investment considerations, which, among others, could affect the ability of the Issuer to pay the Accreted Value of and premium, if any, on the Series 2021 Bonds and which could also affect the marketability of, or the market price for, the Series 2021 Bonds. Such discussion is not, and is not intended to be, a comprehensive compilation of all possible investment considerations nor a substitute for an independent evaluation of the information presented in this Official Statement, including the appendices attached hereto. Each prospective purchaser of any Series 2021 Bond should read this Official Statement, including the appendices attached hereto, in its entirety and consult such prospective purchaser's own investment or legal advisor for a more complete explanation of the matters that should be considered when purchasing an investment such as the Series 2021 Bonds.

### **Enforceability of Remedies**

The remedies available to the owners of the Series 2021 Bonds upon an event of default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay.

The enforceability of remedies or rights with respect to the Series 2021 Bonds may be limited by state and federal laws, rulings and decisions affecting remedies and by bankruptcy, insolvency or other laws affecting creditors' rights or remedies heretofore or hereafter enacted. Under existing constitutional and statutory law and judicial decisions, including specifically Title 11 of the United States Code (federal bankruptcy code), certain remedies specified by the Indenture or the Loan Agreement may not be readily available or may be limited.

Under existing law, municipalities must obtain the consent of state government in order to avail themselves of federal bankruptcy protection under Title 11 of the United States Code. However, there is currently no State law granting such consent. The various legal opinions to be delivered concurrently with the delivery of the Series 2021 Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by bankruptcy, reorganization, insolvency, moratorium, or other similar laws affecting the rights of creditors generally or as to the availability of any particular remedy.

### **Early Payment Prior to Maturity**

The Series 2021 Bonds are subject to optional redemption prior to maturity, as more fully described herein. See "THE SERIES 2021 BONDS - Redemption Provisions" herein. A prospective investor should consider these redemption rights when making any investment decision. Following redemption, the owners of the Series 2021 Bonds may not be able to reinvest their funds at a comparable interest rate.

## **General Obligation of City Pursuant to Loan; Non-Recourse Obligation Against Issuer**

The Series 2021 Bonds are limited obligations of the Issuer payable solely from and secured by an assignment and pledge of the Trust Estate, which consists primarily of the payments and prepayments to be received by the Issuer from the City under and pursuant to the Loan Agreement (excluding the Unassigned Rights). Payment of the Series 2021 Bonds is not secured by a mortgage lien or other security interests in the Project or any portion thereof or any other assets of the Issuer or the City other than the Trust Estate. Holders of Series 2021 Bonds will have no recourse against any assets of the Issuer. The City, however, has pledged its full faith and credit to the payment of obligations under the Loan Agreement in an amount sufficient to pay the Accreted Value of and premium, if any, on the Series 2021 Bonds when due. The Issuer has no taxing power. In the case of a Loan Default under the Loan Agreement consisting of the failure to timely make Loan Repayments, and upon receipt of indemnity satisfactory to it for its fees and expenses, the Trustee is authorized by the Indenture to take all actions to enforce the remedies of the Issuer set forth in the Loan Agreement. See "SECURITY AND SOURCES OF PAYMENT" and "APPENDIX A – DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT" attached hereto.

### **Limitations on Remedies**

The occurrence of an event of default under the Indenture or the Loan Agreement will not permit the acceleration of the maturity of, or allow immediate payment for, the entire outstanding principal balance of the Series 2021 Bonds. As payment of the Series 2021 Bonds is not secured by a mortgage lien or other security interests in the Project or any portion thereof or any other assets of the Issuer or the City, Holders of Series 2021 Bonds will be limited to seeking remedies against the Trust Estate.

### **Secondary Market Prices**

No assurance can be given that a secondary market for any of the Series 2021 Bonds will be available and no assurance can be given that the initial offering prices for the Series 2021 Bonds will continue for any period of time.

The Series 2021 Bonds may not constitute a liquid investment, and there is no assurance that a liquid secondary market will exist for the Series 2021 Bonds in the event an owner thereof determines to solicit purchasers of the Series 2021 Bonds. Even if a liquid secondary market exists, there can be no assurance as to the price for which the Series 2021 Bonds may be sold. Such price may be lower than that paid by the current owner of the Series 2021 Bonds, depending on existing market conditions and other factors.

### **Seismic Risks**

The City is located adjacent to the New Madrid seismic zone, which is the most seismically active and well-studied region in the Central and Eastern United States. The last major earthquakes located within this seismic zone, believed to have ranged between 7.0 and 7.7 in magnitude, occurred in 1811 and 1812. According to the U.S. Geological Survey, there is a 7-10% chance that a repeat of earthquakes of similar scale to the 1811 and 1812 earthquakes will occur within the next 50 years and a 25-40% risk of a still dangerous earthquake in the low-

6 magnitude. During the past 25 years, building codes in the City and the County have been gradually upgraded to require stricter seismic construction standards. However, many older buildings, particularly in the downtown area, are masonry structures built long before seismic requirements and are believed to be highly vulnerable to shaking from an earthquake.

In addition to the potential damage to the Project and to other buildings and facilities within the City, due to the importance of the City as a tourist destination and regional hub of commercial, retail and entertainment activity, a major earthquake may cause significant temporary and possibly long-term harm to the City's economy, tax receipts and residential and business real property values.

### **Climate Change**

Numerous scientific studies have detailed changing global weather patterns and the potential for increasing extreme weather events across the world. The City's location in the southern United States and next to the Mississippi River increases its vulnerability to flooding and extreme heat. In addition to flooding and extreme heat, the City faces other threats due to climate change, including both drought and damaging wind that could become more severe and frequent. The City and the County have collaborated to develop a Climate Action Plan, which is intended to measure and lessen the City's contributions to climate change. The Issuer and the City cannot predict the timing, extent or severity of climate change and its impact on the Project or the City's operations and finances, including revenues used to support the Series 2021 Bonds.

### **Cyber Security**

The City utilizes various computer systems and network technology to perform many of its vital operations. Such operations often include the storage and transmission of sensitive information. As a result, the City may be the target of cyberattacks attempting to gain access to such information. In addition to intentional attacks, information breaches may occur due to unintentional employee error. A successful cyberattack or unintentional breach may require the expenditure of an unknown amount of money or time to resolve, substantially interrupt municipal services and operations and subject the City to legal action. The City has no knowledge of, nor historical record of, any successful cyber security breach or related attack. Attempted cyber security attacks, whether anonymous or targeted, occur on a periodic frequency that is not uncommon to organizations or entities similar to the City. To mitigate against such risks, the City has instituted various policies and procedures to protect its network infrastructure, including a cyber-security training requirement for certain departments, as well as general cyber security training and awareness for all employees. The City also maintains insurance against cyber security incidents. Despite the City's measures to safeguard its network infrastructure, there are no guarantees that such measures will be successful.

### **COVID-19**

#### **[TO BE UPDATED]**

The worldwide spread of COVID-19, a respiratory illness caused by a novel strain of coronavirus, is a pandemic that has affected the entire world, including the City, and is considered by the World Health Organization to be a Public Health Emergency of International Concern. The

Governor of the State issued a state of emergency for the State in March 2020 in response to the COVID-19 pandemic. The spread of COVID-19 has led to "quarantine and other "social distancing" measures throughout the United States, including the City. These measures have included (i) the closure, from time to time, of nonessential businesses, (ii) recommendations and warnings to limit nonessential travel and promote telecommuting, (iii) the postponement or cancellation of or reduced capacity at large-scale gatherings such as conventions, concerts and sporting events, (iv) limits on operations and customer capacity at commercial and retail establishments and (v) the closure, from time to time, of school buildings. In response to the pandemic, many of the City's notable tourist attractions have, from time to time, closed or operated at reduced capacity. Similarly, travel to the City and hotel stays within the City have decreased since the onset of the pandemic. The State continues to be under a state of emergency and the Governor of the State may continue to issue executive orders to facilitate continued response to the COVID-19 pandemic. The County and the City may also issue future restrictions in response to the pandemic. **[As of [\_\_\_\_], 2021, there were approximately [\_\_] confirmed cases of COVID-19 in the County and [\_\_] deaths.]**

Multiple vaccines for the virus that causes COVID-19 were developed in late 2020. To date, **[three]** vaccines have been approved for distribution in the United States with **[each of these vaccines having an efficacy rate exceeding 65%]**. Multiple variants of the virus that causes COVID-19 have been documented in the United States and globally, but studies so far suggest that antibodies generated through vaccination with approved vaccines recognize these variants to varying extents. COVID-19 vaccines are currently available to all residents within the State, including the City, who are over the age of 16. **[It is estimated [by the State of Tennessee Department of Health][by the [City][County] Health Department] that approximately [\_\_%] of the [City's][County's] population has been partially or fully vaccinated.]**

The Issuer and the City are unable to predict: (i) the extent or duration of the COVID-19 outbreak, any recurrence thereof or any other epidemic or pandemic; (ii) the extent or duration of existing or additional quarantines, closures, restrictions or other measures relating to COVID-19 or any other epidemic or pandemic; (iii) whether and to what extent the COVID-19 outbreak or any other epidemic or pandemic may disrupt the local or global economy, manufacturing or the supply chain or whether any such disruption may adversely affect the operations of the City; or (iv) the impact of, or the timing of distribution of, the COVID-19 vaccines. Given the evolving nature of the spread of the virus and the behavior of governments, businesses and individuals in response thereto, the City cannot accurately predict the magnitude of the impact of COVID-19 on the operations and financial condition of the City. The City is proactively taking steps to mitigate the spread of COVID-19 within the City, including but not limited to the above-mentioned distribution of COVID-19 vaccines to eligible residents.

Although the City cannot predict the magnitude of the impact of the COVID-19 pandemic, the City is monitoring its operations and finances. From an operations perspective, the City's primary concern is ensuring that its employees remain healthy and capable of managing the City's operations. The City has enacted policies, based on guidelines issued by the Centers for Disease Control and Prevention, requiring the isolation of any employees who may have contracted or been exposed to the virus. At the outset of the COVID-19 pandemic, the City implemented policies and procedures for limiting access to certain government facilities, including City Hall, the rotation of employees, social distancing and telecommuting, where possible, as well as the following changes:

(i) instituting a hiring freeze for all employees except uniformed fire and police officers through June 30, 2020, (ii) instituting a vacation freeze and suspending travel for all employees through June 30, 2020, (iii) increasing salaries for certain essential employees (a portion of the costs of which **[are to be][have been]** reimbursed from relief funds received from the federal government in connection with the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")); (iv) acquiring personal protective equipment for essential employees and disinfection supplies for City facilities (a portion of the costs of which **[are to be][have been]** reimbursed from CARES Act funding) and (v) creating employee reassignment pools whereby certain non-essential City employees are reassigned to tasks relating to the City's response to the pandemic (a portion of the costs of which **[are to be][have been]** reimbursed from CARES Act funding). In Fiscal Year 2021, the City has reduced certain part-time workers in the Memphis Public Library System and Public Works and Parks Departments and has also reduced certain non-essential professional services. To date, the City's operations have not been materially impacted.

Financially, the City has experienced some fluctuations in General Fund revenues and expenditures resulting from COVID-19, although the overall unassigned General Fund balance for Fiscal Year 2020 was consistent with forecast expectations. There was no material change in property tax collections in Fiscal Year 2020 as a result of the pandemic, as most property taxes for the applicable tax year were due prior to March 2020. **[Similarly, there has not been a material change in property tax collections for Tax Year 2020 / Fiscal Year 2021, though no assurances may be made as to future years.]** As set forth below, property tax revenues for the City for Fiscal Year 2021 were budgeted for a year-over-year decrease of 1%.

As the pandemic has restricted commercial activity throughout the City, including but not limited to activity related to retail, tourism and entertainment, City revenues from sales taxes, hotel/motel taxes, licenses and permits, and charges for services all decreased at the onset of the pandemic. Though no assurances can be made as to future revenues, state and local sales tax revenues currently appear to be rebounding. State and local sales tax revenues collected by the City from **[June 2020 through December 2020]** were % **[higher]** than such sales tax revenues collected by the City during this same period in **[2019]**. The latest state and local sales tax revenue numbers available for the month of  **2021** show a year-over-year increase of %. Though not a major source of City revenue, hotel/motel taxes (including the bed tax) for the City from **[June 2020 through December 2020]** were % lower than such revenues collected by the City during the same period in **[2019]**. City revenues from fines and forfeitures from **[June 2020 through December 2020]** were % lower than the amount collected by the City during the same period in **[2019]**, due to the initial suspension of court in response to COVID-19. Court has since resumed. The year-over-year revenue comparisons presented above include amounts that are unadjusted and unaudited.

While the course of the pandemic and its impact on the City remain unclear, the City has forecast a significant decrease in Fiscal Year 2021 General Fund revenues primarily as a result of COVID-19. For Fiscal Year 2021, revenues were budgeted with a year-over-year decrease of approximately 25%. Property tax revenues and state and local sales tax revenues for Fiscal Year 2021 were budgeted for year-over-year decreases of 1% and 25%, respectively. Collectively, other fees of the City for Fiscal Year 2021 were budgeted for a 10% decrease from the prior year. The City has not experienced any delays in the collection of its fees and tax revenues as a result of the pandemic and does not expect any disruption, though no assurances can be made. In light of the

economic uncertainty caused by the pandemic and at the direction of the Mayor, the City has reallocated, for Fiscal Year 2021, the property tax rate allocation for the Affordable Housing Trust Fund and the Community Catalyst Fund to be redirected and reallocated to the General Fund. This reallocation increases the General Fund property tax rate allocation from \$2.163984 to \$2.177318. See "APPENDIX A - GENERAL INFORMATION REGARDING THE CITY OF MEMPHIS, TENNESSEE - FINANCIAL INFORMATION - Property Tax Rates, Levies and Collections" for historical information on the allocation of the City's property tax rates.

City personnel costs increased in Fiscal Year 2020 as a result of the pandemic, but most of these increased costs were reimbursed with federal funds resulting from the CARES Act. The pandemic also resulted in the reduction of certain City costs, as the onset of COVID-19 led to a delay in project personnel needs and the City suspended employee travel and froze employee vacation. The City does not expect a significant increase in expenditures for Fiscal Year 2021 as a result of the pandemic, though no assurances can be made. Any increased expenditures may be mitigated by the City's CARES Act funds. Budgeted expenditures for Fiscal Year 2021 were adjusted to include an additional \$40 million, reflecting the City's disbursement of its CARES Act funds.

To date, the City has received approximately [**\$113.6 million**] in CARES Act funds. The City has used these funds to cover unbudgeted City costs caused by COVID-19 as well as to provide economic relief for organizations, businesses and individuals within the City. Per the American Rescue Plan Act of 2021 (the "Rescue Plan"), the City anticipates receiving approximately \$168 million in additional federal aid, with half of this aid being received during Fiscal Year 2021 and the remaining half being received a year after the first distribution. Funds from the Rescue Plan may be used by the City to **[(i) respond to the health or economic impacts of COVID-19 within the City, including assistance to households, small businesses, nonprofits and impacted industries such as hospitality, travel and tourism, (ii) provide premium pay for essential workers, (iii) cover lost revenue in providing services and (iv) make investments in certain utility infrastructure]**. It is unknown at this time whether the City will receive additional funds from either the State or the federal government.

The City is liable, both contingently and unconditionally, for the payment of certain obligations incurred to finance or incentivize capital improvements within the City, including certain of the City's sports, entertainment and tourist venues. These obligations are generally primarily payable from revenues of certain sales and tourism-related taxes and fees, which revenues have been and are expected to continue to be significantly affected by the restriction of commercial and social activity resulting from the pandemic. As the revenues from these taxes and fees decrease, it becomes more likely that the City may be required to use its Non-Property Tax Revenues (as defined herein) to support these payment obligations. See "ADDITIONAL OBLIGATIONS" herein for a description of these contingent and unconditional obligations, the payment streams therefor and the City's obligations in connection therewith.

Though no assurances can be made, the City expects its current liquidity position to be adequate to fund essential services and to make timely payments on its debt service when due. For Fiscal Year 2021, the City has budgeted to use \$17,944,169 of its unassigned General Fund balance to cover anticipated revenue shortfalls and other adverse financial effects caused by COVID-19. The City's General Fund unassigned fund balance was approximately \$78 million at June 30, 2020.



As of June 30, 2020, the General Fund cash position was \$208,518,000. The City's Debt Service Fund was approximately \$174 million at June 30, 2020. The City does not anticipate needing any other source of liquidity, though circumstances may change.

See "FISCAL OVERVIEW" herein for more information on the City's Fiscal Year 2021 budget and use of its General Fund balance and the financial results of Fiscal Year 2020. See also APPENDIX B for additional economic information regarding the impact of COVID-19 to the City, including but not limited to changes to the City's employment rate. As provided in this Section and in APPENDIX B, due to the constantly evolving nature of the pandemic and its impact to the City, information related to the pandemic cannot be predicted with any assurance and is subject to change without notice.

### **Recently Adopted and Pending Legislation**

The IMPROVE Act. The Improving Manufacturing, Public Roads and Opportunities for a Vibrant Economy Act (the "IMPROVE Act"), the primary purpose of which is to raise taxes to fund transportation and road projects, has been adopted by the Tennessee General Assembly and was executed into law by the Governor on April 26, 2017. The IMPROVE Act eliminated the Hall income tax, which is a tax on income derived from dividends on stock and interest on bonds, for tax years beginning on or after January 1, 2022. The rate at which the Hall income tax is reduced in the tax years prior to January 1, 2022, is determined through the State's annual budgeting process. Because three-eighths of the proceeds derived from the Hall income tax is distributed to local governments, elimination of the Hall income tax will eliminate a source of income for the City.

Internet Sales Tax. In light of a 2018 decision by the U.S. Supreme Court that a physical presence is no longer required in order for a person to have a substantial nexus subjecting the person to taxation by a state, the Tennessee General Assembly enacted House Bill 667, which provides that the Tennessee Department of Revenue is no longer prohibited from collecting internet sales and use taxes from certain persons having no physical presence in the State but who sell to consumers located in the State. To implement the State's new authorization to collect internet sales and use taxes, the Tennessee General Assembly adopted Senate Bill 0082 and its companion, House Bill 0733 (together, the "Internet Sales Tax Law"). Effective January 1, 2020, the Internet Sales Tax Law requires a dealer with no physical presence in the State to collect and remit sales tax if, in the previous 12-month period, the dealer's gross revenues from sales in the State exceed \$100,000 or the dealer made 200 or more separate sales transactions in the State. The Internet Sales Tax Law further provides that proceeds of such internet sales taxes must be distributed among counties in proportions reflecting the amount of such sales taxes collected for each county. Because the City will share in the sales taxes distributed to the County, the sales taxes authorized under the Internet Sales Tax Law should result in an increase in sales tax revenue for the City.

Increased Share of Sales Tax. Senate Bill 1158 and its companion, House Bill 1007 (together, the "Increased Sales Tax Share Bill"), if adopted, would decrease the amount of state sales and use tax revenues deposited to the State's General Fund from 29.0141% to 28.5262% and increase the share of such sales and use tax revenues appropriated to municipalities, including the City, from 4.6030% to 5.0909%, thereby increasing the amount of sales tax revenues allocated to

the City. The Tennessee General Assembly is **[currently in recess and will not consider the Increased Sales Tax Share Bill until it returns]**.

Traffic Enforcement Cameras. Senate Bill 2002 and its companion, House Bill 1656 (together, the "Traffic Camera Bill"), have been introduced for consideration by the Tennessee General Assembly. The Traffic Camera Bill would prohibit the issuance of traffic citations based solely on evidence obtained from unmanned traffic cameras used to monitor traffic signal violations or speed limits. If adopted, the Traffic Camera Bill will result in a decrease in revenues from traffic fines for the City. The Tennessee General Assembly **[is currently in recess and will not consider the Traffic Camera Bill until it returns]**.

Deannexation Bills. In recent years, various bills have been introduced for consideration by the Tennessee General Assembly which would allow voters residing in an area annexed by a Tennessee city to petition the county election commission to hold an election to deannex the area or which would have a similar impact ("Deannexation Bill"). In light of attempts in recent years to deannex ten areas annexed by the City since 1998, passage of any Deannexation Bill could lead to actual deannexation of some or all of those areas, thereby resulting in a negative impact on the City's property and sales tax revenues. Though the City deannexed the Eads and Riverbottom areas in 2019 and the Southwind-Wyndyke, South Cordova and Rocky Point areas in 2020, those deannexations were implemented at the discretion of the City for the benefit of the entire City and not forced by an election of the residents of only those areas. Though one could be introduced at any time, no Deannexation Bill has yet been introduced to the current Tennessee General Assembly.

## TAX MATTERS

### Series 2021 Bonds – Federal Tax Consequences

**[To be provided by Co-Bond Counsel]**

### State of Tennessee Taxes

Co-Bond Counsel also are of the opinion that, under existing law, the Series 2021 Bonds and the income therefrom are exempt from all present state, county and municipal taxes in Tennessee except (a) inheritance, transfer and estate taxes, (b) Tennessee excise taxes on all or a portion of the interest on the Series 2021 Bonds during the period the Series 2021 Bonds are held or beneficially owned by any organization or entity other than a sole proprietorship or general partnership, doing business in the State of Tennessee, and (c) Tennessee franchise taxes by reason of the inclusion of the book value of the Series 2021 Bonds in the Tennessee franchise tax base of any organization or entity, other than a sole proprietorship or general partnership, doing business in the State of Tennessee. Ownership of the Series 2021 Bonds or interest thereon may be subject to state or local taxation in jurisdictions other than the State of Tennessee under applicable state or local laws, as to which Co-Bond Counsel express no opinion. Each prospective investor and purchaser of the Series 2021 Bonds should consult its, his or her own tax advisor regarding the status of the interest on the Series 2021 Bonds in a particular state or local jurisdiction other than Tennessee.

## **Changes in Federal and State Tax Law.**

From time to time, there are legislative proposals in the Congress and in the states that, if enacted, could alter or amend the federal and state tax matters referred to under this heading "TAX MATTERS" or adversely affect the market value of the Series 2021 Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether if enacted it would apply to bonds issued prior to enactment. In addition, regulatory actions are from time to time announced or proposed and litigation is threatened or commenced which, if implemented or concluded in a particular manner, could adversely affect the market value of the Series 2021 Bonds. It cannot be predicted whether any such regulatory action will be implemented, how any particular litigation or judicial action will be resolved, or whether the Series 2021 Bonds or the market value thereof would be impacted thereby. Purchasers of the Series 2021 Bonds should consult their tax advisors regarding any pending or proposed legislation, regulatory initiatives or litigation. The opinions expressed by Co-Bond Counsel are based on existing legislation and regulations as interpreted by relevant judicial and regulatory authorities as of the date of issuance and delivery of the Series 2021 Bonds, and Co-Bond Counsel has expressed no opinion as of any date subsequent thereto or with respect to any pending legislation, regulatory initiatives or litigation.

PROSPECTIVE PURCHASERS OF THE SERIES 2021 BONDS ARE ADVISED TO CONSULT THEIR OWN TAX ADVISORS PRIOR TO ANY PURCHASE OF THE SERIES 2021 BONDS AS TO THE IMPACT OF THE CODE UPON THEIR ACQUISITION, HOLDING OR DISPOSITION OF THE SERIES 2021 BONDS.

## **LITIGATION**

### **The Issuer**

There is no known pending or, to the knowledge of the Issuer, threatened litigation against the Issuer which restrains or enjoins the issuance or delivery of the Series 2021 Bonds, the execution, delivery or performance of the Indenture or the Loan Agreement, or the use of the proceeds of the Series 2021 Bonds or which questions or contests the validity of the Series 2021 Bonds, the Indenture or the Loan Agreement or the proceedings and authority under which they are to be issued, executed and delivered. Neither the creation, organization, nor existence of the Issuer, nor the title of the present board members or other officials of the Issuer to their respective offices, is being currently contested or questioned to the knowledge of the Issuer.

### **The City**

A discussion of litigation in which the City is involved which could potentially have a material impact on the City is set forth below.

*PILOT Payments Litigation.* The County has filed two lawsuits against the City, claiming that approximately \$55 million of electric and gas payments in lieu of taxes made by MLGW and collected by the City should have been paid to the County instead. Many of the County's claims were rejected by the Court in a prior suit between the City and the County. The City also disputes the County's interpretation and application of applicable law and has interposed several defenses, including sovereign immunity. As a result, the City believes that the amounts due to the County

under these lawsuits, if any, will be significantly less than initially claimed by the County. In any event, the City does not expect that any such amounts will materially affect the financial condition of the City.

*BellSouth Litigation.* AT&T (formerly known as BellSouth Telecommunications, Inc.) sued the City in 2000 to recover alleged excessive telecommunications franchise fees. Tennessee courts have ruled that approximately \$35,000,000 (with interest since 2000), is payable by the City to BellSouth (the "BellSouth Payment"), net of any City right-of way costs properly allocable to BellSouth (the "ROW Compensation"). To the extent the ROW Compensation due from BellSouth is greater than the BellSouth Payment, BellSouth will have to pay the difference. To the extent the ROW Compensation is less than the BellSouth Payment, the City will have to refund the difference to BellSouth. The City has performed a cost allocation study to determine the amount of the ROW Compensation. The City believes that the ROW Compensation from BellSouth will be significant, and that any amounts ultimately due to BellSouth will not materially affect the financial condition of the City.

*City Pension Litigation.* In order to comply with the Public Employee Defined Benefit Act's requirements to improve the financial security and actuarial soundness of the City's Retirement Plans, the City Council adopted Ordinance No. 5573 (the "Pension Ordinance") on December 16, 2014.

On November 12, 2015, seven (7) of the non-vested employees who were to be transferred to the 2016 Plan on July 1, 2016, filed an action in Tennessee state court on behalf of themselves and others who are similarly situated, claiming the Pension Ordinance is invalid because it violates Tennessee law as interpreted by the Tennessee Supreme Court. Specifically, Plaintiffs claim that the transfer of certain non-vested employees to the 2016 Plan, which is a hybrid plan consisting of a market based cash balance plan and a 401(a) defined contribution plan, was not reasonable or necessary to protect or enhance the actuarial soundness of the City's defined benefit pension plan and therefore the transfer of non-vested employees to the 2016 Plan will violate their rights. On June 20, 2016, the trial court denied Plaintiffs' application for a temporary injunction pending a trial on the merits. The City intends to vigorously defend this lawsuit, since the adoption of the Pension Ordinance was adopted upon the express finding of the City's governing body that the creation of the 2016 Plan will protect and enhance the actuarial soundness and ensure the long-term viability of the City Retirement System and the immutable rights of vested participants. Moreover, the Pension Ordinance is one of a series of actions taken by the City to satisfy the State's stated policy of improving the financial security of public defined benefit pension plans by requiring that the unfunded accrued liability of such plans be eliminated no later than June 15, 2020.

*City Employee Other Post-Employment Benefits (OPEB) Plan Litigation.* On November 12, 2015, four participants in the OPEB Plan filed a putative class action in Tennessee State Court for themselves and others similarly situated seeking to enjoin the City's changes to the OPEB Plan. Although the suit is still pending, the trial judge has denied Plaintiff's request for a temporary injunction and has denied Plaintiff's request to certify the case as a class action. The Court concluded that Plaintiffs are unlikely to succeed on the merits of their claims, since they have not shown any contractual vested rights to lifetime health insurance subsidies. The City Council adopted an amendment to the Hybrid Pension Plan on December 15, 2020, which gives the non-

vested fire and police employees, who were transferred to the 2016 Plan, the irrevocable option to transfer from the 2016 Plan to the 1978 Defined Benefit Plan. Any employees who elect to return to the 1978 Defined Benefit Plan will have no further claims in the lawsuit. In any event, the City believes that it will successfully defend this action.

*Other Litigation.* The City is a defendant in various other lawsuits arising in the ordinary course of operations. Although the outcome of these lawsuits is not presently determinable, it is the opinion of the administration of the City and the Chief Legal Officer/City Attorney that the ultimate disposition of these matters will not materially affect the financial condition of the City. Under the Tennessee Governmental Tort Liability Act, §§ 29-20-101 through 29-20-408 of the Tennessee Code Annotated (the "Governmental Tort Act"), all governmental entities in Tennessee are immune from suit for any injury which may result from the activities of such governmental entities when engaged in the exercise and discharge of any function, except within the limits provided in the Governmental Tort Act. Pursuant to the Governmental Tort Act, there are limits for liability for governmental entities for bodily injury or death of any one person in any one accident, occurrence or act, unless and to the extent insurance is provided. The City is self-insured within these limits and all such claims are budgeted and paid from annual operating revenues of the City.

## CONTINUING DISCLOSURE

The Issuer has determined that no financial or operating data concerning the Issuer is material to any decision to purchase, hold or sell the Series 2021 Bonds and the Issuer will not provide any such information. The City will undertake all responsibility for providing continuing disclosure with respect to the Series 2021 Bonds and the Issuer will have no liability to the Holders of the Series 2021 Bonds or any other person with respect to the obligations undertaken by the City under the Disclosure Agreement.

In order to assist the Underwriter in complying with Rule, simultaneously with the issuance of the Series 2021 Bonds, the City will enter into the Disclosure Agreement for the benefit of the Holders of the Series 2021 Bonds, substantially in the form attached hereto as "APPENDIX D – FORM OF CONTINUING DISCLOSURE AGREEMENT." The City, as an "obligated person" under the Rule, will undertake in the Disclosure Agreement to provide: (a) certain financial information and operating data relating to the Series 2021 Bonds in each year (the "Annual Report"); and (b) notice of the occurrence of certain enumerated events (each a "Listed Event Notice"). The Annual Report and each Listed Event Notice, if applicable, will be filed by DAC, on behalf of the City, on EMMA, a service of the MSRB. The specific nature and timing of filing the Annual Report and each Listed Event Notice, and other details of the City's undertakings, are more fully described in "APPENDIX D – FORM OF CONTINUING DISCLOSURE AGREEMENT" attached hereto.

The following disclosure is being provided by the City for the sole purpose of assisting the Underwriter in complying with the Rule:

The City previously entered into continuing disclosure undertakings with its underwriters, as an "obligated person" under the Rule (the "Undertakings"). In the period beginning five years

prior to the date of this Official Statement to the dated date of this Official Statement (the "Compliance Period"), the City has, on several instances during the Compliance Period, failed to comply, in all material respects, with certain provisions of the Undertakings, including: (a) failing to provide certain required annual financial information in its annual filings; and (b) failing to file or timely file certain notices, including event notices relating to rating changes, notices of defeasance and notices of failures to submit required annual financial information before the date specified in the Undertakings. Pursuant to the hereinafter defined Order, the City posted on EMMA that certain Corrective and Voluntary Notice Regarding Certain Annual Financial Information in the Annual Filings and Notices, dated as of May 12, 2017 (the "Corrective Notice"), in order to update and provide notice of all past continuing disclosure delinquencies described above.

The following disclosure is being provided by the City for the sole purpose of complying with the hereinafter defined Order:

In March 2014, the SEC announced its Municipal Continuing Disclosure Cooperation (MCDC) Initiative, a voluntary self-reporting program, intended to address potentially widespread violations by municipal issuers and underwriters of the federal securities laws relating to continuing disclosure compliance reporting in municipal bond offering documents. The MCDC Initiative offered favorable settlement terms to issuers that self-report securities law violations, relating to material misstatements or omissions in bond documents about compliance with an issuer's prior undertakings as to continuing disclosure. After a review of its compliance record, as noted above, in November 2014, the City determined to self-report to the SEC by submitting an MCDC Questionnaire. On February 22, 2016, following discussion with the SEC staff, the City filed an Offer of Settlement.

On August 24, 2016, the SEC entered an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing Remedial Sanctions and A Cease-and-Desist Order (the "Order"). The Order contains no monetary penalties, but orders the City to cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act of 1933 and orders the City to comply with the following undertakings:

(a) Establish appropriate written policies and procedures and periodic training regarding continuing disclosure obligations to effect compliance with the federal securities laws, including the designation of an individual or officer responsible for ensuring compliance with such policies and procedures and responsible for implementing and maintaining a record (including attendance) of such training;

(b) Comply with existing continuing disclosure undertakings, including updating past delinquent filings if the City is not currently in compliance with its continuing disclosure obligations;

(c) Disclose in a clear and conspicuous fashion the terms of the settlement in any final official statement for an offering by the City within five years from the date of the Order;

- (d) Certify, in writing, compliance with the undertakings set forth above; and
- (e) Cooperate with any subsequent investigation by the SEC regarding the false statements or material omissions, including the roles of individuals or other parties involved.

The City has undertaken all measures necessary to comply with the Order. Since the date of the Order, the City believes that it has complied, in all material respects, with its Undertakings, except that the City did not timely file certain annual financial information relating to the City's sewer collection and treatment fund for the Fiscal Year ended June 30, 2017, which failure was disclosed in a notice filed on EMMA by the City on December 27, 2017.

### LEGAL MATTERS

Certain legal matters incident to the authorization, issuance, validity, sale and delivery of the Series 2021 Bonds are subject to the approving opinions of Carpenter Law, PLLC, Memphis, Tennessee, and Butler Snow LLP, Memphis Tennessee, as Co-Bond Counsel, whose approving opinion, in substantially the form attached hereto as "APPENDIX E – FORM OF OPINIONS OF CO-BOND COUNSEL," will be delivered concurrently with the issuance of the Series 2021 Bonds. No representation is made to the Holders of the Series 2021 Bonds that Co-Bond Counsel has verified the accuracy, completeness or fairness of the statements in this Official Statement and Co-Bond Counsel assumes no responsibility to the Holders of the Series 2021 Bonds except for the matters that will be set forth in their approving opinion.

Certain legal matters will be passed upon for the Issuer by Carpenter Law, PLLC, Memphis, Tennessee. Certain legal matters will be passed upon for the City by Jennifer Sink, Chief Legal Officer / City Attorney. In addition, certain legal matters will be passed upon for the City by Bass Berry & Sims PLC, Nashville, Tennessee, and Bruce Turner, PLLC, Memphis, Tennessee, Co-Disclosure Counsel to the City. Certain legal matters will be passed upon for the Underwriters by their counsel, **[Underwriter's Counsel Name]**, Memphis, Tennessee.

The legal opinions to be delivered concurrently with the delivery of the Series 2021 Bonds express the professional judgment of the attorneys rendering the opinions regarding the legal issues expressly addressed therein. By rendering legal opinions, the attorneys providing such opinions do not become insurers or guarantors of the result indicated by that expression of professional judgment with respect to the transaction on which the opinions are rendered or of the future performance of parties to the transaction. Furthermore, the rendering of an opinion does not guarantee the outcome of any legal dispute that may arise out of the transaction.

### FINANCIAL STATEMENTS

The basic financial statements of the City as of June 30, 2020, and for the year then ended have been audited by Banks, Finley, White & Co., Memphis, Tennessee, independent auditors (the "Auditor"). The Auditor's report, together with the basic financial statements, management discussion and analysis and the required supplemental information for the Fiscal Year ended June 30, 2020, are set forth in the 2020 Audited Financial Statements attached hereto as "APPENDIX C – AUDITED FINANCIAL STATEMENTS OF THE CITY OF MEMPHIS,

TENNESSEE FOR THE FISCAL YEAR ENDED JUNE 30, 2020". The Auditor has not been engaged to perform, and has not performed, any procedures relating to this Official Statement.

### CO-FINANCIAL ADVISORS

ComCap Partners, Memphis, Tennessee, and PFM Financial Advisors LLC, Memphis, Tennessee, serve as Co-Financial Advisors to the City for the Series 2021 Bonds. The Co-Financial Advisors assisted in matters related to the planning, structuring and issuance of the Series 2021 Bonds and provided other advice. The Co-Financial Advisors did not engage in any underwriting activities with regard to the issuance and sale of the Series 2021 Bonds.

### RATINGS

Moody's Investors Service, Inc. ("Moody's") and S&P Global Ratings ("S&P," and together with Moody's, the "Rating Agencies") have assigned ratings of ["\_\_\_" (\_\_\_\_ outlook)] and ["\_\_\_" (\_\_\_\_ outlook)] respectively, to the Series 2021 Bonds.

The ratings, including any related outlook with respect to potential changes in such ratings, reflect only the respective views of the Rating Agencies, and an explanation of the significance of such ratings may be obtained from the Rating Agencies furnishing the ratings. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies, and assumptions of its own. There is no assurance that such ratings will remain unchanged for any given period of time or that they will not be revised downward or withdrawn entirely by the rating agency furnishing the same, if, in its judgment, circumstances so warrant. Any such downward revision or withdrawal of such ratings or other actions by the Rating Agencies, or any of them, may have an adverse effect on the liquidity or market price of the affected Series 2021 Bonds. Neither the Issuer nor the City has undertaken any responsibility to oppose any such revision, suspension or withdrawal.

### UNDERWRITING

[Underwriter Name] (the "Representative"), on behalf of itself and the other underwriters listed on the cover page of this Official Statement (collectively, the "Underwriters") have agreed jointly and severally, pursuant to a Bond Purchase Agreement between the Representative and the City (the "Bond Purchase Agreement") to purchase the Series 2021 Bonds at an aggregate purchase price of \$\_\_\_\_\_, representing the principal amount of the Series 2021 Bonds of \$\_\_\_\_\_, plus a bond premium of \$\_\_\_\_\_ and minus an underwriters' discount of \$\_\_\_\_\_. The Bond Purchase Agreement provides that the Underwriters' obligations are subject to certain conditions precedent but that the Underwriters will be obligated to purchase all of the Series 2021 Bonds if any Series 2021 Bonds are purchased.

The Underwriters reserve the right to join with dealers and other underwriters in offering the Series 2021 Bonds to the public. The Series 2021 Bonds may be offered and sold to certain dealers (including dealers depositing such Series 2021 Bonds into investment trusts) at prices



lower than the public offering prices. Public offering prices may be changed from time to time by the Underwriters.

**[The Underwriters have provided the following information for inclusion in this Official Statement.]**

### **FORWARD-LOOKING STATEMENTS**

Any statements made in this Official Statement, including in the appendices attached hereto, involving estimates or matters of opinion, whether or not so expressly stated as such, are set forth as estimates or matters of opinion and not as representations of fact. No representation is made that any of the estimates or matters of opinion will be realized.

The statements contained in this Official Statement, including in the appendices attached hereto, that are not purely historical, are forward-looking statements. Readers should not place undue reliance on forward-looking statements. All forward-looking statements included in this Official Statement are based on information available on the date hereof and neither the Issuer nor the City assumes any obligation to update any such forward-looking statement. It is important to note that actual results could differ materially from those in such forward-looking statements.

The forward-looking statements herein are necessarily based on various assumptions and estimates and are inherently subject to various risks and uncertainties, including without limitation: risks and uncertainties relating to the possible invalidity of the underlying assumptions and estimates; possible changes or developments in social, economic, business, industry, market, legal and regulatory circumstances and conditions; and actions taken or omitted to be taken by third parties, including customers, suppliers, business partners, competitors and legislative, judicial and other governmental authorities and officials. Assumptions related to the foregoing involve judgments with respect to, among other things, future economic, competitive and market conditions and future business decisions, all of which are difficult or impossible to predict accurately and many of which are beyond the control of the Issuer or the City. Any of such assumptions could be inaccurate. Therefore, there can be no assurance that the forward-looking statements included in this Official Statement, including in the appendices attached hereto, will prove to be accurate.

### **MISCELLANEOUS**

The references, excerpts and summaries of all documents referred to in this Official Statement do not purport to be complete statements of the provisions of such documents and reference is directed to all such documents for full and complete statements of all matters of fact relating to the Series 2021 Bonds, the security for and the sources for repayment for the Series 2021 Bonds and the rights and obligations of the Holders. Copies of such documents may be obtained in the manner specified under the heading "INTRODUCTION - Other Information" herein.

The information in this Official Statement, including the appendices attached hereto, has been compiled from official and other sources deemed by the City to be reliable and, while not

guaranteed as to completeness or accuracy, is believed by the City to be correct as of the date of this Official Statement.

Use of the words "shall" or "will" in this Official Statement or in summaries of documents to describe future events or continuing obligations is not intended as a representation that such event or obligation will occur but only that the document contemplates or requires such event to occur or obligation to be fulfilled.

Neither this Official Statement nor any statement which may have been made orally or in writing is to be construed as a contract with the owners of the Series 2021 Bonds.

**AUTHORIZATION OF AND CERTIFICATION  
CONCERNING OFFICIAL STATEMENT**

The execution and delivery of this Official Statement, and its distribution and use by the Underwriters in connection with the original public offer, sale and distribution of the Series 2021 Bonds by the Underwriters, have been duly authorized and approved by the Issuer and the City.

**NEW MEMPHIS ARENA PUBLIC BUILDING  
AUTHORITY OF MEMPHIS AND SHELBY  
COUNTY, TENNESSEE**

By: \_\_\_\_\_  
David Levine, Chairman

**CITY OF MEMPHIS, TENNESSEE**

By: \_\_\_\_\_  
Jim Strickland, Mayor

**APPENDIX A**

**DEFINITIONS OF CERTAIN TERMS AND SUMMARY OF  
CERTAIN PROVISIONS OF THE INDENTURE AND THE LOAN AGREEMENT**

**APPENDIX B**

**GENERAL INFORMATION REGARDING THE CITY OF MEMPHIS, TENNESSEE**

## APPENDIX C

### AUDITED FINANCIAL STATEMENTS OF THE CITY OF MEMPHIS, TENNESSEE FOR THE FISCAL YEAR ENDED JUNE 30, 2020

Audited Financial Statements of the City of Memphis, Tennessee, and supplementary information as of and for the Fiscal Year ended June 30, 2020, together with the independent auditors' report from Banks, Finley, White & Co., Certified Public Accountants, are available through the website of the City's Department of Finance at:

<https://www.memphistn.gov/government/finance/cafr-information/>

and are hereby incorporated by reference as part of this Appendix B. To the extent there are any differences between the electronically posted financial statements of the City and the printed financial statements of the City, the printed version shall control.

**APPENDIX D**

**FORM OF CONTINUING DISCLOSURE AGREEMENT**

**APPENDIX E**

**FORM OF OPINIONS OF CO-BOND COUNSEL**



**APPENDIX F**

**ACCRETION TABLE**

30084292.4

## APPENDIX B

### GENERAL INFORMATION REGARDING THE CITY OF MEMPHIS, TENNESSEE

In addition to the information provided in the Official Statement, including each of the appendices attached thereto, with respect to the New Memphis Arena Public Building Authority of Memphis and Shelby County, Tennessee (the "Issuer"), Local Government Public Improvement Capital Appreciation Bonds (City of Memphis Project), Series 2021 (the "Series 2021 Bonds"), the City of Memphis, Tennessee (the "City") has provided the following general information regarding the City. A complete review of this Appendix B, together with the body of the Official Statement and all other appendices attached thereto, is essential to the making of an informed investment decision by any purchaser of the Series 2021 Bonds. In the making of an informed investment decision relating to the Series 2021 Bonds, a potential purchaser should not conclude that the presentation of information in this Appendix B, versus a presentation of the same in the body of the Official Statement, denotes that the information provided in this Appendix B is of less relevance or importance than the information set forth in the body of the Official Statement.

The City has not authorized anyone to give any information or to make any representations not contained herein or supplemental hereto and, if given or made, such other information or representations must not be relied upon as having been authorized.

**All of the following information, estimates and expressions of opinion are subject to change without notice. Though collected from sources the City believes to be reliable, the City has made no independent verification of the information provided by non-City sources, and the City takes no responsibility for the completeness or accuracy thereof. Except as otherwise provided, the information herein is often in relation to dates and periods prior to the COVID-19 pandemic and the resulting measures instituted to mitigate it. As provided in the section of the Official Statement entitled "CERTAIN INVESTMENT CONSIDERATIONS – COVID 19," the economic and social impact of COVID-19 to the City is far-reaching, unprecedented and constantly evolving. Historical numbers, including but not limited to those regarding employment, transportation and tourism, presented herein cannot be relied upon as reflective of current conditions or predictive of future results, which may be materially different from the information presented herein. The delivery by the City of the information contained herein shall not, under any circumstances, create any implication that there has been no material change in the affairs of the City since the date of the Official Statement.**

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## THE CITY OF MEMPHIS, TENNESSEE

### Administration and Officials

For information related to the City and its administration, see "THE CITY" in the Official Statement. Following are brief personal résumés of relevant administration officials of the City.

***Jim Strickland, Mayor of the City of Memphis.*** Jim Strickland was sworn in as mayor of the City on January 1, 2016, pledging to work toward making the City a safer and stronger city, to lead a transparent and trustworthy government and to have an administration that applies, in his words, "new eyes to solve old problems." Mayor Strickland was sworn in for a second term as mayor on January 1, 2020. After an eight-year tenure as a member of the Memphis City Council (the "City Council"), Mayor Strickland was first elected to the City's top office on October 8, 2015. Mayor Strickland served as vice chairman of the City Council in 2013 and as its chairman in 2014.

Mayor Strickland is a 1982 graduate of Christian Brothers High School, a 1986 graduate of the University of Memphis and a 1989 graduate of the Cecil C. Humphreys School of Law at the University of Memphis. He practiced law at Glankler Brown PLLC from 1990 to 1998, when he began practicing at Kustoff & Strickland PLLC, where he remained until becoming mayor.

Community service has long been a part of Mayor Strickland's life. He has volunteered with various organizations, such as the St. Vincent de Paul Soup Kitchen, and has served on many different community boards, including chairing the Memphis Botanic Garden board of directors. He is a life member of the NAACP.

***Shirley Ford, Chief Financial Officer.*** Shirley Ford was appointed as Chief Financial Officer (or "CFO") for the City in January 2018 after serving for three years as Comptroller. As a member of the senior leadership team, Ms. Ford serves as a resource to the Mayor and other senior leaders in the areas of financial strategy and enterprise fiscal management. As CFO, she is responsible for the financial management of the organization, which includes budget analysis and management, financial modeling and reporting, cost benefit analysis, forecasting needs, accounting and treasury operations, and investment strategies. The CFO is Chairperson of the Pension Investment Committee, a non-voting member of the Sports Authority Board, and a TIF board member.

Ms. Ford has over 30 years of financial, accounting, and managerial experience. She is recognized by the State of Tennessee as a Certified Public Accountant and carries the designation of Certified Municipal Finance Officer authorized by the Tennessee Comptroller's Office. Ms. Ford holds both a Bachelor of Business Administration in Accounting and a Master of Business through the Executive MBA Program of the University of Memphis.

**Douglas A. McGowen, Chief Operating Officer.** Captain Douglas A. McGowen, United States Navy (Retired), is the City's Chief Operating Officer. He previously served as the Director of the Innovation Delivery Team and the Office of Performance Management for the City. Prior to this, McGowen served for 26 years as a Naval Officer, most recently as the Commanding Officer of the Naval Base in Millington, Tennessee. During his tenure, he completed multiple overseas deployments and participated in combat operations during Operation Desert Shield, Operation Desert Storm, Operation Southern Watch and Operation Enduring Freedom. He also graduated from the Navy Fighter Weapons School (TOPGUN) and the Marine Weapons and Tactics Instructor course. He holds a B.S. in Civil Engineering from Virginia Military Institute and an M.A. in National Security from the Naval War College.

**Ursula Madden, Chief Communications Officer.** Ursula Madden, the City's Chief Communications Officer, is an Emmy award-winning journalist who has been an anchor and reporter for more than two decades, most recently serving as co-anchor of WMC Action News 5 in Memphis, Tennessee. She is a proud graduate of the University of Oregon. Madden serves on the Board of Trustees for the Church Health Center and St. Mary's Episcopal School for Girls. She also lends her support to the Women's Foundation for a Greater Memphis, has recently joined The Links Incorporated and is a local chapter member of the Shelby County Links. Madden is a member of Christ the Rock Christian Church and contributes to the MIFA Meals on Wheels program.

**Jennifer Sink, Chief Legal Officer / City Attorney.** Jennifer A. Sink was appointed Chief Legal Officer / City Attorney for the City of Memphis in January 2020, after serving as the Deputy Director of the Legal Division. As the Chief Legal Officer, she provides legal advice and counsel to the Mayor, division directors, and city officials on a broad range of legal matters, identifying areas of risk, and provides strategy and legal-problem solving. Ms. Sink manages over 60 employees in the Legal Division, which includes attorneys and employees of the claims, permits, risk management, and metro alarm departments. Prior to joining the City's legal division in 2016, she was a Shareholder at the law firm Baker, Donelson, Bearman, Caldwell and Berkowitz. Ms. Sink graduated cum laude from Southern Illinois University School of Law in 2003, where she served as Editor-in-Chief of the law review. Ms. Sink was elected to the Board of Directors of the Memphis Bar Association in 2019, is a Memphis Bar Foundation Fellow, and also serves as an ethics panel hearing member for the Tennessee Board of Professional Responsibility.

**Alexandria Smith, Chief Human Resources Officer.** Alexandria Smith, the City's Chief Human Resources Officer, is a SHRM-Senior Certified Professional with a wealth of professional experience in human resources management. She most recently served as Director of Human Resources for Brightstar Device Protection, a subsidiary of Brightstar Corporation. Prior to her tenure at Brightstar, Smith served in human resources management roles at industry leaders, including Target Corporation and Microsoft Corporation. She earned her B.A. in economics from Duke University and an M.A. in human resources and industrial relations from the University of Minnesota's Carlson School of Management.

**André D. Walker, Deputy Chief Financial Officer.** André Walker joined the City in July 2010 as Deputy Director of Finance and was later appointed to Deputy Chief Financial Officer in December 2019. He is responsible for oversight of the City's Debt and Investment Service Center. Mr. Walker has twelve years prior experience with a leading financial advisory firm where he advised and assisted state and local governmental entities with the issuance and management of debt. Mr. Walker is a fellow of the Woodrow Wilson Institute of Public Policy at the University of Michigan, is recognized by the State of Tennessee as a Certified Municipal Finance Officer, and has a Bachelor of Science in Business Administration with an Economics major and a Finance concentration from the University of Tennessee.

**Dywuana Morris, City Comptroller.** Dywuana Morris was appointed as City Comptroller in March 2020. As set forth in the City Charter, she is responsible for management of the accounting and financial reporting activities of the City. This responsibility includes the preparation of financial reports, the processing of all disbursement activities, and the retention and retrieval of all records including the preparation and retention of the agendas and minutes of the City Council Meetings. As the City Comptroller, Ms. Morris serves on the City of Memphis Pension Board and Healthcare and Pension Investment Committees.

Ms. Morris has over 20 years of progressive finance and accounting experience, including general ledger accounting, financial reporting and analysis, internal controls design and maintenance, budgeting, and internal and external auditing. She is recognized by the State of Tennessee as a Certified Public Accountant. Ms. Morris holds both a Bachelor of Business Administration in Accounting from the University of Memphis and a Master of Business Administration in Management from Middle Tennessee State University.

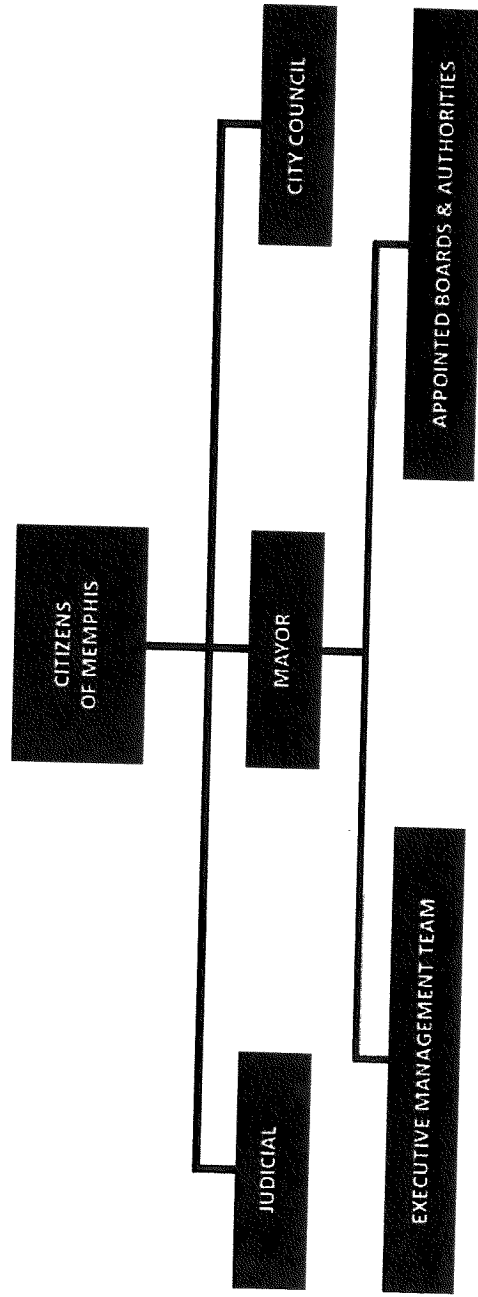
## Organization Chart

An organization chart showing the structure of City government is set forth below.

### City of Memphis, Tennessee

## ORGANIZATION CHART

Primary Government and Discretely Presented Component Units

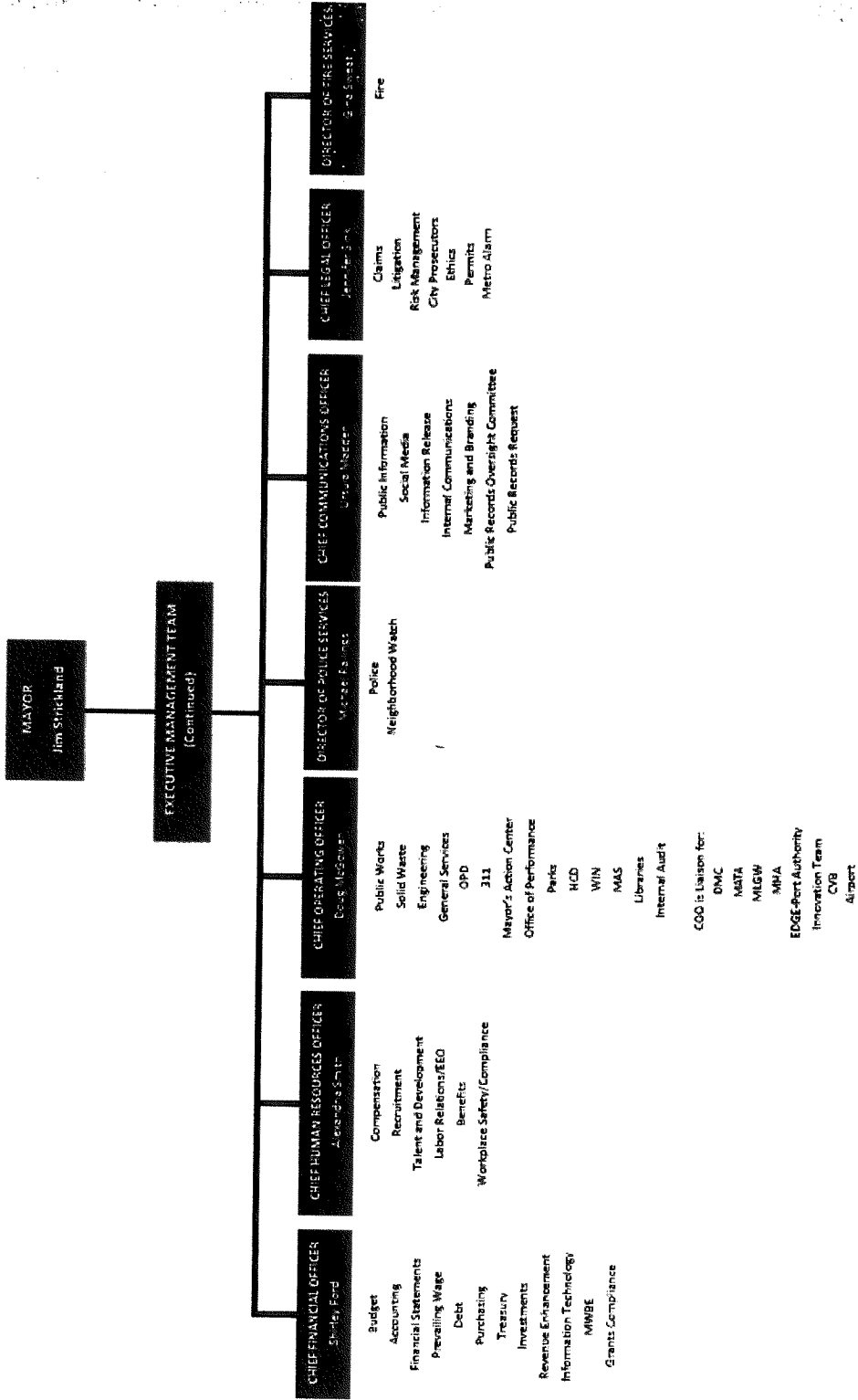


(1) Appointed boards and authorities for Memphis Area Transit Authority and Memphis-Shelby County Airport Authority are legally separate from the primary government. These component units are discretely reported in a separate column in the combined financial statements to distinguish them from the primary government. Memphis Light, Gas and Water and Memphis Light, Gas and Water Retirement and Pension System are reported as part of the primary government. Certain other boards and commissions not listed above do not meet the definition of component units as presented in GASB Statement 61. These entities are further explained as related organizations, jointly governed organizations, and joint ventures in the Letter of Transmittal and Note 1 of the notes to the financial statements.

# City of Memphis, Tennessee

## ORGANIZATION CHART

Primary Government and Discretely Presented Component Units (continued)





## **Division of Finance**

The mission of the City's Division of Finance is to provide fiscal leadership, integrity, and superior finance services through prudent and efficient management of the City's financial affairs. This includes offering quality, meaningful analyses, and financial perspectives necessary for enterprise decisions and strategic planning. The Division of Finance is responsible for all fiscal affairs, information systems, financial management and related systems of the City. The Chief Financial Officer is charged with oversight of the City's financial policy and reports directly to the Mayor. The Chief Financial Officer is primarily responsible for the accounting, financial reporting, debt and investment policy, risk management, financial support systems and tax collection functions for the City. The activities of the Division are currently organized into six service centers: Accounting, Purchasing, Budget, Treasury, Debt and Investment Management.

## **Labor Relations**

The City currently has approximately 6,857 permanent full-time employees, approximately 4,909 of whom are represented by employee labor organizations. The effective agreements with these organizations will expire on June 30, 2021, subject to annual wage openers. The American Federation of State, County and Municipal Employees, Local 1733, represents approximately 884 employees; the Memphis Police Association represents approximately 1,816 police officers; and the International Association of Fire Fighters, Local 1784, represents approximately 1,589 employees. The International Union of Operating Engineers represents 270 employees; the International Association of Machinists and Aerospace Workers represents 86 employees; the International Brotherhood of Electrical Workers and Crafts Union represent 135 employees; and Communication Workers of America represents 129 employees.

All labor-related activities are now coordinated through the Labor Relations Service Center of the Division of Human Resources. In addition to the general administration of labor agreements, the Service Center provides extensive management and non-management training and coordinates all labor negotiations. Labor negotiations in accordance with State law are conducted in open meetings.

The City Charter prohibits strikes by City employees and provides for the automatic dismissal of any striking employee, allowing for their reinstatement only as "new probationary employees." In addition, the City Charter contains an impasse procedure which addresses economic issues between the City and its employees. This procedure provides for a three-person fact-finding committee made up of City Council members. City Council members of any impasse committee are chosen by lot. The committee evaluates the economic positions at impasse and recommends the last best offer total package of either union or the City. The full City Council may accept the committee's recommendation or deny it and accept the position of the other party.

## FINANCIAL INFORMATION

### Property Tax

Property taxes, which are levied on real estate and personal property, provide the City with a major source of revenue for a variety of functions. The City's property tax levy is without legal limit.

The City Council reserves and allocates a portion of the property tax rate between general government and the payment of debt service on obligations which are not paid from various enterprise funds and capital expenditures.

The Shelby County Assessor of Property assesses all real estate and personal property, including some utilities not under the jurisdiction of the Tennessee Regulatory Authority (the "TRA"). The TRA assesses some intangible personal property related to banks.

As part of the standard procedure for reevaluating assessed values every four years, based on current market values, the Shelby County Assessor of Property completed a full reappraisal of all properties in Shelby County (the "County") for the 2017 tax year (collections in Fiscal Year 2018) reappraisal. The 2017 reappraisal reflects an increase in the overall assessed value of taxable property in the County. The appraised values approximate market value. This ratio of assessment, authorized by the Property Assessment and Classification Act of 1993, provides for assessing farm and residential real property at 25% of the current market value, commercial and industrial real property at 40% of the current market value, personal property at 30% of the current market value and real and personal property of public utilities at 55% of the current market value with corresponding reductions in tax rates.

New appraisal changes in real estate occur only when improvements are made to existing structures or demolition of existing structures occur or when improvements are made on vacant property. Reappraisal does not occur based on property sales. Personal property assessments are made annually based upon returns submitted by the taxpayers and are, therefore, maintained at current market value.

Public utilities are assessed by the TRA and are automatically reviewed by the State Board of Equalization. These assessments include real estate and personal property on the basis of location and usage. Currently, under a ruling by the State Board of Equalization, the appraised value of public utilities is being reduced by multiplying it by a factor computed by dividing the appraised valuation for tax purposes of all real property within the City by the current market value. The assessed value is based on this reduced appraised value.

### Other Sources of Revenue

Other sources of revenues for the City include the following, some of which are applied to pay debt service on certain indebtedness described in this Official Statement under the heading "ADDITIONAL OBLIGATIONS".

General Sales Tax. The general (local) sales tax is currently levied at a rate of 2.25% on the first \$1,600 of a sale of any single item.

Beer Sales Tax. The sales tax for beer is 17% on the wholesale price of beer containing not more than 5% alcohol. It is collected by the wholesaler and remitted monthly, less collection fees to the City Treasurer.

Alcoholic Beverage Inspection Fee. The alcoholic beverage inspection fee is a 5% fee charged to retailers on the sale of alcoholic beverages. The fee is based on the wholesale price, collected by the wholesaler, and is remitted monthly, less collection fees to the City Treasurer.

Telephone Franchise Taxes. The telephone franchise tax, which is paid by AT&T (formerly known and at times referred to herein as "BellSouth Telecommunications"), is a 5% tax on local service and intrastate long-distance calls. Currently, a dispute exists between the City and BellSouth Telecommunications and the matter is in litigation. For more information on this matter, see the disclosure in the section entitled "LITIGATION – BellSouth Litigation" herein. Pending resolution of the litigation, the City has ceased collection of the 5% tax.

Hotel/Motel Occupancy Tax. This tax is 3.5% of gross occupancy revenues, not including revenues from residents of 30 or more continuous days. There is a 2% credit if payment is made on or before the 20<sup>th</sup> of each month and 10% per year interest and a 1% per month penalty if delinquent.

State Tax Revenues (Local Share). The City receives funds from the State of Tennessee (the "State") which are briefly described below:

(a) State Income Tax – This is a tax on income from dividends on stocks or interest on certain bonds. Three-eighths (3/8) of the revenue is distributed to the local government by situs. In 2016, the State of Tennessee passed legislation that cut the income tax rate from 6 percent to 5 percent for tax year 2016 on tax returns due April 2017. In 2017, the State passed additional legislation that reduces the tax rate by 1 percent annually. The state income tax will be phased out effective January 1, 2021, which means the tax will be eliminated entirely for Fiscal Years 2022 and after.

(b) State Sales Tax – A 7% sales tax is imposed on the gross proceeds from retail sale or use of tangible personal property and some services. Over 60% of total state shared revenues that the City receives is derived from this source.

(c) State Gasoline Taxes – The City receives a pro rata share of the State gasoline tax of \$0.20 per gallon and the State Motor Vehicle Tax (Diesel) of \$0.17 per gallon that is earmarked for Tennessee municipalities. Allocation among Tennessee cities is determined on a per capita basis. These funds are used for street maintenance and for debt service on bond proceeds used for street capital improvement projects.

(d) Other State Taxes – The City also receives State revenues derived from the beer tax, alcoholic beverage tax, mixed drink tax, Tennessee Valley Authority in-lieu-of-tax payments and bank excise tax.

## Principal Property Taxpayers of the City

The following table presents the City's principal property taxpayers for Fiscal Year 2020.

### Principal Property Taxpayers of the City Fiscal Year 2020

|  | Taxable<br>Assessed<br>Value | Percentage of<br>Total Taxable<br>Assessed<br>Value <sup>(1)</sup> |
|--|------------------------------|--|
| FedEx Corporation                            | \$ 733,141,169               | 5.78%  |
| Wolfchase Galleria, LTD                      | 48,200,000                   | 0.38   |
| BSNF Railway Company                         | 47,253,027                   | 0.37   |
| Smith & Nephew Inc.                          | 39,740,850                   | 0.31   |
| Exeter                                       | 39,293,320                   | 0.31   |
| AT&T Mobility LLC                            | 35,723,362                   | 0.28   |
| TMF II Riverset LLC                          | 32,984,560                   | 0.26   |
| EDGE   | 32,832,700                   | 0.26   |
| Olymbec USA LLC                              | 32,756,920                   | 0.26   |
| Union Pacific Railroad Company               | 31,660,164                   | 0.25   |
| Total Assessed Valuation of Top 10 Taxpayers | \$ 1,073,586,072             | 8.46 %   |
| Balance of Assessed Valuation                | 11,620,622,663               | 91.54  |
| Total Assessed Valuation                     | \$ 12,694,208,735            | 100.00%  |

<sup>(1)</sup> Numbers may not add due to rounding.

Source: City of Memphis, Tennessee Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2020.

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**Property Tax Rates, Levies and Collections**

The following table presents the City's property tax rates for Fiscal Years 2016 through 2020.

**PROPERTY TAX RATES<sup>(1)</sup>**  
**Fiscal Years Ended June 30**

| <b>Tax Year</b>             | <b>2015</b>      | <b>2016</b>      | <b>2017</b>      | <b>2018</b>      | <b>2019</b>      |
|-----------------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Fiscal Year</b>          | <b>2016</b>      | <b>2017</b>      | <b>2018</b>      | <b>2019</b>      | <b>2020</b>      |
| General Fund                | \$ 2.3125        | \$ 2.3125        | \$ 2.2251        | \$ 2.1640        | \$ 2.1640        |
| Debt Service Fund           | 1.0842           | 1.0842           | 1.0432           | 1.0189           | 0.9989           |
| Capital Improvement Program | 0.0033           | 0.0033           | 0.0032           | 0.0031           | 0.0098           |
| Pre-K                       | 0.0000           | 0.0000           | 0.0000           | 0.0100           | 0.0100           |
| Community Catalyst Fund     | 0.0000           | 0.0000           | 0.0000           | 0.0000           | 0.0067           |
| Affordable Housing Fund     | 0.0000           | 0.0000           | 0.0000           | 0.0000           | 0.0067           |
| <b>Total City Tax Rate</b>  | <b>\$ 3.4000</b> | <b>\$ 3.4000</b> | <b>\$ 3.2715</b> | <b>\$ 3.1960</b> | <b>\$ 3.1960</b> |

<sup>(1)</sup> Taxes are assessed as of January 1 and are due on June 1 for the City and October 1 for the County. No tax rate limits exist and taxes must be assessed sufficiently to pay debt service. Tax rates are per \$100 of assessed value. The City's tax levy includes payments in lieu of taxes.

Source: City of Memphis, Tennessee.

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The following table presents the City's property tax levies and collections for Fiscal Years 2011 through 2020.

**PROPERTY TAX LEVIES AND COLLECTIONS<sup>(1)</sup>**

| Tax Year | Fiscal Year          | Adjusted Tax Levy | Current Tax Collections | Percent Collected | Delinquent Tax Collections | Total Tax Collections | Total Collections as Percent of Current Levy | Prior Years Outstanding Delinquent Taxes | Outstanding Delinquent Taxes as Percent of Current Levy |
|----------|----------------------|-------------------|-------------------------|-------------------|----------------------------|-----------------------|--|--|---|
| 2010     | 2011 <sup>(2)</sup>  | 380,186,210       | 359,918,827             | 94.67             | 17,476,145                 | 377,394,972           | 99.27  | 37,327,820                               | 9.82  |
| 2011     | 2012 <sup>(3)</sup>  | 378,505,905*      | 357,439,955             | 94.43*            | 7,157,948                  | 364,597,903           | 96.33*                                       | 38,518,840*                              | 10.18*  |
| 2012     | 2013 <sup>(4)</sup>  | 369,997,811       | 351,568,012             | 95.02             | 4,609,428                  | 356,177,440           | 96.26  | 37,920,407                               | 10.25   |
| 2013     | 2014 <sup>(5)</sup>  | 386,414,817*      | 373,811,552*            | 96.74*            | 4,475,138                  | 378,286,690*          | 97.90*                                       | 40,240,356*                              | 10.41*  |
| 2014     | 2015 <sup>(6)</sup>  | 390,901,305       | 372,601,741*            | 95.32*            | 9,154,932                  | 381,756,673*          | 97.66*                                       | 37,980,066*                              | 9.72*   |
| 2015     | 2016 <sup>(7)</sup>  | 389,694,995       | 371,180,561             | 95.25             | 9,372,759                  | 380,553,320           | 97.65  | 38,934,491                               | 9.99  |
| 2016     | 2017 <sup>(8)</sup>  | 395,497,616       | 376,155,872             | 95.11             | 5,759,219                  | 381,915,091           | 96.57  | 41,089,159                               | 10.39   |
| 2017     | 2018 <sup>(9)</sup>  | 420,342,211       | 400,081,997             | 95.18             | 7,091,826                  | 407,173,822           | 96.87  | 40,252,452                               | 9.58  |
| 2018     | 2019 <sup>(10)</sup> | 413,606,555       | 394,872,256             | 95.47             | 6,753,713                  | 401,625,969           | 97.10  | 38,342,430                               | 9.27  |
| 2019     | 2020 <sup>(11)</sup> | 417,014,960       | 393,487,960             | 94.36             | 3,148,875                  | 396,636,836           | 95.11  | 38,212,875                               | 9.16  |

\* Prior year's reported activity was revised to ensure consistent reporting across reported fiscal years.

- (1) Taxes are normally due on June 1 and become delinquent on September 1 each year. A penalty of 1/2 of 1% accrues the first of each month taxes remain delinquent and interest is charged at 12% per annum until paid. Discounts are not allowed. Delinquent taxes may be collected by foreclosure proceedings through court ordered tax sales.
- (2) Fiscal Year 2011 was corrected to include collections of current receivables (tax year 2010 that funds Fiscal Year 2011) and collections of delinquent receivables (tax years 2008 and 2009) resulting from a sale of real property tax receivables to an outside party in May 2011. The sale generated property tax revenue and a reduction of the property tax receivable balance of \$6,717,420 for the 2010 tax year, which is reflected in current tax amount collections, and \$3,507,581 for the 2008 and 2009 tax years, which is reflected in delinquent collections.
- (3) In November 2011, the City sold the majority of the 2011 tax year real property taxes outstanding (which funds Fiscal Year 2012) to an outside party. The sale generated property tax revenue and a reduction of the property tax receivable balance in the amount of \$17,737,009 for Fiscal Year 2012, which is reflected in current tax collections.
- (4) In November 2012, the City sold the majority of the 2012 tax year real property taxes outstanding (which funds Fiscal Year 2013) to an outside party. The sale generated property tax revenue and a reduction of the property tax receivable balance in the amount of \$17,353,001 for Fiscal Year 2013, which is reflected in current tax collections.
- (5) In November 2013, the City sold the majority of the 2013 tax year real property taxes outstanding (which funds Fiscal Year 2014) to an outside party. The sale generated property tax revenue and a reduction of the property tax receivable balance in the amount of \$21,413,447 for Fiscal Year 2014, which is reflected in current tax collections.
- (6) In December 2014, the City sold the majority of the 2014 tax year real property taxes outstanding (which funds Fiscal Year 2015) to an outside party. The sale generated property tax revenue and a reduction of the property tax receivable balance in the amount of \$14,917,354 for Fiscal Year 2015, which is reflected in current tax collections.
- (7) In April 2016, the City sold a portion of the 2015 tax year real property taxes outstanding (which funds Fiscal Year 2016) to an outside party. The sale generated property tax revenue and a reduction of the property tax receivable balance in the amount of \$8,622,852 for Fiscal Year 2016, which is reflected in current tax collections. Additionally, the City swapped previously sold receivables that had not yet been paid, with different delinquent receivables. The total balance of the swap was \$2,431,705 which is reflected in "Prior Years Outstanding Delinquent Taxes."
- (8) In March 2017, the City sold a portion of the 2016 tax year real property taxes outstanding (which funds Fiscal Year 2017) to an outside party. The sale generated property tax revenue and a reduction of the property tax receivable balance in the amount of \$10,884,669. Additionally, the City redeemed remaining outstanding 2012 receivables in the amount of \$1,270,078. The sale is reflected in the total tax collections.
- (9) In May 2018, the City sold a portion of the 2017 tax year real property taxes outstanding (which funds Fiscal Year 2018) to an outside party. The sale generated property tax revenue and a reduction of the property tax receivable balance in the amount of \$11,000,143. Additionally, the City redeemed remaining outstanding 2013 receivables in the amount of \$2,945,038. The sale is reflected in total tax collections. Adjusted Tax Levy increased \$24,844,295 due to tax assessment on January 1, 2017 for Fiscal Year 2018. This assessment is performed every four years.
- (10) In December 2018, the City sold a portion of the 2018 tax year real property taxes outstanding (which funds Fiscal Year 2019) to an outside party. The sale generated property tax revenue and reductions of the property tax receivable balance of \$12,231,850. Additionally, the City redeemed remaining outstanding 2014 receivables in the amount of \$2,541,071. The sale is reflected in total tax collections.
- (11) In December 2019, the City sold a portion of the 2019 tax year (which funds fiscal year 2020) real property taxes outstanding to an outside party. The sale generated property tax revenue and reductions of the property tax receivable balance of \$8,759,171. In April 2020, the City sold a portion of the 2019 tax year (which funds fiscal year 2020) real property taxes outstanding to an outside party. The sale generated property tax revenue and reductions of the property tax receivable balance of \$3,382,709. Additionally, the City redeemed remaining outstanding 2015 receivables in the amount of \$1,196,751. The sale is reflected in total tax collections.

Source: City of Memphis, Tennessee Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2020.

# Assessed and Estimated Values of Taxable Property

The following table presents the City's assessed and estimated actual values of taxable property for Fiscal Years 2011 through 2020.

## ASSESSED AND ESTIMATED ACTUAL VALUES OF TAXABLE PROPERTY Fiscal Year Ended June 30

| Tax Year | Real Property              |                        |                | Personal Property                              |                |                        | Utilities and Carriers (55%)<br>Real and Personal <sup>(1)</sup> |                        |                | Total                  |                |                        | Total<br>Assessed<br>to Total<br>Market<br>Value | Total<br>Direct<br>Tax<br>Rate |
|----------|----------------------------|------------------------|----------------|--|----------------|------------------------|--|------------------------|----------------|------------------------|----------------|------------------------|--|--------------------------------|
|          | Farm and Residential (25%) |                        |                | Commercial and Industrial (40%) <sup>(2)</sup> |                |                        | Commercial and Industrial (30%) <sup>(3)</sup>                   |                        |                | Privately Owned        |                |                        |  |                                |
|          | Assessed Value             | Estimated Actual Value | Assessed Value | Estimated Actual Value                         | Assessed Value | Estimated Actual Value | Assessed Value   | Estimated Actual Value | Assessed Value | Estimated Actual Value | Assessed Value | Estimated Actual Value |  |                                |
| 2010     | 5,359,781,600              | 21,439,126,400         | 4,743,781,550  | 12,089,810,000                                 | 1,133,365,185  | 3,774,783,400          | 816,425,195  | 1,484,409,445          | 12,053,353,530 | 38,788,129,245         | 31.07          | 3.1957                 |  |                                |
| 2011     | 5,301,771,500              | 21,207,086,000         | 4,507,983,385  | 11,506,347,200                                 | 1,128,790,635  | 3,760,225,200          | 877,932,058  | 1,596,240,105          | 11,816,477,578 | 38,069,898,505         | 31.04          | 3.1889                 |  |                                |
| 2012     | 5,248,101,650              | 20,992,406,600         | 4,371,602,915  | 11,161,458,700                                 | 1,178,853,370  | 3,927,663,000          | 922,004,864  | 1,676,372,480          | 11,720,562,799 | 37,757,900,780         | 31.04          | 3.1100                 |  |                                |
| 2013     | 4,731,533,025              | 18,926,132,100         | 4,532,007,925  | 11,566,004,400                                 | 1,273,218,610  | 4,242,350,800          | 946,724,202  | 1,721,316,731          | 11,483,483,762 | 36,455,804,031         | 31.50          | 3.4000                 |  |                                |
| 2014     | 4,680,381,500              | 18,721,526,000         | 4,285,184,728  | 10,949,013,700                                 | 1,202,709,565  | 4,007,052,700          | 973,975,835  | 1,770,865,155          | 11,142,251,428 | 35,448,457,555         | 31.43          | 3.4000                 |  |                                |
| 2015     | 4,747,920,725              | 18,991,682,900         | 4,346,281,513  | 11,109,511,700                                 | 1,163,790,125  | 3,876,630,900          | 1,087,988,613  | 1,978,161,115          | 11,345,980,976 | 35,955,986,615         | 31.56          | 3.4000                 |  |                                |
| 2016     | 4,751,997,850              | 19,007,991,400         | 4,352,967,258  | 11,139,231,800                                 | 1,195,454,995  | 3,979,910,300          | 1,074,179,569  | 1,953,053,762          | 11,374,599,672 | 36,080,187,262         | 31.53          | 3.4000                 |  |                                |
| 2017     | 5,158,704,825              | 20,634,819,300         | 5,130,873,210  | 13,104,786,500                                 | 1,232,142,320  | 4,105,025,400          | 1,075,298,505  | 1,955,088,191          | 12,597,018,860 | 39,799,719,391         | 31.65          | 3.2715                 |  |                                |
| 2018     | 5,168,064,525              | 20,672,258,100         | 5,120,604,860  | 13,087,942,600                                 | 1,260,430,100  | 4,199,045,700          | 1,138,764,751  | 2,070,481,365          | 12,687,864,236 | 40,029,727,765         | 31.70          | 3.1960                 |  |                                |
| 2019     | 5,185,372,125              | 20,741,488,500         | 5,162,651,977  | 13,235,580,400                                 | 1,210,052,260  | 4,030,360,300          | 1,136,132,373  | 2,065,695,224          | 12,694,208,735 | 40,073,124,424         | 31.68          | 3.1960                 |  |                                |

<sup>(1)</sup> Does not include City-owned utilities (Electric and Gas Divisions) which are assessed a separate in-lieu-of-tax. The Electric and Gas Divisions are taxed under the provisions of state statutes, "The Municipal Electric System Tax Equivalent Law of 1987" and "The Municipal Gas System Tax Equivalent Law of 1987," respectively. Under these laws, the annual tax equivalent is the sum of: (a) the equalized tax rate applied to the net plant value and book value of materials and supplies; and (b) four percent (4%) of the average of revenue less power cost for the preceding three (3) fiscal years. The law also provides that no payment shall be less than the amount paid in Fiscal Year 1987. Net proceeds from this source go only to the City's General Fund and are not allocated by the tax rate ordinance. The City contributes a portion of the proceeds to the County based on a tax rate formula.

<sup>(2)</sup> Includes multiple real estate assessed at 0-40% as well as greenbelt commercial real estate assessed at 25%, greenbelt industrial real estate assessed at 25%, and greenbelt multiple real estate assessed at 0-40%. For real estate where parcel classification is multiple, the assessments will not equal the percentage multiple of the market appraisal or greenbelt.

<sup>(3)</sup> Includes intangible personal property which is assessed at 40%.

Source: City of Memphis, Tennessee Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2020.

## Debt Limit

Tennessee Code Annotated provides that bonds may be issued by a municipality without regard to any limit on indebtedness.

## General Obligation Debt Service

The following table presents general obligation debt service as a percentage of general fund expenditures for Fiscal Years 2016 through 2020.

### GENERAL OBLIGATION DEBT SERVICE AS A PERCENTAGE OF GENERAL FUND EXPENDITURES Fiscal Years Ended June 30 (In Thousands of Dollars)

|  | 2016       | 2017       | 2018       | 2019       | 2020       |
|--|------------|------------|------------|------------|------------|
| General Fund Expenditures and Other Uses <sup>(1)</sup>                                    | \$ 639,234 | \$ 662,997 | \$ 712,632 | \$ 723,632 | \$ 742,824 |
| G. O. Debt Service <sup>(2)</sup>  | 131,575    | 133,590    | 132,598    | 145,118    | 144,175    |
| Total G.F Expenditure and G. O. Debt Service   | \$ 770,809 | \$ 796,587 | \$ 845,230 | \$ 868,750 | \$ 886,999 |
| G. O. Debt Service as of Percentage of the Sum of G.F. Expenditures and G. O. Debt Service | 17.07%     | 16.77%     | 15.69%     | 16.70%     | 16.25%     |

<sup>(1)</sup> Includes General Fund Expenditures, Transfers Out and Special Items.

<sup>(2)</sup> Includes Debt Service on General Obligation Bonds and Interest on General Obligation Commercial Paper. Interest on General Obligation Bonds is net of subsidy payments for the General Improvement Bonds, Series 2010B (Direct Build America Bonds), General Improvement Bonds, Series 2010C (Direct Payment Build America Bonds) and General Improvement, Series 2010F (Recovery Zone Economic Development Bonds).

Source: City of Memphis, Tennessee.

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## Ratios of General Bonded Debt

The following table presents the City's ratios of general bonded debt (which includes the City's general obligation bonds, bond anticipation notes and commercial paper) to appraised and assessed values and bonded debt per capita for Fiscal Years 2016 through 2020.

### RATIOS OF GENERAL OBLIGATION BONDED DEBT<sup>(1)</sup> TO APPRAISED AND ASSESSED VALUES AND BONDED DEBT PER CAPITA Fiscal Years Ended June 30

|  | 2016          | 2017          | 2018          | 2019          | 2020          |
|--|---------------|---------------|---------------|---------------|---------------|
| Estimated population <sup>(2)</sup>                | 653,480       | 666,723       | 652,236       | 650,618       | 651,073       |
| Appraised property valuation <sup>(3)(4)</sup>     | \$ 35,955,987 | \$ 36,080,187 | \$ 39,799,719 | \$ 40,029,728 | \$ 40,073,124 |
| Assessed valuation <sup>(3)(4)</sup>               | 11,345,981    | 11,374,600    | 12,597,019    | 12,687,864    | 12,694,209    |
| General obligation debt <sup>(3)(5)</sup>          | \$ 1,199,950  | \$ 1,119,035  | \$ 1,347,440  | \$ 1,261,655  | \$ 1,300,115  |
| Bond premiums <sup>(1)</sup>                       | 73,155        | 60,542        | 66,452        | 52,893        | 67,620        |
| Total Debt <sup>(3)</sup>                          | \$ 1,273,105  | \$ 1,179,577  | \$ 1,413,892  | \$ 1,314,548  | \$ 1,367,735  |
| Bonded debt per capita                             | \$ 1,948      | \$ 1,769      | \$ 2,168      | \$ 2,020      | \$ 2,101      |
| Bonded debt to appraised valuation<br>– total debt | 3.54%         | 3.27%         | 3.55%         | 3.28%         | 3.41%         |
| Bonded debt to assessed valuation –<br>total debt  | 11.22%        | 10.37%        | 11.22%        | 10.36%        | 10.77%        |

<sup>(1)</sup> For additional information relating to general bonded debt, see the Notes in the Audited Financial Statements.

<sup>(2)</sup> Source: U.S. Census Bureau.

<sup>(3)</sup> In thousands of dollars.

<sup>(4)</sup> Sources: Shelby County Assessor and State of Tennessee Office of State Assessed Properties.

<sup>(5)</sup> Includes the City's general obligation bonds only.

**Note:** The title of this table has been amended from "Debt Ratio Trends" in previous disclosure filings to "Ratios of General Obligation Bonded Debt to Appraised and Assessed Values and Bonded Debt Per Capita." In addition, certain line items in this table were amended from previous disclosure filings to reflect the presentation of such information in the 2018 CAFR.

Source: City of Memphis, Tennessee Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2020.

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## ECONOMIC AND DEMOGRAPHIC INFORMATION

### Population Data

The following table presents population data for the City, the County, the State and the United States for calendar years 2015 through 2019.

**Population Data<sup>(1)</sup>  
Calendar Years 2015-2019  
(amounts in 000s)**

|               | <u>2015</u> | <u>2016</u> | <u>2017</u> | <u>2018</u> | <u>2019</u> |
|---------------|-------------|-------------|-------------|-------------|-------------|
| Memphis       | 654         | 653         | 651         | 651         | 651         |
| Shelby County | 937         | 936         | 935         | 936         | 937         |
| Tennessee     | 6,591       | 6,646       | 6,709       | 6,772       | 6,829       |
| United States | 320,635     | 322,941     | 324,986     | 326,688     | 328,240     |

<sup>(1)</sup> From time to time, the U.S. Census Bureau revises its population estimates.

Source: U.S. Census Bureau, Annual Estimates of Resident Population, as of July 1, 2019.

### Per Capita Personal Income

The following table presents per capita income for the City, the County, the State and the United States for calendar years 2015 through 2019.

**Per Capita Personal Income  
Calendar Years 2015-2019<sup>(1)</sup>**

|                        | <u>2015</u> | <u>2016</u> | <u>2017</u> | <u>2018</u> | <u>2019</u> |
|------------------------|-------------|-------------|-------------|-------------|-------------|
| Memphis <sup>(2)</sup> | \$42,588    | \$43,694    | \$44,958    | \$46,620    | \$47,985    |
| Shelby County          | 45,324      | 46,321      | 47,655      | 49,465      | 50,744      |
| Tennessee              | 42,810      | 43,932      | 45,517      | 48,995      | 48,684      |
| United States          | 48,940      | 49,831      | 51,640      | 54,501      | 56,490      |

<sup>(1)</sup> From time to time, the U.S. Bureau of Economic Analysis may revise its income data.

<sup>(2)</sup> Includes the Memphis Metropolitan Statistical Area.

Source: U.S. Bureau of Economic Analysis.

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## Employment

The following table presents annual employment and unemployment trends in the City, the County, the State and the United States for calendar years 2011 to 2020. The COVID-19 pandemic significantly affected the unemployment rates for the City, the County, the State and the United States in 2020. As provided above, because of the nature of the COVID-19 pandemic, one cannot predict the course of the pandemic or its future impact on the City's economy, including its employment rate.

### Labor Force Trends<sup>(1)</sup> Calendar Years 2011-2020

| Calendar Year | Shelby County <sup>(2)</sup> |            | Unemployment Percentages |               |           |      |
|---------------|------------------------------|------------|--------------------------|---------------|-----------|------|
|               | Employed                     | Unemployed | City of Memphis          | Shelby County | Tennessee | USA  |
| 2020          | 404.5                        | 43.3       | 11.3%                    | 9.7%          | 7.5%      | 8.1% |
| 2019          | 450.0                        | 18.1       | 4.2                      | 4.0           | 3.4       | 3.7  |
| 2018          | 424.0                        | 18.4       | 4.6                      | 4.2           | 3.5       | 3.9  |
| 2017          | 417.7                        | 19.1       | 4.8                      | 4.4           | 3.8       | 4.4  |
| 2016          | 411.9                        | 23.8       | 5.3                      | 5.5           | 4.8       | 4.9  |
| 2015          | 401.5                        | 26.5       | 6.2                      | 6.1           | 5.6       | 5.3  |
| 2014          | 394.0                        | 33.6       | 7.6                      | 7.9           | 6.5       | 6.2  |
| 2013          | 401.9                        | 39.4       | 9.3                      | 8.9           | 7.8       | 7.4  |
| 2012          | 409.1                        | 38.7       | 9.1                      | 8.6           | 7.9       | 8.1  |
| 2011          | 409.0                        | 43.1       | 10.1                     | 9.5           | 9.0       | 8.9  |

(1) From time to time, the U.S. Bureau of Labor Statistics may revise its employment data.

(2) In thousands.

Source: U.S. Bureau of Labor Statistics.

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## Employers

The following table presents the 25 largest employers in the Memphis area.

### Memphis Area 25 Largest Employers

|    | <b>Company</b>                                    | <b>Local Employees</b> | <b>Type of Business</b>                        |
|----|---|------------------------|--|
| 1  | Federal Express Corporation                       | 30,000                 | Transportation, e-commerce & business services |
| 2  | Wal-Mart Inc.                                     | 6,280                  | Discount General Merchandise                   |
| 3  | The Kroger Co.                                    | 6,198                  | Retail Groceries                               |
| 4  | Technicolor                                       | 3,500                  | Distribution of Movies, DVD's, Games           |
| 5  | Nike Inc.   | 3,200                  | Sports & Fitness Footwear & Apparel            |
| 6  | First Horizon National Corp.                      | 2,680                  | Financial Services; Banking                    |
| 7  | XPO Logistics Supply Chain                        | 2,540                  | Warehousing, Distribution & Logistics          |
| 8  | Tenet Healthcare Corp. (Saint Francis Healthcare) | 2,430                  | Healthcare                                     |
| 9  | International Paper Co.                           | 2,400                  | Packaging, Paper & Distribution                |
| 10 | Smith & Nephew                                    | 2,300                  | Orthopedic Medical Devices                     |
| 11 | ServiceMaster Global Holdings Inc.                | 2,200                  | Commercial & Residential Services              |
| 12 | United Parcel Service Inc.                        | 2,150                  | Express Carrier & Package Delivery             |
| 13 | AutoZone Inc.                                     | 2,000                  | Retail & Distribution of Auto Parts            |
| 13 | DHL Supply Chain                                  | 2,000                  | Supply Chain Logistics                         |
| 15 | Cummins Inc.                                      | 1,800                  | New & Remanufactured Diesel Engines            |
| 16 | Walgreens   | 1,726                  | Retail Pharmacy                                |
| 17 | UTC-Carrier Corp.                                 | 1,600                  | Split System Condensing Units                  |
| 18 | Amazon  | 1,500                  | Package Fulfillment/Distribution               |
| 18 | AT&T Inc.   | 1,500                  | Telecommunications Products & Services         |
| 20 | Medtronic Spinal                                  | 1,450                  | Surgical Instruments & Surgical Implants       |
| 21 | Caesars Entertainment (Horseshoe Casino)          | 1,357                  | Entertainment & Gaming                         |
| 22 | MGM Resorts International (Gold Strike Casino)    | 1,240                  | Owns & Operates Casinos                        |
| 23 | Hilton Worldwide                                  | 1,209                  | Hotel Development; Franchising & Management    |
| 24 | Cigna Healthcare of Tennessee Inc.                | 1,200                  | Health Services; Specialty Pharmacy            |
| 24 | The Home Depot Inc.                               | 1,200                  | Retail Home Improvement Products & Services    |

Source: Memphis Business Journal: Book of Lists 2019-2020.

Notes: As a result of the COVID-19 pandemic, certain employers are operating at reduced capacity or may have temporarily closed. It is unknown at this time when and if these employers will reopen at full capacity or whether additional operating restrictions will be necessary.

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The following table presents the largest manufacturing companies, based on number of employees, in the Memphis area.

### Memphis Area Manufacturing Companies

|  | <b>Local<br/>Employees</b> | <b>Products</b>                             |
|--|----------------------------|---|
| 1 Smith & Nephew Inc.                          | 2,300                      | Joint Reconstruction and Trauma Devices     |
| 2 UTC-Carrier Corp.                            | 1,600                      | Split System Condensing Units               |
| 3 ABB Electrification Products                 | 800                        | Electrical Connectors and Components        |
| 3 Hino Motors Manufacturing USA                | 800                        | Rear Axle for Trucks; Front End Suspension  |
| 5 Unilever                                     | 700                        | Ice Cream, Klondike Bars, Popsicles         |
| 6 MicroPort Orthopedics Inc.                   | 554                        | Orthopedic Products, Implants               |
| 7 Electrolux                                   | 530                        | Stoves, Ovens and Freestanding Ranges       |
| 8 K.T.G. (USA) Inc.                            | 490                        | Bathroom and Facial Tissue and Paper Towels |
| 9 Nucor Steel of Memphis Inc.                  | 450                        | Steel                                       |
| 10 The Hershey Co.                             | 400                        | Candy, Mints and Gum                        |
| 11 Wright Medical Group N.V.                   | 395                        | Orthopedic Implants                         |
| 12 Competition Cams Inc.                       | 375                        | Automotive Performance Aftermarket          |
| 13 Cummins Inc.                                | 373                        | Diesel Components and Engines               |
| 14 Bryce Corp.                                 | 356                        | Flexible Packaging                          |
| 15 Kellogg Co.                                 | 350                        | Cereal                                      |
| 16 Olympus Surgical Technologies of America    | 324                        | Ear Nose and Throat Implants                |
| 17 Buckman                                     | 320                        | Specialty Industrial Chemicals              |
| 17 Mueller Industries Inc.                     | 320                        | Tubular Products, Fittings and Valves       |
| 19 Valero Energy Corp.                         | 311                        | Gasoline, Fuel, Petrochemicals              |
| 20 Charms, Division of Tootsie Roll Industries | 300                        | Hard Candy                                  |
| 20 ThyssenKrupp Elevator Manufacturing Inc.    | 300                        | Elevators & Industrial Lifting Equipment    |
| 22 Barr Brands International Inc.              | 285                        | Heavy Duty Cleaning                         |
| 23 DuPont Nutrition & Health                   | 280                        | Soy Protein                                 |
| 24 Kellogg Co.                                 | 250                        | Waffles                                     |
| 25 Brother Industries (USA) Inc.               | 235                        | Office Products; Manufacturing Services     |

Source: Memphis Business Journal: Book of Lists 2019-2020.

Notes: Electrolux has announced that it plans to close its Memphis manufacturing plant in 2021. Further, as a result of the COVID-19 pandemic, certain employers are operating at reduced capacity or may have temporarily closed. It is unknown at this time when and if these employers will reopen at full capacity or whether additional operating restrictions will be necessary.

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**Construction**

The following table presents annual data on the number of building permits granted and the value of related construction between Fiscal Years 2016-2020 for both the County and the City.

**Building Permits  
Fiscal Years 2016-2020**

| <b>Fiscal Year</b> | <b>Shelby County<sup>(1)</sup></b> |                                | <b>Memphis</b>             |                                | <b>City as a % of Shelby County</b> |
|--------------------|------------------------------------|--------------------------------|----------------------------|--------------------------------|-------------------------------------|
|                    | <b>Total Number Issued</b>         | <b>Valuation<sup>(2)</sup></b> | <b>Total Number Issued</b> | <b>Valuation<sup>(2)</sup></b> |                                     |
| 2016               | 6,458                              | 1,120,594                      | 4,704                      | 864,921                        | 77.2                                |
| 2017               | 6,968                              | 1,315,647                      | 4,884                      | 935,446                        | 71.1                                |
| 2018               | 6,907                              | 1,276,982                      | 4,973                      | 926,505                        | 72.6                                |
| 2019               | 6,637                              | 2,169,484                      | 4,662                      | 1,696,732 <sup>(3)</sup>       | 78.2                                |
| 2020               | 5,922                              | 1,707,890                      | 4,182                      | 1,399,648                      | 82.0                                |

<sup>(1)</sup> Includes all incorporated and unincorporated areas of the County except the Cities of Bartlett and Collierville.

<sup>(2)</sup> In thousands of dollars.

<sup>(3)</sup> Increase in valuation is due to large construction projects, including projects for St. Jude Children’s Research Hospital and the City’s downtown convention center.

Source: Shelby County Building Department.

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## **The Economy**

In recent years, the economy of the City has experienced success in attracting new businesses along with the continued growth of existing businesses. This success is due in large part to the City's location near the geographic center of the nation, combined with its transportation facilities. Also, the City benefits from serving as the trade center for the surrounding area. See the section of the Official Statement entitled "CERTAIN INVESTMENT CONSIDERATIONS – COVID 19" for information regarding the impact of the COVID-19 pandemic to the City's finances.

## **Trade Area**

Trade and retail facilities in the City serve a trade area of 76 counties, with a radius of roughly 200 miles east and west and a longer radius paralleling the Mississippi River approximately 300 miles north and south. This trade territory includes 13 counties in Arkansas, one county in Kentucky, 41 counties in Mississippi, two counties in Missouri and 19 counties in Tennessee.

## **Agribusiness**

The Mid-South area, encompassing the Mississippi River Delta, is one of the richest agricultural areas in the nation. Farming is a major occupation of the region and has developed into major agribusiness activities. The 200-day growing season and favorable climate encourage the production of a variety of products. There is a major emphasis on soybeans, cotton and cattle, with additional interest in rice, corn, peaches, apples and a variety of vegetables.

The Memphis MSA is a leading spot cotton market and the nation's second largest processor of soybeans, third largest meat processor and third largest total food processor. Also, agricultural processors, packers, shippers, distributors and merchants are becoming increasingly visible contributors to the growth of the City and its economy.

An international agricultural market center, Agricenter International, was established in 1985 and is located in the eastern part of the City, approximately 30 minutes from downtown Memphis. The 140,000-square-foot exhibition center provides a forum for manufacturers, researchers and agribusiness organizations and producers from across the country. Its facilities include a 1,000-acre demonstration farm, both indoor and outdoor exhibition space, a fishing lake and an auditorium with seating capacity of 500. The Agricenter is operated by a nonprofit entity pursuant to a management contract with the Shelby County Agricenter Commission.

Indigo Ag, a high-tech agricultural company, announced in December 2018 its plans to locate its North American headquarters in the City's downtown. The company is expected to occupy approximately 60,000 square feet of office space downtown, though in 2020 the company announced an unspecified number of layoffs in the City. Founded in 2014, Indigo Ag primarily focuses on coating crop seeds with beneficial microbes that are intended to protect crops from disease and drought.

In 2019, the Mississippi River Delta area experienced significant flooding, including the flooding of hundreds of thousands of acres of farmland. Flooding in the area has become more frequent with recent patterns of increasing rainfall. It is unknown how long it will take for such

flooded areas to recover or how increasing rainfall patterns may affect Delta communities, the area's farming business and the area's larger economy in the future.

## **Tourism**

The City's tourism industry has shown considerable growth since 1990. Some of the principal reasons for the growth include the investment of public funds into tourism development projects, the area's music culture and industry and the development of casino gaming in nearby Northern Mississippi.

The City's two largest tourist attractions draw on the area's rich music heritage. The Beale Street Historic District is located in downtown Memphis and on an annual basis has attracted approximately 4 million patrons, both tourists and residents. Entertainment in the District focuses on the Blues, a genre of music, which developed, in part, on Beale Street in the early and middle parts of the 20th century. The other large music-related attraction is Graceland, the home of the late Elvis Presley, which serves as a museum honoring the early rock-and-roll pioneer. Graceland has attracted an annual average of more than 650,000 people, many of whom make Graceland the primary reason for their visit to the City. A 450-room hotel, The Guest House at Graceland, opened in 2016 and additional tourism-related developments are currently under construction on the Graceland campus.

Much of the area's tourism activity is focused on downtown Memphis. Mud Island, a park and museum devoted to the history, environment and culture of the Mississippi River, is located in Memphis's harbor. The City's convention center is downtown and hosts business and other gatherings. In 2003, a \$92 million expansion to the convention center was completed, which included the construction of the Cannon Center for the Performing Arts, home to the Memphis Symphony. The National Civil Rights Museum is located at The Lorraine Motel and other nearby buildings, offering a comprehensive overview of the American Civil Rights Movement in exhibit form. In 2000, Memphis became the home of the Memphis Redbirds, a minor league baseball team. A new stadium, AutoZone Park, was constructed for the Memphis Redbirds in the heart of downtown. In 2001, the Vancouver Grizzlies team of the National Basketball Association (or "NBA") was refranchised and relocated to the City. An arena, the FedEx Forum, was constructed just south of Beale Street for the Grizzlies' use and for large artistic performances, concerts and shows. It opened for the 2004-2005 NBA season. In 2015, BassPro Shops opened a retail store and tourist attraction in the Pyramid building located in downtown Memphis on the banks of the Mississippi River. In addition to its retail store, the 220,000-square-foot facility includes a hotel, a bowling alley, restaurants, an aquarium, an indoor shooting range, a duck aviary and an alligator pit.

Many other features enhance the City's ability to attract visitors. These include Shelby Farms, the City's 4,500-acre park system which is one of the largest urban park systems in the United States, as well as the Memphis Zoo and Aquarium, a number of fine art galleries, the Overton Square entertainment district, the 62,000-seat Liberty Bowl Memorial stadium and the Memphis International Raceway.

There are approximately 241 hotels and 22,353 hotel rooms in the City and the County, including the historic Peabody Hotel, the Memphis Marriott Downtown Hotel, the Westin Hotel and other facilities located downtown, and there are currently more than 2,000 new hotel rooms in



various stages of development for the downtown and midtown areas. Additionally, there are a number of large hotels in the eastern part of the City and in the County.

As a result of the COVID-19 pandemic, several popular tourist attractions in the City, including but not limited to the Beale Street Historic District and Graceland, are operating at reduced capacity and may, from time to time, be closed. These closures and capacity modifications are anticipated to be temporary, though it is unknown when these changes will cease or whether increased restrictions or additional closures will be necessary.

### **Memphis Redbirds, Memphis 901 FC, and AutoZone Park**

The Memphis Redbirds (the AAA farm club of the St. Louis Cardinals) play at AutoZone Park, a baseball stadium in downtown Memphis containing approximately 10,000 seats and two upper decks with 48 luxury Club suites. AutoZone Park provides grass berm seating down both the left field line and the right field line and has a family-oriented games and amusement area. In 2019, the Memphis 901 Football Club, a professional soccer team affiliated with the United Soccer League (“USL”), began play with home games hosted at AutoZone Park. As a result of the COVID-19 pandemic, the 2020 USL season was suspended and the 2020 AAA baseball season was cancelled. The USL resumed play in July 2020, and the 2021 AAA baseball season commenced in April 2021. It is unclear whether future seasons of the USL or AAA baseball will be impacted.

### **Memphis Grizzlies' Basketball Arena**

The construction of the FedEx Forum, an approximately 18,200-seat multipurpose sports, entertainment and public assembly facility with suites, lounge boxes and other premium seating, was completed in September 2004. The FedEx Forum serves as the home of the Memphis Grizzlies, an NBA franchise, and as a venue for many other sports, concerts and other events and activities. As a result of the COVID-19 pandemic, the 2019-2020 NBA season was suspended in March 2020, as were most major entertainment events scheduled for 2020, and NBA league play was moved to Orlando, Florida. The Memphis Grizzlies have resumed play in the City for the 2020-2021 NBA season, though fan attendance has been significantly limited. It is unclear how other entertainment events at the FedEx Forum will be impacted by the pandemic in the current and ensuing years.

### **Renasant Convention Center**

The Renasant Convention Center (the “Convention Center”) offers 300,000-square-feet of space designed especially for conventions, tradeshow and performing arts. The Convention Center is located in the downtown convention district on the Trolley Line, convenient to hotels, attractions, shopping and entertainment, and is only 12 miles from the Memphis International Airport. The Convention Center has had over 500,000 visitors annually. The Convention Center includes a 125,000-square-foot exhibition hall, a 35,000-square-foot secondary exhibit hall, a 28,000-square-foot ballroom, 31 meeting rooms and the Cannon Center for the Performing Arts, which seats 2,100 people and is the permanent home of the Memphis Symphony Orchestra. The City is currently in the process of a \$205 million-plus renovation and expansion of the Convention Center, a portion of which was financed with general obligation bond proceeds of the City. The renovation and expansion are expected to be completed by [2021] and are designed to both

modernize the facility and increase meeting space, including the addition of a new exterior concourse and pre-function space.

**[As a result of the COVID-19 pandemic, Convention Center bookings during the remainder of 2021 have been significantly reduced. It is unclear if and when bookings will return to historic levels.]**

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## TRANSPORTATION

Because much of the economy of the Memphis MSA depends on transportation and distribution, local leaders formed an organization known as "Uniport" to unify the four modes of transportation: air, rail, highway and water. More recently, these efforts have been incorporated into the City's plan to become "America's Aerotropolis." An aerotropolis is a city which has centered its economy on, and is generally dependent upon, its airport.

### Air

Memphis International Airport (the "Airport") occupies about 4,600 acres of land in the City and includes a terminal complex containing approximately one million square feet and four other buildings containing approximately 100,000 square feet. The Airport is served by six major passenger carriers: Allegiant Air, American Airlines, Delta Airlines, Frontier Airlines, Southwest Airlines and United Airlines. Several regional and commuter airlines also serve the Airport.

The Airport is operated by the Memphis Shelby County Airport Authority (the "Airport Authority") created in 1969 by official action of the City and County. The Airport Authority is governed by a seven-member Board of Commissioners, five of whom are appointed by the Mayor of the City and two of whom are appointed by the Mayor of the County. All of the Commissioners are confirmed by the City Council for seven-year terms.

More than 35,000 individuals work at the Airport, including airline, Airport Authority, Federal Aviation Authority, concessionaires and tenant employees. Prior to the COVID-19 pandemic, passenger enplanements were approximately 2.3 million for 2019, and aircraft movements totaled approximately 199,000. **[In 2019, the Airport started an approximately \$214 million renovation project intended to both modernize the Airport Terminal and accommodate additional Airport traffic. The renovation project is expected to take approximately 30 months to complete.]**

Airlines have continued to operate at the Airport during the COVID-19 pandemic. Passenger activity has decreased significantly, however, causing reduced service to many markets. Passenger enplanements for 2020 were approximately 1.01 million, and aircraft movements totaled approximately 180,600. As a result of reduced passenger activity, certain airport facilities, including but not limited to checkpoints, retail stores and restaurants, have closed. These closures are expected to be temporary.

Federal Express ("FedEx") is headquartered in the County and employs approximately 30,000 people in the Memphis area. The main sorting facility is located just off of the Memphis International Airport runways. FedEx has completed several major expansion and improvement projects at its airport hub operations in recent years, and employment has increased. The company also has two major facilities in the County outside of its airport operations. There is a 500,000-square-foot technology complex in Collierville, in the southeastern part of the County, and a headquarters office complex in a nearby area of the County to accommodate and consolidate growth.

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The following table presents Airport activity for calendar years 2016 through 2020.

**Memphis International Airport Aviation Activities  
Calendar Years 2016-2020**

|   | <u>2020</u>        | <u>2019</u>          | <u>2018</u>      | <u>2017</u>         | <u>2016</u>      |
|---|--------------------|----------------------|------------------|---------------------|------------------|
| <b>Enplaned Passengers By Airline Type</b>                      |                    |                      |                  |                     |                  |
| Major/National  | 659,893            | 1,628,720            | 1,532,435        | 1,452,157           | 1,308,932        |
| Regional/Commuter   | 347,474            | 667,555              | 655,217          | 631,403             | 687,785          |
| Non-Scheduled   | 2,238              | 3,530                | 964              | 887                 | 478              |
| <b>Total</b>  | <b>1,009,605</b>   | <b>2,299,805</b>     | <b>2,188,616</b> | <b>2,084,447</b>    | <b>1,997,195</b> |
| <br>  |                    |                      |                  |                     |                  |
| <b>Per Thousand Pounds of Cargo Handled 2020:</b>               |                    |                      |                  |                     |                  |
|   | <u>Domestic</u>    | <u>International</u> | <u>Air Mail</u>  | <u>Total</u>        |                  |
| Cargo - Enplaned  | 4,502,626.9        | 694,517.5            | 9,788.2          | 5,206,932.6         |                  |
| Cargo - Deplaned  | 4,060,606.0        | 894,650.8            | 10,426.2         | 4,965,683.1         |                  |
| <b>Total Cargo Handled 2020</b>                                 | <b>8,563,232.9</b> | <b>1,589,168.3</b>   | <b>20,214.5</b>  | <b>10,172,615.6</b> |                  |
| <br>  |                    |                      |                  |                     |                  |
| <b>Total Cargo Handled 2019</b>                                 | <b>8,084,661.4</b> | <b>1,427,189.8</b>   | <b>19,789.4</b>  | <b>9,531,640.5</b>  |                  |
| <br>  |                    |                      |                  |                     |                  |
| Increase (Decrease) (2020 vs. 2019)                             | 478,571.5          | 161,978.5            | 425.1            | 640,975.1           |                  |
| Percent Increase (Decrease)                                     | 5.9%               | 11.3%                | 2.1%             | 6.7%                |                  |
| <br>  |                    |                      |                  |                     |                  |
| Aircraft Total Movements <sup>(1)(2)</sup>                      | 180,644            | 199,172              | 190,682          | 190,662             | 191,260          |
| Aircraft Landed Weight (in thousand pound units) <sup>(2)</sup> | 26,787,218         | 27,204,622           | 27,058,742       | 26,484,421          | 26,333,844       |

Source: Memphis-Shelby County Airport Authority, Calendar Year Statistics

<http://www.flymemphis.com>

<sup>(1)</sup> Excludes Military and General Aviation activity.

<sup>(2)</sup> Totals include major airlines, regional/commuter airlines, cargo airlines, non-scheduled, and other landings

## Water

The Mississippi River ranks third in length, fourth in drainage area and fifth in volume in the world. Among the world's ten largest rivers, reaching from the Gulf of Mexico deep into the heartlands of the United States, the Mississippi River system encompasses about 8,900 miles of navigable inland waterways. This system has also helped make Memphis a close neighbor of the agricultural Midwest and the industrial East and West Coasts. The waterways allow for barge service to New Orleans and other Gulf Ports along the Gulf Intercoastal Waterway. This intracoastal waterways system of approximately 1,173 miles connects Florida and Texas and has

offered unprecedented growth opportunities to industry in the City. In addition, regular service is available to Europe and Asia via the waterway system.

In terms of freight handled, the Port of Memphis (the "Port") is the fourth largest shallow draft river port in the U.S. and second largest inland shallow draft river port on the Mississippi River. The Port handles approximately 12 million tons of barge driven cargo each year. The navigation channel is maintained by the U.S. Army Corps of Engineers. Favorable climatic conditions typically permit year-round availability of water transportation. The Port's operations have an estimated economic impact of \$7.1 billion annually and support more than 19,900 jobs throughout the County.

The following table presents total tonnage shipped through the Port of Memphis for calendar years 2010 through 2019.

**Total Tonnage  
Port of Memphis  
Calendar Years 2010-2019**

| Calendar Year | Total Tonnage |
|---------------|---------------|
| 2010          | 12,155,049    |
| 2011          | 12,611,541    |
| 2012          | 13,564,063    |
| 2013          | 14,243,251    |
| 2014          | 14,748,636    |
| 2015          | 12,025,514    |
| 2016          | 12,184,332    |
| 2017          | 11,536,737    |
| 2018          | 11,055,740    |
| 2019          | 8,914,841     |

Source: Waterborne Commerce Statistics of the United States.

Two still-water harbors in the Memphis area provide shelter from the river current – the Port and Wolf River Harbor. Wolf River Harbor, the City's original harbor and located in north Memphis and McKellar Lake, is a \$50 million, man-made harbor just south of the Central Business District in the City. Public facilities include three public terminals; LASH service; roll-on, roll-off service; bulk loading facilities to barges; bulk sacking facilities; chemical fertilizer storage tanks; heavy lifts up to 100 tons (CBI Nuclear heavy lift to 1200T); two boat/barge repair facilities; and six grain elevators.

Most major common carrier barge lines provide service to the Port, including American Commercial Barge Lines, Federal Barge Lines, Ohio Barge Lines, Sioux City and New Orleans Barge Lines, DRAVO-Mechling Corporation, Riverway Barge Corporation and Valley Barge Lines.

**Rail**

Memphis is the third largest rail center in the United States behind Chicago, Illinois and St. Louis, Missouri. Five Class One railroads operate out of the Memphis area with competitive

freight service to all principal cities in the U.S. Forty-five states and Canada and Mexico can be reached from Memphis by train. Serving the Memphis area are BNSF, Canadian National, CSX, Norfolk Southern and Union Pacific. The rail lines offer a variety of modern specialized equipment and services.

### **Highway**

The City is connected to the rest of the nation by eight federal, three interstate and seven state highway systems. These highway systems, combined with a circumferential expressway and two highway bridges crossing the Mississippi River, make all parts of Memphis readily accessible to its surrounding communities.

### **Public Transit**

The Memphis Area Transit Authority ("MATA") provides public mass transportation within the City and parts of the County on fixed-route buses, paratransit vehicles and rubber-tired and vintage rail trolleys. MATA provides fixed-route bus and paratransit services throughout its service area, which consists of 280 square miles. In fiscal year 2018, MATA ridership (all modes) consisted of approximately 6.6 million passenger trips. The fixed-route bus system operates about 6 million revenue miles annually on approximately 33 routes. Service is available 365 days per year.

### **Interstate Bus Lines**

Trailways / Greyhound Bus Lines is the major interstate bus line serving the City and County, offering bus service from its Memphis area terminals to the continental United States and Canada. Trailways / Greyhound Bus is supported by three smaller lines: Bridge Transit Corp., Great Southern Coaches, and Gulf Transport Co.

## **UTILITIES**

The Memphis Light, Gas and Water Division ("MLGW") is a City-owned utility company, which distributes electric power and natural gas throughout the City and the County, as well as water within the City and certain adjacent areas. MLGW was created by an amendment to the Charter of the City by Chapter 381 of the Private Acts of the General Assembly, adopted March 9, 1939. MLGW is managed by its board, which consists of five members nominated by the Mayor and approved by the City Council. Board members serve three-year terms. MLGW has control over the administration of its activities in connection with MLGW's business affairs. It operates as three separate divisions (Electric, Gas, and Water), for accounting and financial purposes.

## **EDUCATION**

**Shelby County Schools.** Shelby County Schools ("SCS") provides public education for school-age children in Shelby County, including the City. SCS is governed by the seven-member Shelby County Board of Education and is the largest school system in Tennessee and among the top 25 in the nation. SCS serves approximately 105,000 students at approximately 200 schools.

The following table presents the historical enrollment and attendance for SCS for the past five school years.

**Historical Enrollment and Attendance  
Shelby County School System**

| <b>School Year</b> | <b>Shelby County Schools</b>    |                                 |
|--------------------|---------------------------------|---------------------------------|
|                    | <b>Average Daily Enrollment</b> | <b>Average Daily Attendance</b> |
| 2019-2020          | 107,420                         | 111,199                         |
| 2018-2019          | 104,902                         | 99,443                          |
| 2017-2018          | 104,515                         | 99,855                          |
| 2016-2017          | 103,703                         | 97,957                          |
| 2015-2016          | 106,455                         | 100,469                         |

Source: State of Tennessee Department of Education Report Card, 2020 Annual Statistics Report.

**Post-Secondary Institutions.** The Memphis area is home to numerous post-secondary institutions, notably including: the University of Memphis; Christian Brothers University; Rhodes College; Lemoyne-Owen College; Baptist Memorial College of Health Sciences; and the University of Tennessee Health Science Center – Memphis.

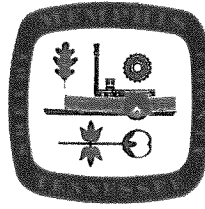
**HEALTHCARE AND BIOSCIENCE**

The Memphis area is home to several hospitals, including St. Jude Children's Research Hospital, Baptist Memorial Hospital, Methodist Le Bonheur Healthcare, and Region One Health. The Memphis area is also a leading medical and bioscience center. Shelby County is the second largest orthopedic device manufacturing center in the United States and is home to the divisional or corporate headquarters of the following orthopedic and medical device leaders: Medtronic, MicroPort Orthopedics, Smith & Nephew and Wright Medical.

In addition, the University of Tennessee Health Science Center ("UTHSC") is a staple of the Memphis community and has trained and employed some of the nation's top health-care professionals. UTHSC is estimated to have had a \$3 billion impact to the Memphis-area economy.

**LIBRARIES**

The City enjoys a Memphis Public Library system with 18 branches throughout the area and houses a circulation of approximately 1.8 million volumes. Colleges, universities, businesses, industries and organizations maintain numerous other libraries in and around the City. The Benjamin L. Hooks Library serves as the information hub of the Mid-South and the flagship for the Memphis Public Library system. Situated in the middle of the City, this 330,000 square-foot facility is accessible to all residents.



## Memphis City Council Summary Sheet

**1. Description of the Item (Resolution, Ordinance, etc.)**

This is a resolution to appropriate construction funds for the Stiles Plant Modification, project number SW04009, needed to rehabilitate electrical equipment at the grit tank and influent pump station generator at the M.C. Stiles WWTF.

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

Public Works

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

This resolution does not change any existing ordinance or resolution.

**4. State whether this will impact specific council districts or super districts.**

The project will impact council district 6 and super district 8. It serves all or portions of districts 2, 3, 4, 6, 8 and 9.

**5. State whether this requires a new contract, or amends an existing contract, if applicable.**

This request will require a new construction contract.

**6. State whether this requires an expenditure of funds/requires a budget amendment.**

Yes, this requires an expenditure of funds and budget amendment.

**7. If applicable, please list the MWBE goal and any additional information needed.**

The City's goal setting committee assigned a 21% MBE goal and 3% WBE goal. The contract is being awarded to Shelby Electric Co. who will meet the MWBE goal by utilizing Industrial Sales and Service (MBE) and York Construction Services (WBE).





# RESOLUTION

This is a resolution to appropriate construction funds to rehabilitate electrical equipment at the M.C. Stiles WWTF

**WHEREAS**, the Council of the City of Memphis approved FY21 Stiles Plant Modification, project number SW04009, as part of the Fiscal Year 2021 Capital Improvement Budget; and

**WHEREAS**, bids were received on March 3, 2021 for the grit tank MCC replacement and influent pump station generator at the M.C. Stiles WWTF with the lowest complying bid \$4,122,093.33 submitted by Shelby Electric Co., Inc.; and

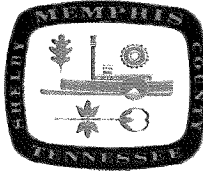
**WHEREAS**, it is necessary to appropriate \$4,534,304.00 funded by Sewer Capital Pay GO in Stiles Plant Modification, project number SW04009 as follows:

|                              |                             |
|------------------------------|-----------------------------|
| <b>Contract Amount</b>       | <b>\$4,122,094.00</b>       |
| <b>Project Contingencies</b> | <b><u>\$ 412,210.00</u></b> |
| <b>Total Amount</b>          | <b>\$4,534,304.00</b>       |

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Memphis that the Fiscal Year 2021 Capital Improvement Budget be and is hereby amended by appropriating the amount of \$4,534,304.00 to Stiles Plant Modification, project number SW04009, to rehabilitate electrical equipment at the M.C. Stiles WWTF; and

**BE IT FURTHER RESOLVED**, that there be and is hereby appropriated the sum of \$4,534,304.00 funded by Sewer Capital Pay Go chargeable to the FY2021 Capital Improvement Budget and credited as follows:

|                        |                                  |
|------------------------|----------------------------------|
| <b>Project Title:</b>  | <b>Stiles Plant Modification</b> |
| <b>Project Number:</b> | <b>SW04009</b>                   |
| <b>Amount:</b>         | <b>\$4,534,304.00</b>            |



## Memphis City Council Summary Sheet

**1. Description of the Item (Resolution, Ordinance, etc.)**

A Resolution approving the lease between Withers Collection Inc. and the Downtown Memphis Commission, Manager of the Beale Street Historic District. Request for same night minutes

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

General Services

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

This is not a change to an existing ordinance or resolution.

**4. State whether this will impact specific council districts or super districts.**

Council District 6 and Super district 8

**5. State whether this requires a new contract, or amends an existing contract, if applicable.**

New Contract

**6. State whether this requires an expenditure of funds/requires a budget amendment**

This does not require expenditure of funds nor a budget amendment.

**7. If applicable, please list the MWBE goal and any additional information needed**

N/A



**A Resolution approving the lease between Withers Collection Inc. and the Downtown Memphis Commission, Manager of the Beale Street Historic District**

**WHEREAS**, Withers Collection Inc. ("Lessee") leases and the City is the owner of certain real property located at and known as 333 Beale Street ("Premises");

**WHEREAS**, Lessee has rented and occupied the Premises under a lease ("Original Lease") with the prior manager of the Beale Street Historic District, and now desires to enter into a new lease by and through the City's current manager of the Beale Street Historic District, the Downtown Memphis Commission ("DMC" or "Lessor");

**WHEREAS**, the term of this proposed Lease Agreement shall commence on the Effective Date and shall expire on October 29, 2024 ("Initial Term"). Lessee shall have the option to extend the term of the Lease for up to five (5) additional periods of five (5) years each.

**WHEREAS**, Lessee is currently in arrears to Lessor, under the Original Lease, in the amount not less than One Hundred Sixty-Two Thousand Two Hundred Ninety-Two and 59/100 Dollars (\$162,292.59), subject to final adjustments based on determination of applicable common area maintenance charges; and

**WHEREAS**, despite said arrearages, the proposed Lease Agreement promotes the economic development of the surrounding area and the community as a whole, and highlights the importance of the presence of nonprofit educational institutions such as Lessee in the Beale Street Historic District to tell the story of the Beale Street Historic District and the African American experience; and

**WHEREAS**, in light of the importance of nonprofit educational institutions such as Lessee to telling the story of the Beale Street Historic District and the African American experience, and contingent upon Lessee's continuing compliance with its rent and other lease obligations, said arrearage shall be incrementally forgiven on an annual basis over seven (7) years, to be accelerated in the event of Lessee's breach of the Lease;

**NOW, THEREFORE, BE IT RESOLVED** by The City of Memphis, that the proposed Lease Agreement between Withers Collection, Inc. and the Downtown Memphis Commission is hereby approved.

**BE IT FURTHER RESOLVED**, by the Council of the City of Memphis that the appropriate officials of the City of Memphis be hereby authorized to execute same.

**LEASE AGREEMENT**

between

**CITY OF MEMPHIS, by and through its Manager for  
Beale Street Historic District, DOWNTOWN MEMPHIS COMMISSION**

and

**WITHERS COLLECTION, INC.**

- c. *Superseding Effect.* Any and all conflicts between the foregoing and the provisions of Article III, Section 1 of the Original Lease shall be construed in favor the foregoing.
  3. Term and Renewal Options.
    - a. *Initial Term.* This Lease shall begin on the Effective Date and shall expire on October 29, 2024.
    - b. *Renewal Options.* Tenant shall have and is hereby granted options to extend the term of this Lease for up to five (5) additional periods of five (5) years each (each, an "Extension Term"), upon the same terms, covenants, conditions and rental as set forth herein provided that Tenant is not in default hereunder at the commencement of such additional period. Tenant may exercise each such option successively by giving written notice to Lessor not less than six (6) months prior to the expiration of the initial term of this Lease or the immediately proceeding five (5) year option period. Should Tenant fail to exercise the any such option, any and all subsequent options to renew shall automatically expire.
    - c. *Superseding Effect.* Any and all conflicts between the foregoing and Article II of the Original Lease shall be construed in favor of the foregoing.
  4. Rent.
    - a. *Percentage Rent.* In addition to, and not in lieu of, Base Rent as set forth in the Original Lease, and all other rents and charges reserved hereunder and as part of the total rent to be paid, Tenant shall pay to Lessor in quarterly installments during the term of this Lease as described herein a sum ("Percentage Rent") equal to the amount of four percent (4%) of Gross Sales, as defined in the Original Lease.
    - b. *Payment of Percentage Rent.* Tenant shall within fifteen (15) days after the end of each quarter (i.e. March 30, June 30, September 30, and December 31) during the term of this Lease submit to Lessor its State of Tennessee Sales & Use Tax Return for the preceding three (3) months and such further documentation as may be requested by Lessor and shall pay to Lessor 4% of Gross Sales as Percentage Rent then due based on such returns and documentation. Tenant's obligation to pay Percentage Rent for the final partial quarter upon the expiration or earlier termination of this Lease shall survive the termination or expiration of this Lease.
    - c. *Superseding Effect.* Any and all conflicts between the foregoing and Article IX, Sections 4 or 5 shall be construed in favor of the foregoing.
  5. Common Area Maintenance. Excepting payment to Lessor for its insurance on the building housing the Premises, all other Common Area Maintenance charges shall be waived. Any and all conflicts between the foregoing and Article XXIV of the Original Lease shall be construed in favor of the foregoing.

# EXHIBIT A

LEASE AGREEMENT  
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- Exhibit B - Beale Street Historic District
- Exhibit C - Memorandum of Lease
- Addendum to Lease

including the improvements thereto, upon those terms and conditions hereinafter set forth.

1.2 Condition. Lessor represents to Tenant that the improvements to the Premises comply with all applicable federal, state, and local laws, including, without limitation, the Accessibility Laws, as defined in Section 3.2 below. Lessor also represents to Tenant that it is not aware of any Hazardous Substances at the Premises. Further, Lessor represents to Tenant that it is not aware of any (i) restrictions on utilities at the Premises or (ii) exclusive use restrictions applicable to the Premises that would adversely affect Tenant's museum design, permitting, construction or use of the Premises. As used herein, "Hazardous Substance" means any contaminant, toxic or hazardous waste, or any other substance the removal of which is required or the use of which is restricted, prohibited or penalized under any law with respect to environmental conditions, health or safety, including, without limitation, asbestos or petroleum products. Notwithstanding any other provision of this Lease, Tenant shall have the right to terminate this Lease by written notice to the Lessor in the event that it is unable, after using reasonable, good faith efforts to obtain all permits, variances and other governmental approvals needed for the construction of a museum, photography studio and gift shop. Lessor agrees to cooperate in obtaining such permits, variances and approvals and agrees to execute any necessary applications for such permits, variances and other governmental approvals.

1.3 Quiet Enjoyment. Lessor covenants and agrees that so long as Tenant shall timely pay all rents due to Lessor from Tenant hereunder and keep, observe and perform all covenants, promises and agreements on Tenant's part to be kept, observed and performed hereunder, Tenant shall and may peacefully and quietly have, hold and occupy the Premises free of any interference from Lessor; subject, however, and nevertheless to the terms, provisions and conditions of this Lease.

## ARTICLE II TERM

2.1 Initial Term. The initial term of this Lease shall, unless sooner terminated as elsewhere provided in this Lease, be for a period of ten (10) year(s), commencing on the Commencement Date (as hereinafter defined) and terminating and expiring at 11:59 p.m. on the day immediately preceding the first (1st) anniversary of the Commencement Date.

2.2 Commencement Date. For the purposes of this Lease, the "Commencement Date" shall be the earlier of (i) the date Tenant opens for business to the public at the Premises, or (ii) 180 days after the Turnover Date, as defined in Article XX below.

limited to, any applicable provisions of The Architectural Barriers Act of 1968, The Rehabilitation Act of 1973, The Americans With Disabilities Act, the accessibility code(s), if any, of the State in which the Premises is located, and all regulations and guidelines promulgated under any all of the foregoing, as the same may be amended from time to time (collectively the "Accessibility Laws"). Tenant's obligations under this Section 3.2 shall be subject to Lessor's representations in Section 1.2 above.

3.3 Hazardous Substances Prohibited. Tenant shall at all times during the term of this Lease keep the Premises free of Hazardous Substances generated by, resulting from or being incident to Tenant's use of the Premises, and neither Tenant nor any of its employees, agents, contractors or subtenants (if permitted) shall use, generate, manufacture, refine, treat, process, produce, store, deposit, handle, transport, release, or dispose of Hazardous Substances in, on or about the Premises or the groundwater thereof, in violation of any federal, state or municipal law, decision, statute, rule, ordinance or regulation currently in existence or hereafter enacted or rendered. Tenant shall give Lessor prompt written notice of any claim received by Tenant from any person, entity, or governmental agency that a release or disposal of Hazardous Substances has occurred on the Premises or the groundwater thereof. Tenant shall not discharge or permit to be discharged into any septic facility or sanitary sewer system serving the Premises any toxic or hazardous sewage or waste other than that which is normal domestic waste water for the type of business contemplated by this Lease to be conducted by Tenant on, in or from the Premises. Any toxic or hazardous sewage or waste which is produced or generated in connection with the use or operation of the Premises shall be handled and disposed of as required by and in compliance with all applicable local, state and federal laws, ordinances and rules or regulations or shall be pre-treated to the level of domestic wastewater prior to discharge into any septic facility or sanitary sewer system serving the Premises. Notwithstanding any other provision of this Lease, Lessor shall (i) remove any Hazardous Substances existing at the Premises prior to the Turnover Date, and (ii) indemnify, defend and hold Tenant, its directors, officers, employees and agents harmless from and against any liability or expenses of any kind (including, without limitation, reasonable attorneys' fees) resulting from or in connection with the existence of any Hazardous Substances at the Premises as of the date of the Lease.

3.4 Conflicting Businesses Prohibited. (Intentionally Deleted).

3.5 Continuous Operations. Tenant shall continuously operate its museum and gift shop and fully stock and staff the Premises during ordinary business hours throughout the entire term of this Lease as described herein. Tenant shall be open for business during the hours of 10:00 a.m. to 10:00 p.m., Central Time (or such greater or lesser hours as Tenant and Landlord shall determine to be appropriate), each day of the year except for such reduced hours on Sundays (but no less than 1:00 p.m. to 6:00 p.m.) as Tenant shall determine to be appropriate and except for federal and state holidays on which Tenant shall choose to be closed. Tenant may close business operations as

3.11 Trash and Waste Removal. Tenant shall, take good care of the Premises and keep the same free from waste at all times. Tenant shall not overload the floors in the Premises or deface or injure the Premises. Tenant shall keep the Premises, and all sidewalks, service-ways, loading areas and other common areas adjacent to the Premises, neat, clean and free from dirt, rubbish, ice and snow at all times. Tenant shall store, and cause the storage of, all trash and garbage within the Premises, or in a trash dumpster or similar container reasonably approved by Lessor as to type, location and screening, and Tenant shall arrange for their regular pick-up of such trash and garbage at Tenant's expense (unless Lessor finds it necessary to furnish such a service, in which event Tenant shall be charged, and Tenant shall pay, an equitable portion of the total of charges to all tenants using the service, with such charge being based upon the market price paid by Lessor without markup). Receipt and delivery of goods and merchandise and removal of garbage and trash shall be made only in the manner and from areas reasonably prescribed by Lessor. Tenant shall not operate an incinerator or burn trash or garbage within the Premises or in the vicinity thereof. Tenant shall not dispose, or allow disposal, of any substances into the storm or sanitary sewers that would be unlawful, would injure or clog such lines or would subject Lessor to liability or expense.

3.12 Display Windows. Tenant shall maintain all display windows in a neat, attractive condition and keep all display windows, exterior electric signs and exterior lighting under any canopy in front of the Premises lighted from dusk until 12:00 p.m. every day, including Sundays and holidays (or any other times reasonably established by Lessor for the Premises). All signs, lighting and canopies shall be subject to the written approval of Lessor before their attachment or implementation into the Premises, such approval not to be unreasonably withheld.

3.13 Permits and Licenses. Tenant shall procure, at its sole cost and expense, all permits and licenses required for their transaction of business in the Premises and shall otherwise comply with all applicable laws, ordinances and governmental regulations. In addition, if the nature of Tenant's business makes it advisable for Tenant to take any extra precautions (for example, in the case of a business which is affected by so-called "dram shop" laws, Tenant's compliance with all "dram shop" educational programs and procedures), Tenant shall take all such extra precautions as may be prudent, required or desirable. At Lessor's request, Tenant shall deliver to Landlord copies of all such permits and licenses and proof of Tenant's compliance with all such laws, ordinances, governmental regulations and extra precautions.

3.14 Chronic Lease Violations. Notwithstanding anything in this Lease to the contrary, and without limiting Landlord's other rights and remedies provided for in this Lease or at law of equity, if Tenant is in default under any covenant, condition, or agreement of this Lease more than two (2) times within any twelve (12) month period, irrespective of whether or not such default is cured, Landlord, at its sole election and in its sole and absolute discretion, may do one or more of the following:

partial) from its customer or any applicable credit or credit card agency. Sales by any permitted sublessee, concessionaire or licensee on, in or from the Premises shall be treated as if the sale were made by Tenant. However, there shall be excluded from Gross Sales: (a) the selling price of goods which are delivered in exchange for goods returned, or the selling price of goods returned without exchange, or goods redeemed for cash; (b) the value of merchandise returned to the manufacturer, wholesaler, vendor or shipper or transferred from the Premises to and/or exchanged with another store or business operated by Tenant or any affiliate of Tenant; (c) any sales tax or similar tax imposed by a governmental authority on the sale of merchandise or services conducted on, in or from the Premises; (d) any sale or transfer of all, or a substantial part of the stock or merchandise or business of Tenant; (e) the sale, not in the ordinary course of Tenant's business, of furniture, fixtures, machinery, equipment or memorabilia of Tenant which Tenant has the right to remove from the Premises following the completion of the use thereof in the conduct of Tenant's business on, in or from the Premises; (f) any money received from an insurance or indemnity company or companies as a result of loss, damage or destruction of or to the merchandise of Tenant, or Tenant's leasehold improvements, fixtures, trade fixtures, equipment or other personal property, and any condemnation proceeds paid to Tenant; (g) sales by any valet for parking, coat check or restroom service by persons who are not employees of Tenant, except to the extent of amounts paid to Tenant in connection with such services; (h) sales from any mechanical or vending device which is provided solely for the convenience of Tenant's employees, and, with respect to any vending machine not operated by Tenant, revenues from such vending machine in excess of amounts paid to Tenant; (i) interest and dividend income; (j) proceeds of sales from charity events or special events, to the extent that such proceeds are donated by Tenant to charitable organizations within twelve (12) months from the event; (k) complimentary services or employee meals in accordance with Tenant's customary and reasonable policies of general application; (l) the net amount of discounts to customers or employees pursuant to Tenant's customary and reasonable policies of general application; (m) sales for credit which are charged off as "bad debts" in the ordinary course of business; (n) sales for which payments are not made either in cash, by check, by credit card or other means at the Premises; and (o) sales of gift certificates (except upon redemption thereof).

4.5 Payment of Percentage Rent. Tenant shall within fifteen (15) days after the end of each calendar month during the term of this Lease submit to Lessor an unaudited (but certified by a duly authorized officer of Tenant) statement showing a detailed breakdown of Gross Sales. On or before the last day of each calendar month, during the term of this Lease, Tenant shall pay to Lessor 4% of Gross Sales as Percentage Rent then due based on such calculation. Tenant's obligation to pay Percentage Rent for the calendar month which includes the date of termination of this Lease shall survive the termination hereof.

reasonable detail and supporting documentation to allow Tenant to review the alleged errors. Tenant or Tenant's designated certified public accountants ("Tenant's Auditors") shall have a period of thirty (30) days to provide to Lessor and Lessor's Auditors any information which relates to the accuracy of the alleged errors and to attempt to resolve any issues pertaining thereto. In the event Lessor and Tenant, along with their respective designated certified public accountants are unable to resolve their differences regarding the alleged errors despite negotiations in good faith within said thirty (30) day period, Tenant shall, within fifteen (15) days thereafter either pay the amount required to comply with Lessor's Audit (less any adjustments agreed to by Lessor) or submit the matter to an independent certified public accounting firm as agreed to by Lessor's Auditors and Tenant's Auditors, or if they cannot agree on the auditor within ten (10) days of Tenant's written notice to Lessor, or Lessor's written notice to Tenant, the independent firm with the largest office (as determined by the number of CPAs within the office) in Memphis, Tennessee which is not the auditor for either Lessor, any affiliate of Lessor, Tenant or any affiliate of Tenant ("Final Auditor"). Each party shall within ten (10) days of designation of the Final Auditor submit copies of all information pertinent to the issues in controversy but only to the extent copies thereof were supplied to the other party prior to the date thereof. The Final Auditor may request additional information. The determination by the Final Auditor shall be the final and binding decision and each party agrees to be bound thereby. The cost and expense of the Final Auditor shall be borne by the parties in proportion to the financial effect of the final decision. In the event the errors agreed to by Tenant, or determined to exist by the auditors indicated that Tenant has underpaid Percentage Rent for the Lease Year which is subject to review by more than three percent (3%), then in addition to the additional Percentage Rent, Tenant shall pay Lessor for the reasonable cost of Lessor's Audit plus interest on the additional amount at the rate of one and one-half of a percent (1-1/2%) per month for each month after Tenant provided Tenant's annual statement of Gross Sales. Lessor agrees to keep sales figures as furnished by Tenant confidential, except that Lessor may reveal such figures on a confidential basis to its accountants and/or auditors, any mortgagee or prospective mortgagee, or any purchaser or prospective purchaser of the Premises.

4.9 Additional Rent; Rent Defined. If Lessor shall make any expenditure for which Tenant is responsible or liable under this Lease, or if Tenant shall become obligated to Lessor under this Lease for any sum other than Base Rent or Percentage Rent as hereinabove provided, except as otherwise provided herein, the amount thereof shall be deemed to constitute additional rent ("Additional Rent") and shall be due and payable by Tenant to Lessor, together with all applicable sales taxes thereon, if any, simultaneously with the next succeeding monthly installment of Rent or at such other time as may be expressly provided in this Lease for the payment of the same. For the purpose of this Lease, the term "Rent" shall mean and be defined as all Base Rent, Percentage Rent and Additional Rent due from Tenant to Lessor hereunder.

pay or perform pursuant to this Lease, together with every penalty and interest that may be added for non-payment, non-performance or late payment thereof (as set forth in Section 4.12 hereof), shall constitute Rent under this Lease. Time is of the essence with respect to payment and performance of Tenant's obligations hereunder. Tenant shall pay its obligations under Article V on the first day of each month without notice or demand. If subsequently notified by Lessor of any change in such monthly amount (which Landlord may do from time to time), Tenant shall then pay such new amount each month without notice or demand.

## ARTICLE V REAL ESTATE TAXES AND ASSESSMENTS

5.1 Real Property Taxes; Tax and Insurance Escrow. Should any real property taxes or assessments be levied or assessed by any lawful authority against the Premises as part of the land and improvements included within the Beale Street Historic District then, unless the Premises is a separate tax parcel (in which case Tenant shall pay the tax thereon), Tenant shall pay Lessor on demand that portion of such tax payments as shall be equal to the full amount of such tax payment multiplied by a fraction, the numerator of which shall be the square footage area of the Premises, and the denominator of which shall be the square footage area of all leasable space in the Beale Street Historic District, further multiplied by a fraction, the numerator of which shall be the number of days during the taxable period for which any such tax payments shall have been paid by Lessor included within the term of this Lease, and the denominator of which shall be the number of days of the taxable period. In addition to the foregoing, Tenant agrees to pay Lessor as additional rent each month an amount equal to 1/12th of Tenant's share of the prior year's tax charge in each subsequent year. Such payment shall be considered an estimated payment and any adjustment shall be made and money paid by Tenant or refunded by Lessor within 15 days after receipt of the actual yearly tax bill. Lessor will refund to Tenant on a pro-rata basis any tax refund which is received on taxes paid by Tenant. Real estate taxes with respect to the Premises for 2009 are estimated to be \$0.00.

5.2 Personal Property Taxes. Tenant shall be liable for all personal property, inventory and other taxes levied against personal property and trade fixtures placed by Tenant in the Premises. If (i) any such taxes are levied against Lessor, Lessor's property on Lessor's leasehold interest in the Premises and (ii) (x) if Lessor elects to pay the same or (y) if the assessed value of Lessor's property is increased by including of personal property and trade fixtures placed by Tenant in the Premises and Lessor elects to pay the taxes based on such increase, Tenant shall pay to Lessor, upon demand, that part of such taxes for which Tenant is primarily liable hereunder.

5.3 Real Estate Charges and Insurance Expenses. "Real Estate Charges" shall include ad valorem taxes, general and special assessments, parking surcharges, taxes or excises on rents, taxes and charges for governmental services (such as street maintenance

relating to the operation of the Premises for its Permitted Use. Tenant shall, at its sole cost and expense, pay all franchise fees, license fees, management fees or other expenses of any kind or nature whatsoever in connection with its operation of the Premises for its Permitted Use.

## ARTICLE VIII INSURANCE

8.1 Insurance by Tenant. Throughout the term of this Lease, Tenant shall, at its sole cost and expense, maintain in full force and effect the following types and amounts of insurance coverage:

(a) Property Insurance. Special form insurance on the improvements and personal property located at the Premises, including all permitted alterations, changes, additions and replacements thereof and thereto, including without limitation, insurance against loss or damage caused by: (i) fire, windstorm and other hazards and perils generally included under extended coverage; (ii) sprinkler leakage; (iii) vandalism and malicious mischief; and, all in an amount which reasonably assures there will be sufficient proceeds to replace the improvements and personal property in the event of a loss against which such insurance is issued. Such insurance shall (i) include contingent liability from Ordinance or Law Coverage, Demolition Costs and Increased Cost of Construction Endorsements, (ii) contain an agreed amount endorsement with respect to the improvements and personal property, (iii) provide for no deductible in excess of TWENTY FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00), and (iv) contain an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the improvements or the use of the Premises shall at any time constitute legal non-conforming structures or uses. All insurance required hereunder shall be carried in favor of Lessor and Tenant, as their respective interests may appear.

(b) Liability Insurance. Occurrence form commercial general liability and property damage insurance providing coverage against liability for bodily injury, death and property damage having limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per person and ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence, with an umbrella liability policy in the amount of THREE MILLION AND NO/100 DOLLARS (\$3,000,000.00). Such insurance shall cover at least the following hazards: (1) premises and operations; (2) products and completed operations; (3) independent contractors; (4) blanket contractual liability for written and oral contracts; and (5) contractual liability covering the indemnities contained in Article XVIII hereof to the extent the same is available. Such insurance shall name Lessor as an additional insured.



stolen, damaged or destroyed by an insured peril, Tenant shall not have any liability to Lessor, nor to any insurer of Lessor, for or in respect of such theft, damage or destruction.

8.5 Insurance by Lessor. Throughout the term of this Lease, Lessor shall, through the Common Area Maintenance Charge, maintain in full force and effect the following types and amounts of insurance coverage:

(a) Liability Insurance. Occurrence form commercial general liability and property damage insurance providing coverage against liability for bodily injury, death and property damage having limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per person and ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence, with an umbrella liability policy in the amount of FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00). Such insurance shall cover at least the following hazards: (1) premises and operations; (2) products and completed operations; (3) independent contractors; (4) blanket contractual liability for written and oral contracts; and (5) contractual liability covering the indemnities contained in Article XVIII hereof to the extent the same is available. Such insurance shall name Tenant as an additional insured.

(b) Workers' compensation insurance as required by applicable law.

(c) All insurance which Lessor is required to obtain in this Article VIII shall be in good and solvent insurance companies licensed to do business in Tennessee. Each such policy shall provide that the same shall not be amended or canceled except after thirty (30) days prior written notice to Tenant. Lessor shall deliver to Tenant duly executed certificates of insurance not later than ten (10) days after the date of execution of this Lease. Not later than ten (10) days prior to the expiration date of any such insurance policy, Lessor shall deliver to Tenant an updated certificate of insurance indicating that such policy has been renewed.

8.6 Scope of Coverage. Insurance covering Tenant and Lessor hereunder shall also cover their respective directors, officers, employees and agents.

8.7 Damage. Lessor and its partners and their respective officers, directors, shareholders, members, employees and agents shall not be liable to Tenant, nor to Tenant's employees, agents or visitors, nor to any other person or entity whomsoever, for any injury or death to person or damage to property occurring in or about the Premises, whether caused by the Premises coming out of repair, by any defect or failure of any structural element of the Premises or of any equipment, pipes or wiring, backing up of drains, or gas, water, steam, electricity or oil leaking, escaping or flowing into the Premises (except where due to Lessor's willful failure to make repairs required to be

adversely affect or impair the policy or the right of the insured party to receive proceeds under the policy; provided, further, that this release shall not be applicable to the portion of any damage which is not reimbursed by the damaged party's insurer because of the "deductible" in the damaged party's insurance coverage. The release specified in this Section 8.6 is cumulative with any releases or exculpations which may be contained in other provisions of this Lease.

## ARTICLE IX DAMAGE OR DESTRUCTION

9.1 Restoration and Repair. If, during the term of this Lease, the improvements at the Premises shall be destroyed or damaged in whole or in part by fire, windstorm or any other cause whatsoever, Tenant shall give Lessor immediate notice thereof and Lessor shall repair, reconstruct or replace the improvements, or the portion thereof so destroyed or damaged (whichever is reasonably required), at least to the extent of the value and character thereof existing immediately prior to such occurrence. All work shall be started as soon as practicable and completed at Lessor's sole cost and expense. In the event such improvements, in Tenant's reasonable judgment, cannot be repaired or reconstructed within one hundred eighty (180) days after the date of such casualty, Tenant shall have the right to terminate the Lease upon written notice to Lessor.

9.2 Leasehold Improvements. In the event Lessor is required to repair or replace the improvements at the Premises as a result of a casualty in accordance with the provisions of Section 9.1 above, Tenant shall also be required to repair or replace all of its trade fixtures, equipment and other personal property.

## ARTICLE X ADDITIONS, ALTERATIONS AND REMOVALS

10.1 Prohibition. Except as hereinafter expressly provided in Section 10.2, no portion of the Premises shall be demolished, removed or altered by Tenant in any manner whatsoever without the prior written consent and approval of Lessor, which such consent shall not be unreasonably withheld. Notwithstanding the foregoing, however, Tenant shall be entitled and obligated to undertake all alterations to the Premises required by any applicable law or ordinance including, without limitation, any alterations required by any Accessibility Laws (subject, however, to Lessor's representations in Section 1.2 above), and, in such event, Tenant shall comply with the provisions of Section 10.2 below.

10.2 Permitted Renovations. Lessor acknowledges that various minor, non-structural alterations may be undertaken by Tenant from time to time without Lessor's consent. Lessor hereby agrees that Tenant shall be entitled to perform all such work on or about the improvements to the Premises; provided, however, that the following

damage, cost and expense (including, without limitation, reasonable attorneys' fees) incurred by or asserted against Lessor which is occasioned by or results, directly or indirectly, from any construction or renovation activities conducted upon the Premises by Tenant; whether or not the same is caused by or the fault of Tenant or any contractor, subcontractor, laborer, supplier, material man or any other third party.

10.3 Additions, Expansions and Structural Alterations. Except as expressly permitted in Section 10.1 above or in any other portion of this Lease, nothing in this Article or elsewhere in this Lease shall be deemed to authorize Tenant to construct and erect any additions to or expansions of the improvements to the Premises, or perform any alterations of a structural nature whatsoever; it being understood that Tenant may do so only with the prior written consent and approval of Lessor, which consent and approval shall not be unreasonably withheld.

## ARTICLE XI MAINTENANCE AND REPAIRS

11.1 Repairs by Tenant. Except as provided in Section 11.2 below or in any other portion of this Lease, Tenant shall, at all times during the term of this Lease and at its sole cost and expense, put, keep, replace and maintain the Premises (including, without limitation, the plumbing systems, electrical systems and HVAC systems, glass, awnings, and the personal property at the Premises) in good repair and in good, safe and substantial order and condition, shall make all repairs thereto, both inside and outside, structural and nonstructural, ordinary and extraordinary, howsoever the necessity or desirability for repairs may occur, and whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise, and shall use all reasonable precautions to prevent waste, damage or injury. Tenant shall also, at its own cost and expense, put, keep, replace and maintain all signs within the Premises in good repair.

11.2 Lessor's Obligation. Lessor shall be responsible for repairs to and maintenance of the structural portions of the Premises, including, without limitation, the roof, foundation and exterior walls. Except as otherwise provided in this Lease, Lessor shall not be required to make any other alterations, reconstructions, replacements, changes, additions, improvements or repairs of any kind or nature whatsoever to the Premises or any portion thereof (including, without limitation, any portion of the improvements or any personal property at the Premises) at any time during the term of this Lease.

## ARTICLE XII LESSOR'S RIGHT TO INSPECT

Lessor and its agents shall have the right to enter upon the Premises or any portion

paid for the preceding calendar year (or, if a calendar year has not yet elapsed, a sum equal to five percent [5%] of the Base Rent then in effect), which deposit shall be held by Lessor, without interest, for the balance of the Term as security for the full and faithful performance of all the obligations under this Lease on the part of the assignee yet to be performed. Such assignee shall expressly assume this Lease by an agreement in recordable form, an original counterpart of which shall be delivered to Lessor prior to an assignment of the Lease.

13.4 Effect of Consent. Unless expressly agreed by Lessor in writing to the contrary, Lessor's consent to any assignment of this Lease shall not operate to release any Tenant-assignor from its obligations hereunder, with respect to which said Tenant-assignor shall remain personally liable.

13.5 Transfer to Affiliate. Notwithstanding any other provision of this Lease, Tenant shall have the right, upon prior written notice to Lessor, but without its consent, to assign this Lease to another person or entity which it controls, is controlled by, or with which it is under common control.

#### ARTICLE XIV LESSOR'S INTEREST NOT SUBJECT TO LIENS

14.1 Liens, Generally. Tenant shall not create or cause to be imposed, claimed or filed upon the Premises, or any portion thereof, or upon the interest of Lessor therein, any lien, charge or encumbrance whatsoever. If, because of any act or omission of Tenant, any such lien, charge or encumbrance shall be imposed, claimed or filed, Tenant shall, at its sole cost and expense, cause the same to be fully paid and satisfied or otherwise discharged of record (by bonding or otherwise) and Tenant shall indemnify and save and hold Lessor harmless from and against any and all costs, liabilities, suits, penalties, claims and demands whatsoever, and from and against any and all attorneys' fees, at both trial and all appellate levels, resulting or on account thereof and therefrom. In the event that Tenant shall fail to comply with the foregoing provisions of this Section, Lessor shall have the option of paying, satisfying or otherwise discharging (by bonding or otherwise) such lien, charge or encumbrance and Tenant agrees to reimburse Lessor, upon demand and as Additional Rent, for all sums so paid and for all costs and expenses incurred by Lessor in connection therewith, together with interest thereon, until paid.

14.2 Mechanics Liens. Lessor's interest in the Premises shall not be subjected to liens of any nature by reason of Tenant's construction, alteration, renovation, repair, restoration, replacement or reconstruction of any improvements on or in the Premises, or by reason of any other act or omission of Tenant (or of any person claiming by, through or under Tenant) including, but not limited to, mechanics' and material men's liens. All persons dealing with Tenant are hereby placed on notice that such persons shall not look to Lessor or to Lessor's credit or assets (including Lessor's interest in the Premises) for

ARTICLE XV  
CONDEMNATION  
EMINENT DOMAIN

15.1 Complete Taking. If the whole of the Premises shall be taken or condemned for any public or quasi-public use or purpose, by right of eminent domain or by purchase in lieu thereof, or if a substantial portion of the Premises shall be so taken or condemned that the portion or portions remaining is or are not sufficient and suitable, in the mutual reasonable judgment of Lessor and Tenant, for the continued operation of the business contemplated by this Lease to be conducted thereon, therein or therefrom so as to effectively render the Premises untenable, then this Lease and the term hereby granted shall cease and terminate as of the date on which the condemning authority takes possession and all Rent shall be paid by Tenant to Lessor up to that date or refunded by Lessor to Tenant if Rent has previously been paid by Tenant beyond that date.

15.2 Partial Taking. If a portion of the Premises is taken, and the portion or portions remaining can, in the mutual reasonable judgment of Lessor and Tenant, be adapted and used for the conduct of Tenant's business operation, such that the Premises are not effectively rendered untenable, then Lessor shall promptly restore the remaining portion or portions thereof to a condition comparable to their condition at the time of such taking or condemnation, less the portion or portions lost by the taking, and this Lease shall continue in full force and effect except that the Rent payable hereunder shall be equitably adjusted to take into account the portion or portions of the Premises lost by the taking.

15.3 Award. The entire award for the Premises or the portion or portions thereof so taken shall be paid to Lessor; provided, however, that except to the extent such award is used to restore the Premises as described above, Tenant shall be entitled to the portion of the award attributable to its investment in the Leasehold Improvements and the value of its leasehold interest in the Premises. In addition, Tenant shall be entitled to any separate award made as compensation for its moving expenses, damages to its business or similar items.

15.4 Disputes. If Lessor and Tenant cannot agree in respect of any matters to be determined under this Article, a determination shall be requested of the court having jurisdiction over the taking or condemnation; provided, however, that if said court will not accept such matters for determination, either party may have the matters determined by a court otherwise having jurisdiction over the parties.

Section 16.1 above and any SNDA executed in accordance with provisions thereof.

16.3 Rights of Mortgagees and Assignees. At the time of giving any notice of default to Lessor, Tenant shall mail or deliver a copy of such notice to the holder of any mortgage on the Premises or holder of a security interest in or collateral assignment of this Lease (individually a "Mortgagee") which has, in writing, notified Tenant of its interest. No notice of default or termination of this Lease by Tenant shall be effective until any Mortgagee shall have been furnished a copy of such notice by Tenant. In the event Lessor fails to cure any default by it under this Lease, the Mortgagee shall have, at its option, a period of thirty (30) days within which to remedy such default of Lessor or to cause such default to be remedied. In the event that the Mortgagee elects to cure any such default by Lessor, then Tenant shall accept such performance on the part of such Mortgagee as though the same had been performed by Lessor, and for such purpose Tenant hereby authorizes any Mortgagee to enter upon the Premises to the extent necessary to exercise any of Lessor's rights, powers and duties under this Lease. If, in the event of any default by Lessor which is reasonably capable of being cured by a Mortgagee but cannot, as a result of the nature of the default, reasonably be cured within such time period, the Mortgagee promptly commences and diligently pursues to cure the default, then Tenant will not terminate this Lease or cease to perform any of its obligations under this Lease so long as the Mortgagee is, with due diligence, engaged in the curing of such default.

ARTICLE XVII  
END OF TERM

17.1 Surrender of Premises.

(a) At the expiration of the term of the Lease, or of any extension or renewal thereof, whether by reason of lapse of time or by reason of Tenant's default hereunder, Tenant will peaceably deliver up to Lessor possession of the Premises, free and clear of any liens or encumbrances, cleared of all persons, goods things not properly belonging to the same, and in as good order and condition as when received by Tenant, ordinary wear and tear, destruction or damage by fire, windstorm or other casualty and condemnation excepted.

(b) All improvements made to the Premises by Tenant which are not owned by Lessor during the term of the Lease shall at the expiration of the term of the Lease or of any extension or renewal thereof, become the property of Lessor, without cost to Lessor; provided, however that all trade fixtures, equipment and other personal property, including, without limitation, the items listed in Article 20.6 herein whether or not attached to the Premises, installed by Tenant for the business conducted by it shall remain the property of Tenant, and such trade fixtures, equipment and other personal property may be removed at the expiration of the Lease; provided further that Tenant is

or nature, including reasonable attorneys' fees and court costs incurred by Tenant arising directly or indirectly from or out of (1) any failure by Lessor to perform any of the terms, provisions, covenants or conditions on Lessor's part to be performed; (ii) any accident, injury or damage which shall happen at, in or upon the Premises or the Beale Street Historic District as a result of any negligent act or omission of Lessor, its employees, agents or contractors; (iii) any failure of Lessor to comply with any laws, ordinances, requirements, orders, directions, rules or regulations of any governmental authority, including, without limitation, the Accessibility Laws (except to the extent compliance therewith is Tenant's responsibility under the Lease); (iv) any contamination of the Premises, or the groundwater thereof, arising prior to the Turnover Date; and (v) any other negligent act or omission of Lessor, its employees, agents or contractors. Lessor's indemnity obligations under this Article and elsewhere in this Lease arising prior to the termination or assignment of this Lease shall survive any such termination or assignment.

18.2 Indemnification of Lessor. Tenant shall defend, indemnify and save and hold Lessor harmless from and against any and all liabilities, obligations, losses, damages, injunctions, suits, actions, fines, penalties, claims, demands, costs and expenses of every kind or nature, including reasonable attorneys' fees and court costs, incurred by Lessor, arising directly or indirectly from or out of: (a) any failure by Tenant to perform any of the terms, provisions, covenants or conditions of this Lease on Tenant's part to be performed; (b) any accident, injury or damage which shall happen at, in or upon the Premises as a result of any negligent act or omission of Tenant, its employees, agents or contractors; (c) any failure of Tenant to comply with any laws, ordinances, requirements, orders, directions, rules or regulations of any governmental authority, including, without limitation, the Accessibility Laws, subject to Lessor's representations under Section 1.2 above; (d) any contamination of the Premises, or the groundwater thereof, arising on or after the date Tenant takes possession of the Premises and occasioned by the use, transportation, storage, spillage or discharge thereon, therein or therefrom of any toxic or hazardous chemicals, compounds, materials or substances, by Tenant or by any agent of Tenant; (e) any discharge of toxic or hazardous sewage or waste materials from the Premises into any septic facility or sanitary sewer system serving the Premises arising on or after the date Tenant takes possession of the Premises, by Tenant or by any agent of Tenant; or (f) any other negligent act or omission of Tenant, its employees, agents or contractors. Tenant's indemnity obligations under this Article and elsewhere in this Lease arising prior to the termination or assignment of this Lease shall survive any such termination or assignment.

18.3 Notice of Claim or Suit. Tenant shall promptly notify Lessor of any claim, action, proceeding or suit instituted or threatened against Tenant or Lessor of which Tenant receives notice or of which Tenant acquires knowledge. In the event Lessor is made a party to any action for damages or other relief against which Tenant has

(e) If, at any time during the term of this Lease, Tenant shall file in any court, pursuant to any statute of either the United States or of any State, a petition in bankruptcy or insolvency, or for reorganization or arrangement, or for the appointment of a receiver or trustee of all or any portion of Tenant's property, including, without limitation, its leasehold interest in the Premises, or if Tenant shall make an assignment for the benefit of its creditors or petitions for or enters into an arrangement with its creditors.

(f) If, at any time during the term of this Lease, there shall be filed against Tenant in any courts pursuant to any statute of the United States or of any State, a petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or trustee of all or a portion of Tenant's property, including, without limitation, its leasehold interest in the Premises, and any such proceeding against Tenant shall not be dismissed within sixty (60) days following the commencement thereof.

(g) If Tenant's leasehold interest in the Premises therein shall be seized under any levy, execution, attachment or other process of court where the same shall not be vacated or stayed on appeal or otherwise within thirty (30) days thereafter, or if Tenant's leasehold interest in the Premises is sold by judicial sale and such sale is not vacated, set aside or stayed on appeal or otherwise within thirty (30) days thereafter.

19.2 Remedies on Default. If any of the Events of Default hereinabove specified shall occur, Lessor, at any time thereafter, shall have and may exercise any of the following rights and remedies:

(a) Lessor may, pursuant to written notice thereof to Tenant, terminate this Lease and, pursuant to appropriate legal proceedings, re-enter, retake and resume possession of the Premises for Lessor's own account and, for Tenant's breach of and default under this Lease, recover immediately from Tenant any and all rents and other sums and damages due or in existence at the time of such termination, including, without limitation, (i) all Rent and other sums, charges, payments, costs and expenses agreed and/or required to be paid by Tenant to Lessor hereunder, (ii) all costs and expenses of Lessor in connection with the recovery of possession of the Premises, including reasonable attorneys' fees and court costs, and (iii) all costs and expenses of Lessor in connection with any reletting or attempted reletting of the Premises or any part or parts thereof, including, without limitation, brokerage fees, attorneys' fees and the cost of any alterations or repairs which may be reasonably required to so relet the Premises, or any part or parts thereof.



allowed at law or in equity as if the remedies of re-entry, unlawful detainer proceedings and other remedies were not herein provided. Accordingly, the mention in this Lease of any particular remedy shall not preclude Lessor from having or exercising any other remedy at law or in equity. Nothing herein contained shall be construed as precluding the Lessor from having or exercising such lawful remedies as may be and become necessary in order to preserve the Lessor's right or the interest of the Lessor in the Premises and in this Lease, even before the expiration of any notice periods provided for in this Lease, if under the particular circumstances then existing the allowance of such notice periods will prejudice or will endanger the rights and estate of the Lessor in this Lease and in the Premises.

19.4 Lessor May Cure Tenant Defaults. If Tenant shall default in the performance of any term, provisions, covenant or condition on its part to be performed hereunder, Lessor may, after notice to Tenant and a reasonable time to perform after such notice (or without notice if, in Lessor's reasonable opinion, an emergency exists) perform the same for the account and at the expense of Tenant. If, at any time and by reason of such default, Lessor is compelled to pay, or elects to pay, any sum of money or do any act which will require the payment of any sum of money, or is compelled to incur any expense in the enforcement of its rights hereunder or otherwise, such sum or sums, together with interest thereon at the rate of twelve percent (12%) per year, shall be deemed Additional Rent hereunder and shall be repaid to Lessor by Tenant promptly when billed therefor, and Lessor shall have all the same rights and remedies in respect thereof as Lessor has in respect of the rents herein reserved.

19.5 Liquidated Damages. In the event that Lessor shall terminate the Lease by reason of the failure of Tenant to pay any rental installment (including Percentage Rent) when due or any other charges due hereunder, or by reason of Tenant's violation of any other provision of the Lease, then, at Lessor's option, but (notwithstanding any other provision in the Lease) in lieu of the other remedies available to Lessor, Tenant shall pay to Lessor liquidated damages in an amount equal to the rental installments, including percentage rent, payable during the next succeeding three (3) calendar months. Percentage rent under the terms hereof shall be computed by calculating the average annual percentage rent as defined herein from the Commencement Date of the Lease to the time of default or during the preceding three full calendar years, whichever period is shorter, and multiplying the average annual percentage by 1/12, thereby establishing a monthly percentage rent. Such damages shall be addition to unpaid rent due from Tenant for the period prior to termination of the Lease by Lessor, provided that if Lessor is unable to regain possession promptly after such termination, Tenant shall continue to be liable for the full amount of rent until Lessor regains physical possession of the Premises.

19.6 Rights Cumulative. The rights and remedies provided and available to Lessor in this Lease are distinct, separate and cumulative remedies, and no one of them,

ARTICLE XXI  
NOTICES

Any notice required or permitted to be given under this Lease shall be deemed given if delivered personally to an officer or general partner of the party to be notified or sent by (a) United States registered or certified mail, postage prepaid, return receipt requested, or (b) overnight courier service, and addressed as follows:

If to Lessor:                      Performa Entertainment Real Estate, Inc.  
203 Beale Street, Suite 300  
Memphis, Tennessee 38103

If to Tenant:                      Withers Collection  
Attn: Rosalyn Withers  
8301 Anastasta Lane  
Palm Beach Gardens, Florida 33418

With a copy to:  
Monice Hagler  
81 Monroe # 200  
Memphis, Tennessee 38103

or such other address as may be designated by either party by written notice to the other. Except as otherwise provided in this Lease, every notice, demand, request or other communication hereunder shall be deemed to have been given or served upon actual receipt thereof. Accordingly, a notice shall not be effective until actually received. Notwithstanding the foregoing, any notice mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or the failure or refusal of such person or party to accept delivery of the notice.

ARTICLE XXII  
RULES AND REGULATIONS

22.1 Applicable Rules. Tenant agrees at all times during the term of this Lease to:

sidewalk shop or other business, occupation or undertaking.

(c) Park, load or unload any car, truck or other vehicle on any part of the Beale Street Historic District other than that portion thereof specifically designated for Tenant.

(f) Use the plumbing facilities in the Beale Street Historic District for any purpose other than that for which they were constructed or dispose of any damaging or injurious substance therein; the expense of breakage, stoppage, or damage resulting from a violation of this provision shall be borne by the Tenant, who shall, or whose employees or agents shall, have caused it.

(g) Install any exterior lighting or plumbing facilities or use in, on or about the Premises any advertising or other medium which may be heard or experienced outside the Premises such as flashing lights, search lights, loudspeakers, phonograph or radio broadcasts.

(h) Burn any papers, trash or garbage of any kind in or on the Premises.

(i) Paint, drill or in any way deface any walls, ceilings, partitions, floors, wood, stone or iron work at the Premises, except as is necessary to complete the Tenant improvements.

(j) Perform any acts or carry on any practices which might injure any building or be a nuisance or menace to other tenants in the Beale Street Historic District.

(k) Use or permit the use of any portion of the Premises as living quarters, sleeping apartments, lodging rooms or for any unlawful purpose.

(l) Place or display any merchandise or other object on or otherwise obstruct any sidewalk, walkways or areaways.

(m) Keep or permit the keeping of any animals of any kind, in about or upon the Premises.

(n) Distribute any handbills or other advertising, political or religious matter on or about the sidewalks, streets, passageways or public areas within or surrounding the Beale Street Area.

(o) Do advertising, publicity or solicitation of any nature using the name "Beale Street", except to specify the location of its business, or any logo, trade or service mark or name owned or used by the Beale Street Area.

23.4 Entire Agreement. This Lease contains the entire agreement between the parties and, except as otherwise provided herein, can only be changed, modified, amended or terminated by an instrument in writing executed by the parties. Wherever conflict or discrepancy occurs between terms, provisions and agreements herein and those contained in any prior instruments involving any parties hereto, the terms, provisions and agreements herein shall prevail for this Lease. It is mutually acknowledged and agreed by Lessor and Tenant that there are no verbal agreements, representations, warranties or other understandings affecting the same. This Lease shall not be changed, amended or modified except by a written instrument executed by Lessor and Tenant.

23.5 Waiver. No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon Lessor or Tenant unless in writing and executed by Lessor or Tenant, as the case may be. Neither the failure of Lessor or Tenant to insist upon a strict performance of any of the terms, provisions, covenants, agreements and conditions hereof, nor the acceptance of any Rent by Lessor with knowledge of a breach of this Lease by Tenant in the performance of its obligations hereunder, shall be deemed a waiver of any rights or remedies that Lessor or Tenant may have or a waiver of any subsequent breach or default in any of such terms, provisions, covenants, agreements and conditions.

23.6 Time. Time is of the essence in every particular of this Lease, including obligations for the payment of money.

23.7 Costs and Attorneys' Fees. If either party shall bring an action to recover any sum due hereunder, or for any breach hereunder or in connection herewith, the prevailing party shall be entitled to recover its reasonable costs and reasonable attorneys' fees, specifically including reasonable attorneys' fees incurred in connection with any appeals (whether or not taxable as such by law). Lessor and/or Tenant shall also be entitled to recover their reasonable attorneys' fees and costs incurred in any bankruptcy action filed by or against the other party, including, without limitation, those incurred in seeking relief from the automatic stay, in dealing with the assumption or rejection of this Lease, in any adversary proceeding, and in the preparation and filing of any proof of claim.

23.8 Captions and Headings. The captions and headings in this Lease have been inserted herein only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of, or otherwise affect, the provisions of this Lease.

23.9 Severability. If any provision of this Lease shall be deemed to be invalid, it shall be considered deleted therefrom and shall not invalidate the remaining provisions of this Lease.

not notify Lessor of any title exceptions to which it objects, within thirty (30) days after receipt of the title commitment, or, if thereafter Tenant does not elect to terminate this Lease as above provided, Tenant shall be deemed to have accepted the Premises subject to all such exceptions.

23.15 Arbitration. It is the intention of the parties hereto not to resolve claims, disagreements or disputes concerning this Agreement through litigation in the courts, rather the parties acknowledge and consent to binding arbitration, as provided for below, concerning any such claims, disagreements, or disputes. If any controversy, claim, disagreement, or dispute should arise between the parties in the performance, interpretation, or application of this Agreement, and such controversy or dispute shall not be resolved or compromised, then after thirty (30) days notice either party may serve upon the other party a written notice stating that the controversy, claim, disagreement, or dispute is being referred to a sole arbitrator selected by the American Arbitration Association. The arbitration proceeding shall be conducted in Shelby County, Tennessee, and shall be governed by the Commercial Rules of the American Arbitration Association. The prevailing party in any arbitration proceeding shall also be awarded against the losing party all reasonable costs of arbitration, including but not limited to, attorney fees, travel costs, and expert witness fees. The decision and award of the arbitrator shall be final and binding upon the parties, and all parties hereby acknowledge that there shall be no appeal or review whatsoever of such arbitration award and such arbitration award may be entered as a final judgment in any court of competent jurisdiction. Notwithstanding the foregoing, Lessor shall have the option, for any nonpayment (or late payment) of Rent or any other obligation under this Lease involving the payment of money or any cause involving Lessor's rights to evict Tenant or Section 15.4 to pursue these claims through litigation in the court of jurisdiction. If Lessor elects the option of litigation as provided for in the preceding sentence, Tenant hereby knowingly, voluntarily and intentionally waives the right for itself, its heirs, personal representatives, successors and assigns to a jury trial with respect to said litigation arising out of, under or in connection with the foregoing.

23.16 Force Majeure. Whenever a period of time is herein prescribed for action to be taken by Lessor or Tenant (other than the payment of Rent by Tenant), Lessor or Tenant shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of Lessor and Tenant.

23.17 Peaceable Possession. Lessor warrants that it has full right and power to execute this Lease and perform its obligations under this Lease, and Lessor agrees, represents and warrants that Tenant shall peaceably and quietly have, hold, and enjoy the Premises during the lease Term, subject to the terms of this Lease and the state of

ARTICLE XXIV  
COMMON AREA

24.1 Rights of Lessor. Lessor is vested by the City of Memphis and all tenants with the responsibility for administrative and common area maintenance responsibility in the Beale Street Historic District (Exhibit "B").

24.2 General. Lessor may make available from time to time within and around the Beale Street Historic District such common areas (including, but not limited to, driveways, truck ways, delivery passages, truck loading areas, access to and egress roads, walkways, enclosed courts and malls, landscaped and planted areas, and public rest rooms) as it in its sole discretion shall deem appropriate. Lessor shall operate, manage, equip, light, repair and maintain the common areas for their intended purposes in such manner as it shall, in its sole discretion, determine. Lessor may, in its sole discretion, from time to time, change the area, size, location, nature and use of the common areas, add to or diminish the common areas and make changes, construct buildings or improvements or installations thereon and move and remove the same. Lessor also reserves the right to dedicate portions of such common areas and other portions of the Beale Street Historic District (excepting only the Premises) for a street, park utility and other public purposes. Lessor or its designees or assigns may conduct sales or displays of merchandise or services in the common area. Notwithstanding the foregoing or any other provision of this Lease, Lessor shall not make any changes to the Beale Street Historic District which would materially and adversely interfere with Tenant's use of the Premises for its intended purpose.

24.3 Use of Common Area. Tenant and its subtenants, licensees, concessionaires, officers, employees, agents, customers and invitees shall have the nonexclusive right, in common with Lessor and all others to whom it has granted or may hereafter grant rights, to use the common area as designated by it from time to time subject to such reasonable rules and regulations as it may from time to time impose, including if it so elects, the designation of specific areas in which cars owned by Tenant, its subtenants and licensees by express contract shall park. Lessor may at any time close temporarily any common area to make repairs or changes therein or to effect construction, repairs or changes within the Beale Street Historic District, to prevent the acquisition of public right in such area, and may do such other acts in and to the common areas as in its sole judgment may be desirable to improve the convenience thereof, subject to the last sentence of Section 24.2, Tenant shall, upon request, promptly furnish to Lessor the license numbers of cars operated by Tenant and its subtenants, licensees by express contract, concessionaires, officers and employees. Tenant shall not any time interfere with the rights of Lessor and other occupants of the Beale Street Historic Area, its and their subtenants, licensees, concessionaires, officers, employees, agents, customers and invitees, to use any part of the common area. Lessor in its sole discretion reserves the right to impose parking charges (determined by meters or otherwise). Any

Security taxes, employer taxes, personal property taxes, (xi) fees for required licenses and permits, (xii) supplies, (xiii) reasonable depreciation of equipment used in the operation of the common areas, but there shall be excluded costs of equipment property chargeable to capital account, (xiv) costs and expense of operating transportation systems, (xv) administrative costs equal to fifteen percent (15%) of the total cost of operating and maintaining the common areas, and (xvi) all other costs and expenses of every kind and nature paid and incurred by Lessor in operating, managing, policing and protecting, lighting, air conditioning and heating, repairing, replacing and maintaining the common areas as designated by it, excluding capital expenditures as determined in accordance with generally accepted accounting principles.

24.6 Payment Of CAM Charges. The estimated Common Area Maintenance Charge imposed hereby shall be paid by Tenant in successive equal monthly installments, the first said monthly installment to become due and payable on the first day of the first full calendar month of Tenant's Lease, and a like installment on the first day of each succeeding month of each Lease Year or Partial Lease Year until notice of change by Lessor. It is understood and agreed that the charge imposed hereby is subject to adjustment to the extent that the cost of the aforesaid services and expenses increases. Lessor may increase, on fifteen (15) days written notice, the monthly payment to offset projected bona fide increases in the Common Area Maintenance Charge. Tenant agrees to pay as the initial monthly installment of the Common Area Maintenance Charge (excluding security which is invoiced as incurred and due upon receipt) the amount of \$2.18 per square foot or \$1,021.15 per month. This monthly CAM Fee is based upon the Budget for the year of 2009.

24.7 Right To Inspect Records. Within ninety (90) days after the end of each calendar year during the term hereof, Lessor shall furnish Tenant with a statement of Common Area Maintenance Charges for such year. Within ten (10) days of Tenant's receipt of such statement, Tenant shall pay any additional Common Area Charges due to Lessor in excess of the monthly installments, and Lessor shall refund to Tenant any payments made in excess of the amount due for such year. Tenant shall have the right to examine the books and records of Lessor with respect to such Common Area Maintenance Charges upon reasonable notice by Tenant.

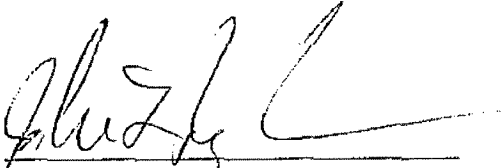
## ARTICLE XXV GUARANTY AGREEMENT

25.1 Guaranty. (Intentionally Deleted).

25.2 Prompt Payment. (Intentionally Deleted).

25.3 Continuing Effect. (Intentionally Deleted).

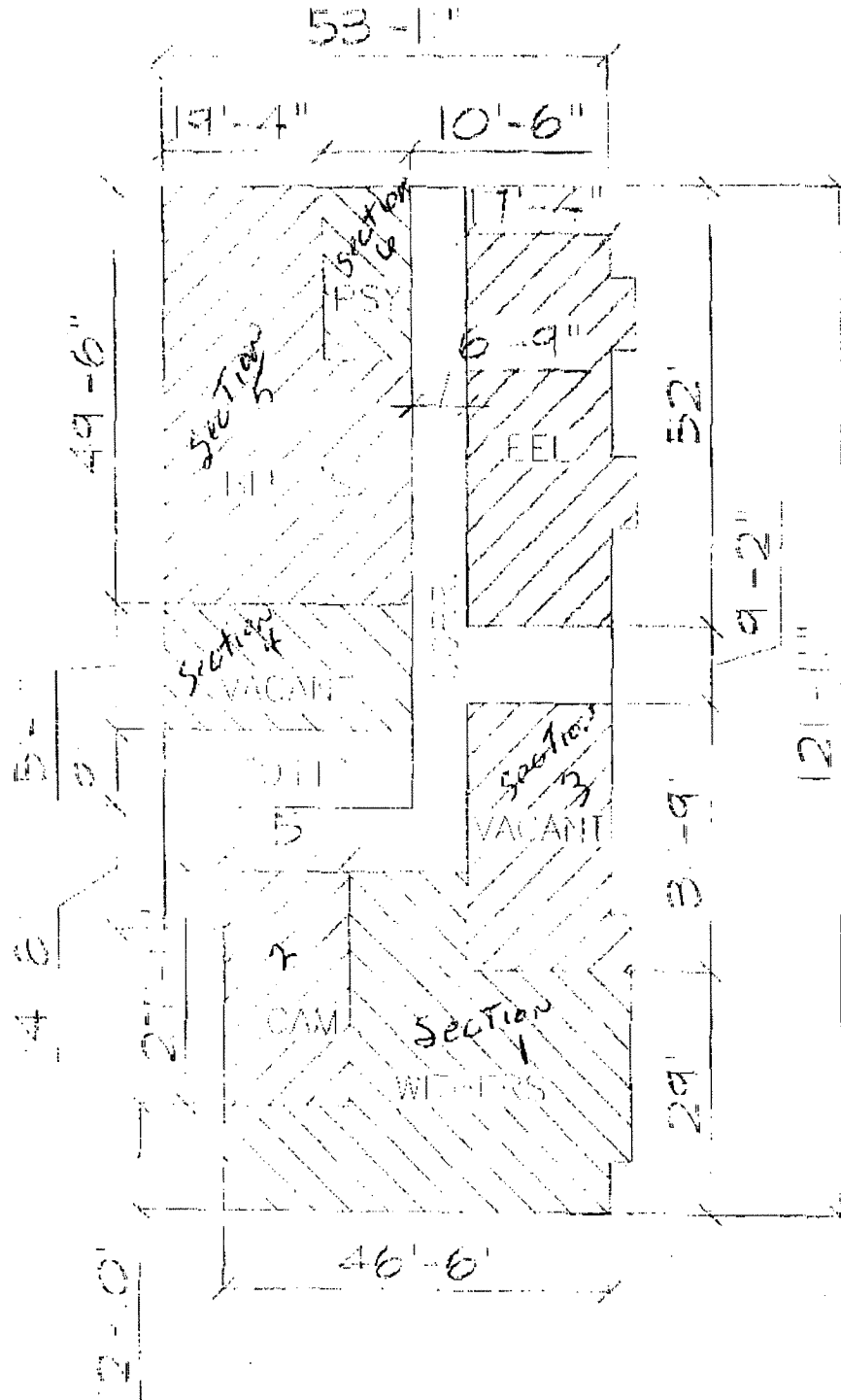
As Receiver of the Beale Street Historic District, I acknowledge that Performa Real Estate, Inc., Lessor and Withers Collection, Inc., Tenant have caused the preceding Lease for 333 Beale Street to be duly executed on October 29, 2009.

A handwritten signature in black ink, appearing to read "John Ryder", written over a horizontal line.

John Ryder, Receiver  
Beale Street Historic District



Mr. Withers  
333 Beale Street



Ground Floor

EXHIBIT B  
BEALE STREET HISTORIC DISTRICT

look to Lessor or to Lessor's credit or assets (including Lessor's interest in the Premises) for payment or satisfaction of any obligations incurred in connection with the construction, alteration, repair, restoration, renovation, replacement or reconstruction thereof by or on behalf of Tenant. Tenant has no power, right or authority to subject Lessor's interest in the Premises to any mechanic's or material men's lien or claim of lien.

(e) Inconsistent Provisions. The provisions of this Memorandum constitute only a general description of the content of the Lease with respect to matters set forth herein. Accordingly, third parties are advised that the provisions of the Lease itself shall be controlling with respect to all matters set forth herein. In the event of any discrepancy between the provisions of the Lease and this Memorandum, the provisions of the Lease shall take precedence and prevail over the provisions of this Memorandum.

(f) Termination of Lease. All rights of Tenant shall terminate upon the expiration or earlier termination of the Lease, which may be evidenced by a written notice of such expiration or termination recorded or filed by Lessor among the appropriate land records of the County in which the Premises is located.

(The remainder of this page intentionally left blank)

**STATE OF TENNESSEE  
COUNTY OF SHELBY**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2009 by \_\_\_\_\_, of Withers Collection, INC. a Tennessee limited liability company as \_\_\_\_\_. She/He is personally known to me or has produced identification.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Notary Public

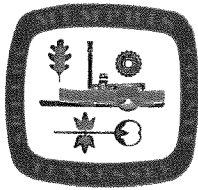
\_\_\_\_\_  
Commission #

My Commission Expires:

\_\_\_\_\_

Seal

# EXHIBIT B



## Memphis City Council Summary Sheet

**1. Description of the Item (Resolution, Ordinance, etc.)**

This is a resolution to transfer and appropriate \$500,000.00 to begin work on the renovation of the Historic Melrose High School. (District 4 and Super District 8)

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

This request is initiated Public Works.

by

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

N/A

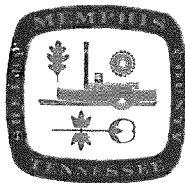
**4. State whether this requires a new contract, or amends an existing contract, if applicable.**

This project requires a new contract currently being negotiated.

**5. State whether this requires an expenditure of funds/requires a budget amendment.**

This resolution requires an expenditure of funds and budget amendment.

6. MWBE Goals? N/A



***A resolution to transfer \$500,000 from Old Melrose Site Rehab PW04117 to the Historic Melrose Rehab CD01102 and appropriate funds.***

**WHEREAS**, the Memphis City Council did, as part of the FY 2018 CIP Budget, approve an allocation of \$500,000 for Old Melrose Site Rehab, project number PW04117, to fund the rehabilitation of the Old Melrose High School site, located at 843 Dallas Street, which would improve the safety and well-being of the Orange Mound community; and

**WHEREAS**, the Division of Housing and Community Development (“HCD”) has been working with the Orange Mound community and neighborhood stakeholders for about four years to create a new vision for the Old Melrose site; and

**WHEREAS**, the proposed renovation plan, developed in cooperation with Memphis Public Libraries, will preserve the historic nature of the building, create a branch library and an African-American genealogy center on the first floor, and create a warm, lit shell condition on the upper two floors for possible future redevelopment; and

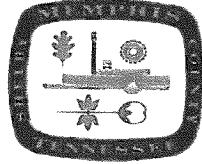
**WHEREAS**, the Accelerate Memphis program includes \$10,000,000 for the Historic Melrose Rehab, project number CD01102, which funds should be available sometime during the FY 2022 budget year; and

**WHEREAS**, HCD wishes to begin work immediately on the proposed renovation plan and utilize existing funds for life-safety analyses of the building, including testing for mold and asbestos and examining the integrity of the roof structure and need for seismic upgrades, as well as to begin architectural and engineering design; and

**WHEREAS**, it is necessary to transfer \$500,000 from Old Melrose Site Rehab, project number PW04117, to the Historic Melrose Rehab, project number CD01102, for the purposes stated above;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Memphis that the Fiscal Year 2021 Capital Improvement Budget be and is hereby amended by transferring the amount of Five Hundred Thousand Dollars (\$500,000) of Capital Improvement fund allocations from the Old Melrose Site Rehab, project number PW04117, to the Historic Melrose Rehab, project number CD01102, and furthermore by appropriating said funds, for the purpose of building inspections and beginning design for the Historic Melrose High School site as follows:

|  |                         |
|--|-------------------------|
| <b><u>Historic Melrose Rehab – CD01102</u></b> |                         |
| Architecture & Engineering                     | <u>\$500,000</u>        |
| <b>TOTAL</b>                                   | <b><u>\$500,000</u></b> |



## Memphis City Council Summary Sheet

**1. Description of the Item (Resolution, Ordinance, etc.)**

This is a Resolution requesting the approval for the sale of a City owned parcel located at 29 E. Mallory Avenue in Memphis, Shelby County, Tennessee and further described as Parcel ID # 05077 00004

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

General Services

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

This is not a change to an existing ordinance or resolution.

**4. State whether this will impact specific council districts or super districts.**

Council District 6 and Super district 8

**5. State whether this requires a new contract, or amends an existing contract, if applicable.**

This item does not require a new contract or amend an existing contract.

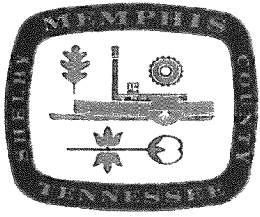
**6. State whether this requires an expenditure of funds/requires a budget amendment**

This does not require expenditure of funds nor a budget amendment.

**7. If applicable, please list the MWBE goal and any additional information needed**

N/A





**A Resolution approving the sale of 29 E. Mallory Avenue- Parcel ID #050077  
00004 Memphis, Tennessee 38109**

**Whereas** the City of Memphis owns a surplus parcel located at 29 E. Mallory Avenue and is further identified by Shelby County Tax Assessor as Parcel 050077 00004 containing 0.172ac, more or less;

**Whereas** the sale of the City owned parcel will increase the General Fund, generate tax revenue, and eliminate blight and maintenance cost for the City of Memphis;

**Whereas** Otis Burnette, on behalf of the Fifty Four Foundation, an adjacent property owner, submitted an offer of Five Hundred Dollars (\$500.00) for the Parcel along with a Fifty Dollars (\$50.00) Earnest Money deposit to the City of Memphis Real Estate Center; and

**Whereas** it is deemed to be in the best interest of the Citizens of the City of Memphis and County of Shelby that this request be considered subject to terms and conditions set forth in the Offer to Purchase and in City Ordinance 2-16-1(E).

**Now, therefore be it resolved** by the Council of the City of Memphis that the offer made by Otis Burnette on behalf of the Fifty Four Foundation on the above described property is hereby accepted subject to the City Ordinance 2-16-1(E) which states in part, "The city real estate manager shall be authorized to convey property to a selected adjacent property owner, without necessity of competitive bidding, for approval by the city council with one reading under the following circumstance: The selected adjacent property owner is willing and capable of paying the value of the adjacent property to be acquired based on valuation determined by the city real estate department."

**Be it further resolved**, that subject to the Ordinance, the City of Memphis Real Estate Department shall prepare and arrange for the execution of the quit claim deed, and any other documents incidental to the completion of the transfer, and the Mayor of the City of Memphis is hereby authorized to execute said deeds or any other documents necessary to complete the sale and conveyance.

Summary Notes for 29 E Mallory Ave

Notes for the sale of 29 E Mallory Ave

1 surplus parcel being sold at 29 E Mallory Ave Parcel ID: 050077 00004

Purchaser: Otis Burnette on behalf of the Fifty Four Foundation. The Fifty Four Foundation is a fund-raising entity for the Moolah Shrine Temple #54, the adjacent property owner at 15 East Mallory. The Fifty Four Foundation intends to purchase the parcel and remove the blighted structure in order to expand and improve its nearby campus and provide further services to the Mallory Heights community.

Property was acquired by the City of Memphis in Tax Sale 1503 TX-2017.

Council District 6/ Edmund Ford, Sr.

Super Council District 8/ J.B Smiley

An analysis of comparable sales was performed to arrive at a sales price of \$500, price reflected to account for the demolition of the derelict structure.

Parcel being sold:

| Parcel ID #  | Sales Price |  |
|--------------|-------------|--|
| 050077 00004 | \$500.00    |  |

The total sale price for 29 E Mallory Avenue is \$500.00.

The purchaser has deposited the earnest money of \$50.00 (10% of the Sales Price)

Requesting Council to approve the sale.

City Council Resolution



Shekandra Y. Ford  
Shelby County Register of Deeds

CITY OF MEMPHIS

Owner: CITY OF MEMPHIS  
Parcel Address: 29 E MALLORY AVE  
Parcel ID: 050977 00004  
2021 Appraisal: \$15,700  
Tax District: MEMPHIS  
Year Built: 1923  
Lot Number: 6  
Subdivision: NEW SOUTH MEMPHIS BLK 5  
Flat BK & PG: UNKNOWN  
Dimensions: 50 X 150  
Total Acres: 0.172  
Owner Address: 125 N MAIN ST  
MEMPHIS TN  
38103 2026

Map prepared on 1/8/2021

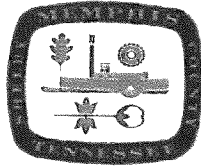




Sheldra Y. Ford  
Shelby County Register of Deeds

Owner: CITY OF MEMPHIS  
Parcel Address: 29 E MALLORY AVE  
Parcel ID: 050077 00004  
2021 Appraisal: \$15,700  
Tax District: MEMPHIS  
Year Built: 1923  
Lot Number: 6  
Subdivision: NEW SOUTH MEMPHIS BLK 5  
  
Plat BK & PG: UNKNOWN  
Dimensions: 50 X 150  
Total Acres: 0.172  
Owner Address: 125 N MAIN ST  
MEMPHIS TN  
38103 2026





## Memphis City Council Summary Sheet

**1. Description of the Item (Resolution, Ordinance, etc.)**

A Resolution approving the sale of a city owned property known as 0 E. Railroad Avenue Memphis, TN 38104, Parcel ID # 030026 00016.

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

General Services

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

N/A

**4. State whether this will impact specific council districts or super districts.**

*Super*  
District 5 / District 9

**5. State whether this requires a new contract, or amends an existing contract, if applicable.**

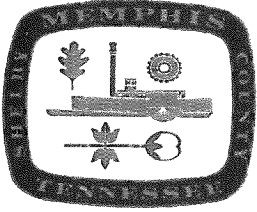
N/A

**6. State whether this requires an expenditure of funds/requires a budget amendment**

N/A

**7. If applicable, please list the MWBE goal and any additional information needed**

N/A



**A Resolution approving the sale of a city owned property known as 0 E. Railroad Avenue Memphis, TN 38104, Parcel ID# 030026 00016**

**WHEREAS**, the City of Memphis owns the property known as 0 E. Railroad Avenue, Memphis, TN 38104 ("The Property") and is further identified by Shelby County Tax Assessor as Parcel # 030026 00016 containing 0.226 acres, more or less;

**WHEREAS**, the sale of the subject Parcel will increase the General Fund, generate tax revenue and eliminate blight and maintenance cost for the City of Memphis;

**WHEREAS**, Jake R. & Jeanine H. Muhundro, submitted an offer of Two Thousand One Hundred Sixty Three Dollars (\$2,163.00) and submitted an earnest money deposit of ten percent equaling \$216.30; and

**WHEREAS**, <sup>it is</sup> ~~is it~~ deemed to be in the best interest of the citizens of the City of Memphis and County of Shelby that said sale be accepted subject to City Ordinance 5637, Amendment to Section 2-291(A) of the City's Code of Ordinance.

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Memphis that the offer made by Jake R. & Jeanine H. Muhundro, on the above described parcel is hereby accepted subject to the City Ordinance 5637, Amendment to Chapter 2, Article V, Division 2, Section 1, Section 2-291(A)1 which states in part, "properties receiving an initial bid offer of twenty thousand dollars (\$20,000) or less shall be submitted for approval to the City Council for the first reading, which is final."

**BE IT FURTHER RESOLVED**, that subject to the Ordinance, the City of Memphis Real Estate Department shall prepare and arrange for the execution of the quit claim deed, and any other documents incidental to the completion of the transfer, and the Mayor of the City of Memphis is hereby authorized to execute said deeds or any other documents necessary to complete the sale and conveyance.

City Council Resolution

Shelandra Y. Ford  
Shelby County Register of Deeds

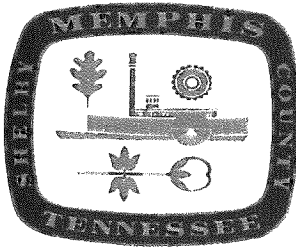
Search **Details** Layers

**Property Details**

|                   |   |
|-------------------|---|
| Owner Name:       | CITY OF MEMPHIS                           |
| Property Address: | D E RAILROAD                              |
| Parcel ID:        | 030026 00016                              |
| Appraisal:        | \$35,500                                  |
| Tax District:     | MEMPHIS                                   |
| Tax Map:          | 138K                                      |
| Year Built:       |   |
| Lot Number:       | 05  |
| Subdivision:      | HIGBEE HIGHLANDS                          |
| Plat Book & Page: | 185/200                                   |
| Dimensions:       | 76 X 130                                  |
| Total Acres:      | 0.225                                     |
| Owner Address:    | GENERAL DELIVERY<br>MEMPHIS TN 38101 9999 |
| Class:            | EXEMPT                                    |
| Use:              | - VACANT LAND                             |
| Longitude:        | -89.99457617                              |
| Latitude:         | 35.12545755                               |

[Assessment Info](#)  
[Municipal Tax Info](#)  
[County Tax Info](#)  
[Google View](#)  
[Search Map](#) [Recent](#) [Favorite](#) [History](#)





Memphis City Council Summary Sheet: A Resolution transferring \$70,000 from CIP Project #GS19104, FY19 Major Mod (Carpentry), earmarked for the Lichterman Green House to Parks and Neighborhoods CIP Project #PK21103.

## Memphis City Council Summary Sheet

**1. Description of the Item (Resolution, Ordinance, etc.)**

A Resolution transferring \$70,000 from CIP Project #GS19104, FY19 Major Mod (Carpentry), earmarked for the Lichterman Green House to Parks and Neighborhoods CIP Project #PK21103.

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

General Services

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

Does not change an existing ordinance or resolution

**4. State whether this requires a new contract, or amends an existing contract, if applicable.**

Requires new contracts

**5. State whether this requires an expenditure of funds/requires a budget amendment.**

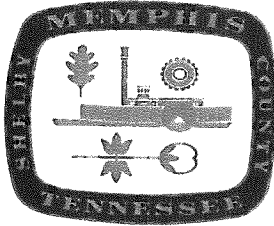
Budget amendment is needed to transfer allocations and appropriations.

6. Council District 2, Super District 9

7. MWBE Goals? N/A



City Council Resolution – Transferring \$70,000 of General Services CIP funds  
#GS19104 to Parks and Neighborhoods #PK21103



A Resolution transferring \$70,000 from CIP Project #GS19104, FY19 Major Mod (Carpentry), earmarked for the Lichterman Green House to Parks and Neighborhoods CIP Project #PK21103.

**WHEREAS**, the Council of the City of Memphis included CIP Project #GS19104, FY19 Major Mod (Carpentry), as part of the FY 2019 Capital Improvement Program budget; and

**WHEREAS**, CIP Project #GS19104, FY19 Major Mod (Carpentry) included funding earmarked for the Lichterman Green House construction; and

**WHEREAS**, all bids, for the construction of the Green House, came in over the earmarked \$70,000 of General Services CIP Project #GS19104 – FY19 Major Mod (Carpentry); and

**WHEREAS**, Parks & Neighborhoods will complete the project; and

**WHEREAS**, General Services has agreed to transfer the allocations and appropriations totaling \$70,000 from CIP Project #GS19104, FY19 Major Mod (Carpentry), to PK21103, Parks & Neighborhoods to assist in the construction of the Lichterman Green House.

**NOW, THEREFORE, BE IT RESOLVED** that there be and is hereby transferred allocations and appropriations totaling \$70,000 from CIP Project #GS19104, FY19 Major Mod (Carpentry), to CIP Project number PK21103 and credited as follows:

|                        |                              |
|------------------------|------------------------------|
| <b>Project Title:</b>  | <b>Contract Construction</b> |
| <b>Project Number:</b> | <b>PK21103</b>               |
| <b>Amount:</b>         | <b>\$70,000</b>              |

**ORDINANCE NO. \_\_\_\_\_**  
**ORDINANCE TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT,  
PRESERVE THE MEMPHIS SAND AQUIFER, AND PROMOTE  
ENVIRONMENTAL JUSTICE**

WHEREAS, the City of Memphis relies on the groundwater of the Memphis Sand Aquifer for its drinking water supply. However, despite the importance of ensuring that Memphis' drinking water resources remain plentiful and uncontaminated, the existing system of federal, state, and local review for many development projects does not adequately consider risks to groundwater in many situations.

WHEREAS, the potential risks to groundwater resulting from improper siting and routing of underground toxic and hazardous materials infrastructure do not receive sufficient scrutiny at any level of government in Tennessee.

WHEREAS, recognizing the important and traditional role of city government in protecting the drinking water of its citizens, the Memphis City Council has determined a need to ensure increased oversight of structures that may impact the Memphis Sand Aquifer or Wellhead Protection Areas.

WHEREAS, acknowledging that patterns of racial, ethnic, and economic inequality in the United States have resulted in the inequitable geographic concentration of potential environmental hazards, the Memphis City Council has determined that this increased level of oversight must also ensure that new development in the City does not cause adverse impacts on the minority populations, low-income populations, and neighborhoods historically burdened by environmental pollution.

WHEREAS, the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*, requires states to protect public water supplies, and pursuant to the Act the United States Environmental Protection Agency has authorized the Tennessee Department of Environment and Conservation to enforce the Act.

WHEREAS, the Tennessee Department of Environment and Conservation, pursuant to the Tennessee Safe Drinking Water Act of 1983, T.C.A. §§ 68-221-701 *et seq.*, promulgated regulations, including Tenn. Comp. R. & Regs. 0400-45-01-.34, and those state regulations identify the important role of local governments in protecting public drinking water, including through the enactment of ordinances to implement or support the wellhead protection plans developed by public water system operators.

WHEREAS, Memphis City Charter, Section 409, grants the City power to pass all laws to preserve the health of the City.

WHEREAS, Memphis City Charter, Section 405, grants the City power to regulate the keeping and storage of combustible articles.

WHEREAS, Memphis City Charter, Section 369, grants the City power over all affairs in the City in which the peace, safety, or general welfare of the inhabitants is interested.

WHEREAS, Memphis City Charter, Section 834, grants the City power to provide rules and regulations for the use, handling, storage and sale of inflammable liquids and the products thereof.

NOW THEREFORE, the Memphis City Council hereby adopts the following requirements designed to protect the Memphis Sand Aquifer, Wellhead Protection Areas, and the health and well-being of the people of Memphis.

## **I. Definitions**

For the purposes of this section:

1. **Committee:** Unless otherwise specified, the Memphis City Council Public Works Committee.
2. **Development:** Any man-made change defined as the construction of buildings or other structures, mining, dredging, paving, filling, grading or site clearing, and grubbing in amounts greater than ten cubic yards on any lot or excavation.
3. **Division:** Unless otherwise specified, the Division of Engineering of the City of Memphis.
4. **Groundwater:** Any waters of the State as defined in T.C.A. § 69-3-103 (Tennessee Water Quality Control Act), occurring below the surface of the ground not contained by artificial barriers.
5. **Toxic or hazardous materials or wastes:** Any substance which poses an actual or potential hazard to water supplies or human health if such a substance were discharged to land or waters of Memphis. Such materials include nuclear or radioactive materials or wastes, crude oil and petroleum products, and any hazardous substance or hazardous waste as listed within:
  - a. Superfund Amendments and Reauthorization Act (SARA) of 1986, Section 302, Extremely Hazardous Substances List (40 CFR 300, App. A and B);
  - b. Comprehensive Environmental Response Compensation and Liability Act Superfund (CERCLA) of 1980, Hazardous Substances List (40 CFR 302, Table 302.4);
  - c. SARA of 1986, Section 313, Toxic Chemicals List (40 CFR 372.45); and

- d. Resource Conservation and Recovery Act (RCRA) of 1976 and 1984 Amendments, Hazardous Wastes List (P and U Categories) (40 CFR 261.33 (e) and (f)).
6. **Wellhead Protection Area:** The surface and subsurface area surrounding a water well, well field or spring supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well, wellfield or spring. The Wellhead Protection Area contains both the Wellhead Protection Zone (Zone 1) and the Wellhead Management Zone (Zone 2), as described in Tenn. Comp. R. & Regs. 0400-45-01-.34.

## **II. Prohibited Development**

1. Absent express approval by the Committee, new developments with the following uses are prohibited throughout the City of Memphis:
  - a. underground hazardous or toxic materials storage tanks, unless contained within basements; and
  - b. underground hazardous liquid transportation or transmission infrastructure, such as pipelines for petroleum products and crude oil.
2. This prohibition will not apply to private or public wastewater, septage, or sewerage tanks or infrastructure.

## **III. Consideration of Exemptions to Prohibited Uses**

1. Any person seeking Committee approval to develop for a prohibited use within the City of Memphis, shall first submit to the Division an application for approval with a Groundwater Impact Statement. The Groundwater Impact Statement shall include:
  - a. a description of the planned development, including a description of the type and volume of toxic or hazardous material to be stored or transported;
  - b. documentation of all other required local, state, and federal permits necessary for the development;
  - c. a site plan that shows:
    - i. the area of the development that is in the City of Memphis;
    - ii. the location of the boundaries of the Wellhead Protection Area and all existing public water supply wells in relation to the project, within 1,000 feet of the project boundary; and
    - iii. the location of all known existing private water supply wells within 1,000 feet of the project boundary;
  - d. an analysis of the potential for the development to cause disproportionate adverse impacts on minority populations, low-income

- populations, and neighborhoods historically burdened by environmental pollution;
- e. an analysis of any potential adverse environmental or groundwater impacts resulting from the development; and
  - f. any other additional information as may be requested by the Division regarding the proposed development, its potential impacts on groundwater or the public interest, hydrogeologic information, monitoring and mitigation measures.
2. After receiving any such application, the Division shall ensure that the application is complete, and request further information from the applicant is required. The Division shall also seek comments on the application and Groundwater Impact Statement from the following:
    - a. Memphis Light, Gas & Water;
    - b. Memphis and Shelby County Land Use and Development Services; and
    - c. The Shelby County Groundwater Quality Control Board.
  3. The Division shall solicit and collect public comments regarding the application. The Division shall:
    - a. give public notice of the application, which must include access to the applicant's Groundwater Impact Statement and a means for the public to submit comments to the Division; and
    - b. accept public comments for at least 30 days from the public notice of the application.
  4. The Division shall then submit the application, Groundwater Impact Statement, comments from local agencies, and public comments to the Committee for review.
  5. The Committee shall hold a public hearing on the application, allowing a presentation by the applicant and comments from members of the public. At least 30 days prior to holding the public hearing, the Committee must give notice to the applicant and members of the public regarding the time and date of the hearing, as well as providing access to the application and Groundwater Impact Statement.
  6. Within 45 days of conducting the public hearing, the Committee shall decide whether or not to approve the application. The Committee shall only approve the application if it determines, after full consideration of the Groundwater Impact Statement all comments received, and any additional information that the Committee may, in its discretion, request from the applicant, that approving the application would be in the public interest, which shall include a determination that:

- a. the development will not go through any Wellhead Protection Area, as delineated in the most recent Wellhead Protection Plan finalized by Memphis Light, Gas & Water;
  - b. Memphis Light, Gas & Water has no objections to the development;
  - c. there will be no potential adverse environmental or groundwater impacts resulting from the proposed development, or any future land uses associated with the development; and
  - d. there will be no disproportionate impacts on minority populations, low-income populations, or neighborhoods historically burdened by environmental pollution.
7. Within 14 days of approving or rejecting the application, the Committee shall send notice of the decision to the applicant, and provide notice of the decision to the public.
  8. The applicant, or any person who submitted comments to the Division or attended the public hearing, may petition the Memphis City Council for review of the Committee's decision within 30 days of the Committee providing public notice of the decision. The Council shall review the application to determine whether the project is in the public interest, according to the criteria described in this section.

#### **IV. Existing Development**

1. Development that would be prohibited without a special exemption, which has completed construction and is in operation at the time this ordinance is adopted, may continue operation without applying for an exemption.
2. The owner or operator of the development must apply for an exemption under the provisions of this ordinance prior to initiating any addition, expansion, or construction activities, and before any significant change in operations.

#### **V. Compliance with Other Authority**

All activities and development being considered by the Committee under this ordinance shall comply with these and all other relevant local ordinances and regulations, as well as all relevant state and federal laws and regulations. Any approval of an application for exemption by the Committee shall not be taken as a finding of public purpose or use in the context of any eminent domain proceedings, and conveys no additional rights or privileges to applicant. To the extent that this ordinance explicitly conflicts with any other local, state, or federal regulation, the more restrictive will apply.

**VI. Savings Clause**

Should any section or provision of this ordinance be declared invalid, such decision shall not affect the validity of the ordinance as a whole or any other part thereof.

Ordinance No. \_\_\_\_\_

**AN ORDINANCE TO AMEND THE CITY OF MEMPHIS CODE OF ORDINANCES CHAPTER 9 "HEALTH AND SAFETY" SECTION 56 "GARBAGE COLLECTION AND DISPOSAL" REGARDING LANDLORDS OR PROPERTY OWNERS**

WHEREAS, it is the desire of the Memphis City Council to take action to reduce the amount of illegal dumping in the City of Memphis in order to help improve blight that is present in city neighborhoods on public property, sidewalks, vacant lots, and abandoned properties.

WHEREAS, the placement of personal property outside of a residence following an eviction, also known as an eviction set-out, not only causes evicted residents mental anguish and hardship, it also contributes to blight and the propagation of illegal dumping.

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, TENNESSEE that Chapter 9 "Health and Safety" also referenced as Sec 9-56 titled "Garbage Collection and Disposal" is hereby amended as follows:

**DIVISION 4 DISPOSAL AND REMOVAL OF PERSONAL PROPERTY**

*Remove Sections 9-56-30 and 9-56-31*

**SUBSTITUTE/ADD Section 9-56-30 Disposition of abandoned property following an eviction.**

Any landlord or property owner is prohibited from leaving an evicted resident's property outside of the residence from which the tenant has been evicted. The landlord or property owner must allow the resident to gather and arrange for transport of their personal belongings and dispose of any abandoned property in one of the following methods immediately following an eviction.

*Required methods.*

- (a) The landlord shall dispose of abandoned eviction belongings by:
  - (1) transporting them to a licensed landfill or solid waste facility;
  - (2) donating them to charity; or
  - (3) some other legal means.

**SUBSTITUTE/ADD Section 9-56-31 Prohibited placement in public way.**

Under no circumstances may eviction belongings, abandoned or otherwise, be placed in a public right-of-way or on any public property.



**Sec. 9-56-32. - Violations for failure to provide notice to city and to remove and dispose of personal property discarded onto city right-of-way.**

A. *First offense violations.* Any landlord, property owner, or person who violates this ordinance, where applicable, that commits a first offense violation of sections [9-56-30](#) or [9-56-31](#) shall be issued a courtesy citation and assessed the actual costs incurred by the city for the removal and disposal of such property.

B. *Second and subsequent violations.* Any landlord or property owner that commits a second or subsequent violation of sections [9-56-30](#) or [9-56-31](#) shall be issued a misdemeanor citation in accordance with article 2 of this chapter and assessed the actual costs incurred by the city for the removal and disposal of such property. Each day that the discarded property remains in a city right-of-way, easement, or on property owned or maintained by the city in violation of this section shall constitute a separate offense punishable up to \$50.00, plus costs, per offense.

C. *Disposal and removal costs.* The actual costs of disposal and removal assessed by the city shall not be less than \$50.00 and shall not exceed \$1,000.00.

D. *Offense of criminal littering.* Criminal littering is littering in an amount more than five pounds (5 lbs.) in weight or seven and one half (7.5) cubic feet in volume and less than or equal to ten pounds (10 lbs.) in weight or fifteen (15) cubic feet in volume.

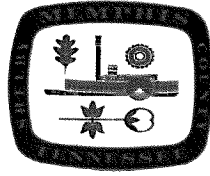
E. Criminal littering is a Class B misdemeanor.

*(The authorized term of imprisonment and fine for a Class B misdemeanor is not greater than six (6) months or a fine not to exceed five hundred dollars (\$500), or both, unless otherwise provided by statute, per TCA § 40-35-111)*

F. In addition to the penalties established in this section, the court shall require a person convicted under this section to remove litter from the state or local highway system, public playgrounds, public parks or other appropriate public locations for not more than eighty (80) hours. The court, in its discretion, may also require a person convicted under this section to work in a recycling center or other appropriate location for any stated period of time not to exceed eight (8) hours.

Sponsor  
JB Smiley, Jr.

Chairman  
Frank Colvett, Jr.



## Memphis City Council Summary Sheet

**1. Description of the Item (Resolution, Ordinance, etc.)**

Resolution to accept, allocate and appropriate \$15,000,000 in federal grant funds from the State of TN, TN Dept. of Health.

**2. Initiating Party (e.g. Public Works, at request of City Council, etc.)**

Executive

**3. State whether this is a change to an existing ordinance or resolution, if applicable.**

N/A

**4. State whether this will impact specific council districts or super districts.**

This impacts all council districts.

**5. State whether this requires a new contract, or amends an existing contract, if applicable.**

New funding agreements will be required.

**6. State whether this requires an expenditure of funds/requires a budget amendment**

Yes, this resolution will require the funding budget to increase by the amount of the grant funds to be received.

**7. If applicable, please list the MWBE goal and any additional information needed**

N/A

**A Resolution to accept, allocate, and appropriate \$15,000,000 in federal grant funds from the State of Tennessee, Tennessee Department of Health**

**WHEREAS**, in order to provide continuing critical support to jurisdictions as they continue to address COVID-19 within their communities, the federal government has agreed to provide \$19.11 billion from the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 to Epidemiology and Laboratory Capacity for Prevention and Control of Emerging Infectious Diseases (“ELC”) grant recipients, to be used for coronavirus testing, case investigation, contact tracing, surveillance, containment, and mitigation; and

**WHEREAS**, the State of Tennessee has been selected to receive a federal ELC grant, in the form of ELC Enhancing Detection Expansion funds; and

**WHEREAS**, the State of Tennessee, by and through the Tennessee Department of Health, has selected the City of Memphis to be a subrecipient of a portion of the State’s ELC Enhancing Detection Expansion grant funds (the “Grant Funds”) in the amount of \$7,500,000 for fiscal year 2021 and \$7,500,000 for fiscal year 2022 for a total Grant Fund amount of \$15,000,000; and

**WHEREAS**, the Grant Funds must be used to cover expenses that:

1. incurred during the period that began July 1, 2020 (Effective Date), and ends twenty-four (24) months after the Effective Date;
2. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); and
3. are activities that address prevention and response to COVID-19; and

**WHEREAS**, as part of its plan for use of the Grant Funds it receives from the State of Tennessee, the City of Memphis intends to allocate a portion of the Grant Funds to the Tennessee municipalities of Germantown, Collierville, Bartlett, Lakeland, Millington and Arlington for those municipalities to utilize in their efforts to combat the coronavirus consistent with federal and state requirements;

**NOW, THEREFORE, BE IT RESOLVED**, by the Memphis City Council that the \$15,000,000 of the recently awarded federal ELC-Enhancing Detection Expansion fund be allocated and appropriated in accordance with the federal guidance for expenditures that are reasonably necessary for its intended use in the reasonable judgement of the government officials responsible for spending said fund payments; and such funding distribution is as follows:

**Source of Funds**

ELA Grant \$ 15,000,000

**Use of Funds**

Service Center 100901

Misc. Prof Services \$ 15,000,000

**THEREFORE, BE IT FURTHER RESOLVED**, that the Memphis City Council does hereby accept the Grant Funds in the amount of \$15,000,000 from the State of Tennessee Department of Health, through the federal ELC-Enhancing Detection Expansion Fund.



JIM STRICKLAND  
MAYOR

May 4, 2021

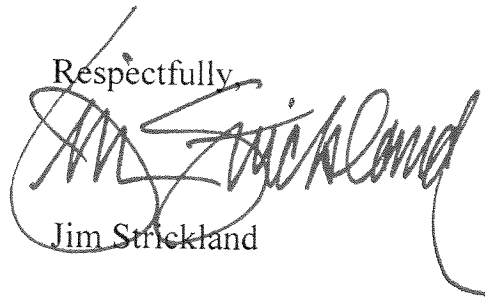
Councilman Chase Carlisle  
Chairman, Personnel and Gov Affairs Committee  
125 N. Main Street, 5<sup>th</sup> Floor  
Memphis TN 38103

Dear Councilman Carlisle:

Subject to Council approval, it is my recommendation that:

**Cerelyn Davis**

be appointed as Chief of Memphis Division of Police Services with a salary of \$230,037.60.

Respectfully  
  
Jim Strickland

cc: Memphis City Council