

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CHICKASAW INKANA FOUNDATION
AND
THE CITY OF TUPELO

THIS MEMORANDUM OF UNDERSTANDING is made on the [DAY] of [MONTH], 2021 (hereinafter, "Memorandum"), between the Chickasaw Inkana Foundation (hereinafter, "CIF"), a Mississippi nonprofit corporation with an address of P.O. Box 1307, Tupelo, MS 38802, and the City of Tupelo (hereinafter, "Tupelo"), a municipal corporation of the State of Mississippi with an address of 71 East Troy Street, Tupelo, MS 38804, (CIF and Tupelo collectively referred to hereinafter as "Parties").

WHEREAS, CIF is the owner of the lands further described on Exhibit A, attached hereto and incorporated by reference herein (hereinafter, "Land");

WHEREAS, CIF desires to develop the Chickasaw Heritage Center (hereinafter, "Center") in Tupelo; and,

WHEREAS, Tupelo desires to develop infrastructure surrounding the Center in order to aid construction and patronage of the Center, create employment opportunities and promote long range economic development of Tupelo;

NOW THEREFORE, the Parties hereto have reached the understanding as follows:

Section 1 Purpose

The purpose of this Memorandum is to memorialize the understanding between Tupelo and CIF concerning the construction of the Center and road construction associated therewith. The intent of the Memorandum is to facilitate construction of the Center by meeting the infrastructure needs of the construction and to avoid premature infrastructure improvements that may be unneeded at the time the improvement is made. The parties shall cooperate to accomplish the purpose and intent of this Memorandum.

Section 2 Assurance of Tupelo

- A. Tupelo intends to construct, reconstruct and improve Gun Club Road in three phases to assist access to the Center:
 - 1. Phase 1 consists of extending Gun Club Road to the West so that Gun Club Road intersects with West Jackson Street.
 - 2. Phase 2 consists of improving Gun Club Road between the Phase 1 extension and the intersection with Remington Drive and Gun Club Road North. The Intersection of Gun Club Road, Remington Drive and Gun Club Road North shall be redesigned.
 - 3. Phase 3 consists of constructing a suitable road of a minimum road base suitable for construction vehicles by extending Gun Club Road along Tupelo's existing right-of-way between Gun Club Road North and the access point for the Center. Upon reasonable completion of the construction of the Center, Tupelo shall make necessary improvements to Gun Club Road east of Remington Drive suitable for daily access to the Land.
- B. Tupelo shall cooperate with CIF to protect any culturally significant sites. Tupelo shall require any contractors employed by Tupelo for road construction to protect any culturally significant sites.
- C. Tupelo shall respond in a reasonable time to reasonable inquiries from CIF regarding the status of road construction, the availability of funding for road construction and speculative dates for additional road construction.

Section 3 Assurance of CIF

- A. CIF intends to design, construct and operate the Center on the property described in Exhibit A and illustrated in Exhibit B. Construction is anticipated to begin in the fall of 2022 and will take approximately two years. The Center is expected to open in 2025. All anticipated dates are contingent upon public funding, private contributions, and Tupelo's completion of road construction.
- B. CIF shall respond in a reasonable time to reasonable inquiries from Tupelo regarding the status of construction and speculative completion of milestones for the Center.

- C. CIF may grant Tupelo any reasonable easements or rights-of-way on land necessary and proper for Tupelo to complete its intentions hereunder.
- D. Upon Tupelo giving notice to CIF that it is ready to proceed and award a construction contract to meet its assurances in Section 2 A., CIF will post security in the form of an irrevocable letter of credit in favor of Tupelo for CIF's completion of its assurances in Section 3 A. The amount of the security will be up to \$1 million to be awarded by Tupelo to meet its Section 2 A. assurances. Upon ground breaking of the Center in CIF's Section 3 A. assurances, Tupelo will release CIF's security.

Section 4 Interests in Property

- A. Except as otherwise provided for herein, neither party shall be granted a mortgage, security interest, or otherwise have an interest in and to the real property, fixtures, personal property, or intangible property of the other party.
- B. Except as otherwise provided for herein, neither party shall be granted a license, ownership interest, security interest, or derivative rights in and to any trademark, copyright, patent or other intellectual property of the other party.

Section 5 Notices

- A. All notices under this Memorandum shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by overnight courier that guarantees next day delivery and provides a receipt. Any notice shall be effective upon delivery.
- B. All notices required hereunder shall be sent to the following addresses:
 - 1. If to Tupelo: Office of the Mayor
 City Hall
 71 East Troy Street
 Tupelo, MS 38804
 - 2. If to CIF: Chickasaw Inkana Foundation
 P.O. Box 1307
 Tupelo, MS 38802
- C. Either party may from time to time specify in writing to the other party such other address as may be desired.

Section 6 Representations and Warranties

- A. The Parties have obtained any and all necessary authorizations and approvals necessary to the execution, deliver, and performance of this Memorandum.

- B. The execution and delivery of this Memorandum will not result in a breach of terms, conditions or provisions of, or constitute a default under, or result in any violation of conditions or provisions of, or constitute a default under, or result in any violation of, the corporate or municipal charter or bylaws of the Parties, or any agreement, contract, instrument, order, judgment, or decree to which the Parties are a party. The execution and delivery of this Memorandum will not result in violation of any provision of any applicable law, statute, rule, regulation, ordinance or any order, decree, writ or injunction of any court or governmental entity that materially affects the performance hereunder.

Section 7 Hold Harmless

Each Party shall hold the other harmless, as well its affiliates, officers, employees, representatives, and agents, from and against any and all liability, claims, suits, demands, losses, damages, costs, expenses or legal fees caused by, arising out of, or resulting from any negligent or willful acts or omissions of the other party, or its employees or agents, incurred in activities arising out of this Memorandum and to the extent proximately caused by the negligent or willful acts or omissions of the other Party, its employees or agents in the performance of such activities or the failure to perform the Memorandum.

Section 8 Non-Disparagement

Each Party may discuss non-confidential aspects of their experience with the other Party, however neither Party shall not make any disparaging remarks or otherwise communicate any disparaging information about the other Party or its employees, officers or agents in their professional capacities to any third party, including but not limited to statements on social media or any other media. Further, each Party agrees to take no action which is intended to harm, or would reasonably be expected to harm, the other Party or its reputation or lead to unfavorable publicity to the other Party. This Section shall survive the termination or expiration of this Memorandum.

Section 9 Confidentiality

In the course of performing services, the parties recognize that each Party may come in contact with or become familiar with information that the other Party may consider confidential. To the maximum extent allowed by the Mississippi Public Records Act and other applicable laws and ordinances, each Party agrees to keep all such information confidential and not to discuss or divulge it to anyone other than the appropriate personnel or their designees of the other Party. This Section shall survive the termination or expiration of this Memorandum.

Section 10 Status of the Chickasaw Nation

As the CIF maintains a close relationship with the Chickasaw Nation, a federally recognized and sovereign Indian tribe, the Parties agree that nothing in this Memorandum shall be construed or is intended to waive the sovereign rights and

immunities of the Chickasaw Nation, its officers, employees or agents. This Section shall survive the termination or expiration of this Memorandum.

Section 11 Dispute Resolution

Prior to initiating any action at law or in equity related to any dispute hereunder, the Parties will use their best efforts to amicably resolve any dispute.

Section 12 Other Provisions

- A. Assignment. This Memorandum shall not be assigned to any part hereto without the written consent of the other Party.
- B. Headings. The headings contained in this Memorandum are for reference only and will not affect in any way the meaning or interpretation of this Memorandum.
- C. Choice of Law. This Memorandum shall be governed, construed and interpreted in accordance with the laws of the State of Mississippi.

IN WITNESS WHEREOF, this Memorandum entered into this day first written above by and between the City of Tupelo and the Chickasaw Inkana Foundation, each acting through their designated and appropriate officials, is for the purpose of entering an agreement for provision of certain municipal services to the Land owned by the Chickasaw Inkana Foundation.

For the Chickasaw Inkana Foundation:

Jamie Joyner, Chairperson
Chickasaw Inkana Foundation

Date

For the City of Tupelo:

Jason L. Shelton, Mayor
City of Tupelo

Date

Exhibit A

Legal Description

Section 1 (Alston)

Commencing at a $\frac{3}{4}$ Pipe (found) with a Convergence Angle of) degrees 02 minutes 38.26 seconds and a Combined Scale Factor of 0.99995 and recognized as being the Northwest corner of the Northwest Quarter of Section 26, Township 9 South, Range 5 East, Lee County, Mississippi, Chickasaw Meridian and also being the POINT OF BEGINNING; thence run North 89 degrees 55 minutes 00 seconds East for a distance of 2,607.54 feet to a $\frac{1}{2}$ inch Capped Rebar (set); thence run South 31 degrees 46 minutes 07 seconds West for a distance of 787.49 feet to a National Park Service Disk 39 (found); thence run South 08 degrees 01 minutes 09 seconds East for a distance of 838.07 feet to a $\frac{1}{2}$ inch Capped Rebar (set); thence run South 83 degrees 10 minutes 18 seconds West for a distance of 2,324.78 feet to a $\frac{1}{2}$ inch Capped rebar (set); thence run North 00 degrees 03 minutes 00 seconds West for a distance of 247.73 feet to a $\frac{1}{2}$ inch Capped Rebar (set); thence run North 00 degrees 03 minutes 00 seconds West for a distance of 56 feet to a $\frac{1}{2}$ inch Rebar (found); thence run North 00 degrees 03 minutes 00 seconds West for a distance of 1,468.27 feet to a $\frac{3}{4}$ inch Pipe (found) and the POINT OF BEGINNING.

LESS AND EXCEPT AND SUBJECT TO, any and all City of Tupelo street right-of-ways

Lying and being in the Northwest Quarter of Section 26, Township 9 South, Range 5 East, Lee County, Mississippi, Chickasaw Meridian and Containing 86.97 acres, more or less.

Section 2 (Rouse)

Commencing at the $\frac{3}{4}$ " Pipe (found) within a Convergence Angle of 0 degrees 02 minutes 38.26 seconds and a combined Scale Factor of 0.99995 and recognized as being the Northwest corner of the Northwest Quarter of Section 26, Township 9 South, Range 5 East, Lee County, Mississippi, Chickasaw Meridian; thence run South 00 degrees 03 minutes 00 seconds East for a distance of 1,468.27 feet to a $\frac{1}{2}$ inch Rebar (found); thence run South 00 degree 03 minutes 00 seconds East for a distance of 56 feet to a $\frac{1}{2}$ inch Capped Rebar (set) and being the POINT OF BEGINNING; thence run South 00 degrees 03 minutes 00 seconds East for a distance of 247.73 feet to a $\frac{1}{2}$ inch Capped Rebar (set); thence run North 83 degrees 10 minutes 18 seconds East for a distance of 2,324.78 feet to a $\frac{1}{2}$ inch Capped Rebar (set) ; thence run South 08 degrees 01 minutes 09 seconds East for a distance of 19.30 feet to a National park Service Marker (found) ; thence run South 08 degrees 09 minutes 26 seconds East for a distance of 852.33 feet to a National park Service Disk (found) on the North Right-Of-

Way line of the Natchez Trace Parkway; thence along said Right-Of-Way line run South 43 degrees 24 minutes 39 seconds West for a distance of 196.04 feet to a Bolt in Concrete Monument (found); thence leaving said Right-of -Way line run north 89 degrees 25 minutes 55 seconds West for a distance of 2,991.26 feet to a ½ inch Capped Rebar (set) ; thence run North 00 degrees 00 minutes 16 seconds East for a distance of 1,268.07 feet to a Creosote Fence Corner (found); thence run South 77 degrees 35 minutes 21 seconds East for a distance of 684.99 feet to a ½ inch Rebar (Set) and the POINT OF BEGINNING.

LESS AND EXCEPT:

Any and All City of Tupelo Street Rights-Of-Way

Indexing Instructions: Lying and being partly in the South half of the Northwest Quarter of Section 26, Township 9 South, Range 5 East and the Southeast Quarter of the Northeast Quarter of Section 27, Township 9 South, Range 5 East, Lee County, Mississippi, Chickasaw Meridian and containing 74.95 acres.

Exhibit B

