

BOND PURCHASE AGREEMENT (PRIVATE PLACEMENT)

\$____,000

**CITY OF TUPELO, MISSISSIPPI
TAXABLE TAX INCREMENT LIMITED OBLIGATION BONDS, SERIES 2021
(FAIRPARK DISTRICT DEVELOPMENT PROJECT)**

Date: _____, 2021

Mayor and City Council
City of Tupelo, Mississippi

_____ with its principal offices located in _____, Mississippi (the “**Purchaser**”), offers to enter into this Bond Purchase Agreement (Private Placement) (this “**Agreement**”) with the City of Tupelo, Mississippi (the “**City**”) which, upon the City's acceptance, will be binding upon the City and the Purchaser. This offer is made subject to acceptance by the City at or prior to the end of the day Daylight Savings Time on the date hereof and, if not so accepted, will be subject to withdrawal by the Purchaser upon written notice delivered to the City by the Purchaser at any time prior to acceptance by the City.

1. **BACKGROUND**

(a) The City will issue and sell its \$____,000 principal amount of Taxable Tax Increment Limited Obligation Bonds, Series 2021 (Fairpark District Development Project) (the “**Bonds**”). The Bonds are being issued to provide funds for certain site and improvements relating to the Project (as defined in the City’s bond resolution, adopted on May 18, 2021 (the “**Bond Resolution**”), including, but not necessarily limited to, installing, constructing and/or reconstruction various infrastructure improvements of the Project, which may include, but are not necessarily limited to, the removal of existing structures, streets, utilities and other improvements upon such project areas, the installation, construction, rehabilitation and/or relocation of streets, utilities such as water, sanitary sewer, construction, renovation, or rehabilitation of drainage improvements, roadways, curbs and gutters, sidewalks, on-site parking, paving, site improvements and other related parking lot improvements, the relocation of electrical lines, lighting, signalization, landscaping of rights-of way, related architectural and engineering fees, attorney's fees, TIF plan preparation fees, municipal advisory and consultant fees, issuance costs, capitalized interest and other costs incidental to the construction by the Developer for the Project; TIF plan preparation fees and other incidental related costs; and related professional fees; (ii) partially funding the 2021 Bonds Reserve Fund (as defined in the Bond Resolution); and (iii) paying costs of issuance for the Bonds.

(b) The Bonds will be issued under the authority of the Constitution and statutes of the State of Mississippi, including Sections 21-45-1 *et seq.*, Mississippi Code of 1972, as amended (the “**Act**”), and by authority of proceedings duly had by the Mayor and City Council (the “**Governing Body**”) of the City, including the Bond Resolution. The Bonds are payable from the Tax Increment (as defined in the Bond Resolution). The Tax Increment has been pledged to pay

the principal of, premium, if any, and interest on the Bonds and to make the payments into the 2021 Bond Fund, the 2021 Bonds Reserve Fund, the Tax Increment Surplus Fund, all as provided for in the Bond Resolution (as such terms are defined in the Bond Resolution).

(c) The Bonds will contain the terms and provisions described in the Bond Resolution and will bear interest at the rates and mature on the dates all as more fully described in Paragraph 4(c) of this Agreement.

(d) No preliminary official statement, final official statement or other disclosure document will be distributed in connection with the sale and issuance of the Bonds.

2. REPRESENTATIONS OF THE CITY

The City makes the following representations, all of which will survive the purchase and offering of the Bonds:

(a) The City is a political subdivision of the State of Mississippi (the “**State**”), duly organized and existing under the laws of the State.

(b) The City is authorized by the provisions of the Act and the Bond Resolution to issue the Bonds secured as set forth in the Bond Resolution.

(c) The City has complied with all provisions of the Constitution and the laws of the State pertaining to the issuance and sale of the Bonds, including the Act, and has full power and authority to authorize and thereafter consummate all transactions contemplated by this Agreement and the Bonds.

(d) The City has duly adopted the necessary resolutions and has duly authorized the execution of this Agreement and the issuance and sale of the Bonds, and has taken all actions and obtained all approvals necessary and appropriate to carry out the same except as set forth in Paragraph 9 of this Agreement.

(e) The City has duly authorized all necessary actions to be taken by the City for (i) the issuance and sale of the Bonds upon the terms set forth herein and in the Bond Resolution, (ii) the execution, delivery, receipt and due performance of this Agreement and the Bonds, and any and all other agreements and documents as may be required to be executed, delivered and received by the City in order to consummate the transactions contemplated hereby, and (iii) the consummation of the transactions contemplated hereby.

(f) There is no action, suit, proceeding, inquiry, investigation at law or in equity or before or by any court, public board or body pending or, to the best of the City's knowledge, threatened against or affecting the City (or any basis therefor), wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or the validity of the Bonds, this Agreement or any agreement or instrument to which the City is or is expected to be a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

(g) The execution and delivery by the City of this Agreement, the Bonds, and other agreements contemplated hereby and compliance with the provisions thereof will not conflict with or constitute, on the part of the City, a breach of or a default under any existing law, court or administrative regulation, decree or order or any agreement, indenture, mortgage, lease or other instrument to which the City is subject or by which the City is or may be bound.

(h) Any certificate signed by any of the City's authorized officers and delivered to the Purchaser shall be deemed a representation and warranty by the City to the Purchaser as to the statements made therein.

(i) To the knowledge of the City, the City is not in default, and at no time has been in default, in the payment of principal of, premium, if any, interest on, or otherwise in default with respect to bonds, notes, or other obligations which it has issued, assumed or guaranteed.

3. COVENANTS OF THE CITY

The City agrees to the following covenants, all of which will survive the purchase and offering of the Bonds and any investigations made by or on behalf of the Purchaser:

(a) The City shall apply the proceeds of the Bonds in accordance with the Bond Resolution.

(b) The City shall not take or omit to take, as may be applicable, any action which would, in any way, cause the proceeds of the Bonds to be applied in a manner contrary to the requirements of the Bond Resolution.

(c) Whether or not the sale of the Bonds by the City to the Purchaser is consummated, the City agrees that the Purchaser shall have no obligation to pay any costs or expenses incident to the performance of the obligations of the City under this Agreement.

4. PURCHASE, SALE AND DELIVERY OF THE BONDS

(a) On the basis of the representations, warranties and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions herein set forth, on the Closing Date the Purchaser agrees to purchase from the City and the City agrees to sell to the Purchaser all, but not less than all, of the Bonds for a purchase price of not to exceed \$_____,000, representing the par amount thereof, all in accordance with this Agreement and the Purchaser's commitment letter attached hereto as **ATTACHMENT B**.

(b) The City will deliver the Bonds to or for the account of the Purchaser against payment of the purchase price therefor on or before _____, 2021 unless a later date is mutually agreed by the City and the Purchaser (the "**Closing Date**"). The Bonds may be in printed, engraved, typewritten or photocopied form, and each such form shall constitute "definitive form."

(c) The Bonds shall be payable directly to the Purchaser; shall be dated the date of delivery thereof; shall be payable, both as to principal and interest, in lawful money of the United

States of America at _____, Jackson, Mississippi, said bank to act as paying agent, registrar and transfer agent for said Bonds; shall bear interest from the date thereof at the rates provided for in **ATTACHMENT A**, payable annually on such dates in each year as are specified in **ATTACHMENT A**, commencing on a date to be specified in **ATTACHMENT A**; and shall mature, subject to prior redemption, if so provided in **ATTACHMENT A**, on the dates and in the years and principal amounts set out in the **ATTACHMENT A**.

(d) In connection with the purchase, sale and delivery of the Bonds, the Purchaser represents and warrants to the City the following:

(1) the Bonds will be sold and purchased as set forth in Paragraph 4(a) hereof through a private sale;

(2) the Purchaser is not purchasing for more than one (1) account, and is purchasing the Bonds for its own account for the purpose of investment and not with a view towards distribution or resale;

(3) the Purchaser has knowledge and experience in financial and business matters and is capable of evaluating the risks and merits of purchasing the Bonds;

(4) the Purchaser has read and understands the Bond Documents (hereinafter described);

(5) the Purchaser has had an opportunity to obtain and has obtained from the City all of the information, documents and materials it regards as necessary to evaluate the merits and risks of its purchase of the Bonds;

(6) the Purchaser recognizes that Bond Counsel and counsel for the City are not responsible for any information contained in or omitted from materials regarding the City and that it does not look to Bond Counsel or counsel for the City to obtain such information on its behalf; and

(7) while the Purchaser has no present intention to resell or otherwise dispose of all or any part of the Bonds, the Purchaser assumes responsibility for disclosing all material information in compliance with all applicable federal and State securities laws in the event of its resale of the Bonds.

5. BOND DOCUMENTS

On or prior to the Closing Date, the Purchaser shall have received a copy, certified by the City Clerk of the City, of the transcript of proceedings of the Governing Body of the City in connection with the authorization, issuance, sale and validation of the Bonds and the supplemental transcript of proceedings, if applicable, regarding same. Such transcripts shall include the Bond Resolution and the form of this Agreement (collectively, the “**Bond Documents**”).

6. CONDITIONS TO OBLIGATIONS OF THE PURCHASER

The obligation of the Purchaser to purchase and pay for the Bonds and the obligation of the City to sell the Bonds to the Purchaser shall be subject to the following conditions precedent:

(a) The City shall have performed all of its obligations hereunder and the statements made on behalf of the City hereunder shall be true and correct on the date hereof and on the Closing Date, as if made on the Closing Date, and the City shall deliver a certificate to such effect.

(b) Except as may have been agreed to by the Purchaser, as of the Closing Date, each of the Bond Documents and all other official actions of the City relating thereto shall be in full force and effect and shall not have been amended, modified or supplemented.

(c) The City shall have received the approving opinion of Butler Snow LLP, Bond Counsel, in form and substance acceptable to the Purchaser.

(d) The Purchaser shall have received the opinion of counsel to the City, Ben Logan, Esquire, Tupelo, Mississippi, dated the Closing Date and addressed to the Purchaser, in form and substance acceptable to the Purchaser.

(e) Between the date of this Agreement and the Closing Date, no material adverse change shall have occurred, nor shall any development have occurred involving a prospective material and adverse change in, or affecting the affairs, business, financial condition, results of operations, prospects or properties of the City.

(f) On or prior to the Closing Date, all actions required to be taken as of the Closing Date in connection with the Bonds and the Bond Documents by the City shall have been taken, and the City shall have performed and complied with all agreements, covenants and conditions required to be performed or complied with by this Agreement, the Bonds and the Bond Documents, and the City shall deliver a certificate to such effect insofar as the foregoing actions, agreements, covenants and conditions apply, and each of such agreements shall be in full force and effect and shall not have been amended, modified or supplemented, except as has been agreed to in writing by the Purchaser.

(g) None of the events referred to in Paragraph 7, infra, of this Agreement shall have occurred.

(h) The terms and conditions set forth in **ATTACHMENT A** hereto shall have been complied with.

(i) The Purchaser shall have received a certificate, dated the Closing Date and signed on behalf of the City, to the effect that:

(1) the City has not received notice of any pending, nor to the City's knowledge is there any threatened, action, suit, proceeding, inquiry or investigation against the City, at law or in equity, by or before any court, public board or body, nor to the City's knowledge

is there any basis therefor, affecting the existence of the City or the titles of its officers to their respective offices, or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the pledge of the Tax Increment pledged or to be pledged to pay the principal of, premium, if any, and interest on the Bonds, or in any way materially adversely affecting or questioning (A) the existence and powers of the City, (B) the use of the proceeds of the Bonds, (C) the validity or enforceability of the Bonds, the Bond Resolution or any proceedings of the City taken with respect to the Bonds, (D) the execution and delivery of this Agreement or the Bonds or (E) the power of the City to carry out the transactions contemplated by this Agreement or the Bonds;

(2) the City has complied with all the covenants and satisfied all of the conditions on its part to be performed or satisfied at or prior to the Closing Date, and the representations and warranties of the City contained herein are true and correct as of the Closing Date.

(j) Evidence, satisfactory in form and substance to the Purchaser and Bond Counsel, of a satisfactory and favorable conclusion to a bond validation proceeding under the laws of the State with respect to the Bonds shall have been received.

(k) The Purchase shall receive copies of such supplemental resolutions adopted by the City to meet the conditions of this Agreement.

(l) Such additional opinions and other documents as the Purchaser or Bond Counsel may reasonably request to evidence performance of or compliance with the provisions of this Agreement and the transactions contemplated hereby, all such Bonds and other documents to be satisfactory in form and substance to the Purchaser, shall have been received.

(m) If any conditions to the obligations of the Purchaser or the City contained in this Agreement are not satisfied and the satisfaction of such conditions shall not be waived by the Purchaser and the City, then, at the option of the Purchaser and the City, the Closing Date, (1) shall be postponed for such period as may be necessary for such conditions to be satisfied, or (2) without limiting the generality of Paragraph 12 of this Agreement, the obligations of the Purchaser and the City under this Agreement shall terminate, and neither the Purchaser nor the City shall have any further obligations or liabilities hereunder.

All of the legal opinions, Bonds, proceedings, instruments and other documents mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Purchaser and the City.

7. TERMINATION

The Purchaser may terminate its obligations hereunder by written notice to the City if, at any time subsequent to the date hereof and on or prior to the Closing Date:

(a) Legislation shall have been enacted or a decision by a court of the United States of America shall be rendered or any action taken by the Securities and Exchange Commission which,

in the opinion of counsel to the Purchaser, has the effect of requiring the offer or sale of the Bonds to be registered under the Securities Act of 1933, as amended.

(b) (1) In the judgment of the Purchaser, the market price of the Bonds is adversely affected because (A) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange, (B) a general banking moratorium shall have been established by federal, New York or State authorities, or (2) any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance or sale of the Bonds or in any way contesting or affecting any authority or security for or the validity of the Bonds, or the existence or powers of the City.

(c) There shall have occurred any change that, in the reasonable judgment of the Purchaser, makes unreasonable or unreliable any of the assumptions upon which payment of debt service on the Bonds is predicated.

(d) There shall have occurred any material change in the business or affairs of the City which, in the reasonable judgment of the Purchaser, materially adversely affects the investment quality of the Bonds.

(e) Any legislation, ordinance, rule or regulations shall be enacted or be actively considered for enactment by any governmental body, department or agency of the State., or a decision by any court of competent jurisdiction within the State of Mississippi shall be rendered, which, in the reasonable opinion of the Purchaser, materially or adversely affects the market price of the Bonds.

(f) A stop order, ruling regulation or official statement by or on behalf of the Office of Secretary of State of the State shall be issued or made to the effect that the issuance, offering or sale of the Bonds, or of obligations of the general character of the Bonds as contemplated hereby, is a violation of any provisions of the Blue Sky laws of the State.

(g) Any condition to the Purchaser's obligations hereunder is not satisfied or because of any refusal, inability or failure on the part of the City to comply with any of the terms or to fulfill any of the conditions provided for or contemplated by this Agreement, or if for any reason the City shall be unable to perform all of its obligations or satisfy conditions provided for or contemplated in this Agreement.

(h) Additional material restrictions, not in force as of the date hereof, shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange.

8. EXPENSES

Except as otherwise provided herein, the City shall cause to be paid from proceeds of the sale of the Bonds or from other funds available to the City, the costs of issuing the Bonds,

including, but not limited to, the fees and expenses described in Paragraph 3 of this Agreement, whether or not the sale of the Bonds by the City to the Purchaser is consummated.

9. CONDITION OF THE CITY'S OBLIGATIONS

The City's obligations hereunder are subject to the following conditions precedent:

- (a) Purchaser's performance of its obligations hereunder.

10. NOTICES

Any notice or other communication to be given to the City and the Purchaser under this Agreement may be given by delivering the same in writing as follows:

City: City of Tupelo, Mississippi
City Hall, 71 Troy Street
Tupelo, MS 38804

Purchaser: _____

Attention: _____

11. SUCCESSORS

This Agreement is made solely for the benefit of the City, and the Purchaser (including their successors or assigns) and no other person shall acquire or have any right hereunder or by virtue hereof (other than pursuant to Section 3 hereof).

12. SURVIVAL OF CERTAIN REPRESENTATIONS AND WARRANTIES

All agreements, covenants representations and warranties and all other statements of the City set forth in or made pursuant to this Agreement shall remain in full force and effect, regardless of any investigation, or statement as to the results thereof made by or on behalf of the Purchaser or the City, and shall survive the Closing Date and the delivery of and payment for the Bonds.

13. GOVERNING LAW

This Agreement shall be governed by the laws of the State.

14. MISCELLANEOUS

This Agreement constitutes the only agreement among the parties hereto relating to the subject matter hereof and it supersedes and cancels any and all previous contracts, agreements or understandings with respect thereto. This Agreement may not be amended or modified except in writing executed by all parties hereto.

15. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Very truly yours,

_____,
_____, **MISSISSIPPI**

By: _____

Accepted on __, 2021

CITY OF TUPELO, MISSISSIPPI

By: _____
Mayor

By: _____
City Clerk

ATTACHMENT A

PURCHASE PRICE

Par Amount of 2021 Bonds	\$,000.00
Less: Purchaser's Fees	<u>.000.00</u>
Total Available for Deposit	<u><u>\$,000.00</u></u>

MATURITY SCHEDULE

(See attached)

REDEMPTION PROVISIONS

The Bonds shall be subject to redemption prior to their stated date of maturity, in whole or in part, on any date at any time.

MAXIMUM ANNUAL DEBT SERVICE

\$

ATTACHMENT B
PURCHASER'S COMMITMENT LETTER