

**LOAN AGREEMENT**

**By and Between**

**MISSISSIPPI DEVELOPMENT BANK**

**and**

**CITY OF PASCAGOULA, MISSISSIPPI**

\_\_\_\_\_  
**DATED MAY \_\_, 2022**  
\_\_\_\_\_

**Acknowledged and Accepted by:**

\_\_\_\_\_, as Trustee

**Secured By:**

**\$\_\_\_\_\_**

**PROMISSORY NOTE**

**(PASCAGOULA, MISSISSIPPI CAPITAL IMPROVEMENTS PROJECT )**

The interest of the Mississippi Development Bank in this Loan Agreement, except for certain rights retained by it pursuant to Section 4.6 hereof, has been assigned to \_\_\_\_\_, \_\_\_\_\_, Mississippi, as Trustee, under that certain Indenture of Trust, dated May \_\_, 2022, by and between the Mississippi Development Bank and the Trustee and securing the \$\_\_\_\_\_ Mississippi Development Bank Special Obligation Bonds, Series 2022 (Pascagoula, Mississippi Capital Improvements Project )

**TABLE OF CONTENTS**

	<b>Page</b>
<b>ARTICLE I. DEFINITIONS, EXHIBITS AND MISCELLANEOUS .....</b>	<b>2</b>
SECTION 1.1. Definitions.....	2
SECTION 1.2. Exhibits.....	10
SECTION 1.3. City's Acts.....	10
SECTION 1.4. Rules of Interpretation.....	10
<b>ARTICLE II. REPRESENTATIONS OF THE BANK AND CITY .....</b>	<b>12</b>
SECTION 2.1. Representations by the Bank.....	12
SECTION 2.2. Representations and Warranties and Covenants of the City.....	13
SECTION 2.3. Survival.....	15
<b>ARTICLE III. APPLICATION OF LOAN PROCEEDS; PAYMENT OF COSTS OF CITY PROJECT ....</b>	<b>16</b>
SECTION 3.1. Application of Loan Proceeds.....	16
SECTION 3.2. Payment of Costs of the City Project.....	16
SECTION 3.3. Disposition of Surplus Funds.....	16
SECTION 3.4. Insufficient Proceeds from Series 2022 Bonds.....	16
SECTION 3.5. Issuance of Series 2022 Bonds.....	17
<b>ARTICLE IV. THE LOAN, BASIC PAYMENTS AND ADDITIONAL CHARGES .....</b>	<b>17</b>
SECTION 4.1. The Loan.....	17
SECTION 4.2. Basic Payments.....	17
SECTION 4.3. Pledge of City Revenues.....	18
SECTION 4.4. Additional Charges.....	19
SECTION 4.5. City's Obligations Unconditional.....	20
SECTION 4.6. Assignment of the Bank's Rights.....	20
SECTION 4.7. City's Remedies.....	20
SECTION 4.8. Agreement Withholding City Monies to Satisfy Delinquent Payments.....	21
SECTION 4.9. Respecting the Indenture.....	21
<b>ARTICLE V. CAPITAL IMPROVEMENTS FUND .....</b>	<b>22</b>
SECTION 5.1. Establishment of Capital Improvements Fund.....	22
SECTION 5.2. Application of Monies Held in Capital Improvements Fund.....	22
SECTION 5.3. Investment of Monies Held by Any Fiduciary.....	22
SECTION 5.4. Liability of Fiduciaries for Investments.....	22
<b>ARTICLE VI. COVENANTS .....</b>	<b>23</b>
SECTION 6.1. Affirmative Covenants of the City.....	23
SECTION 6.2. Covenants in Bond Documents.....	23
SECTION 6.3. Conduct of Government Operations.....	23
SECTION 6.4. Payment of Indebtedness.....	23
SECTION 6.5. Performance of Obligations.....	23
SECTION 6.6. Annual Budget and Financial Reporting.....	23
SECTION 6.7. Environmental Indemnity.....	24
<b>ARTICLE VII. CITY'S COVENANTS .....</b>	<b>25</b>
SECTION 7.1. Covenant for the Benefit of the Trustee and the Bondholders.....	25

SECTION 7.2. Certificate of Compliance and Other Reports.....	25
SECTION 7.3. Indemnification.....	25
SECTION 7.4. Tax Covenants.....	26
<b>ARTICLE VIII. CITY'S OPTIONS .....</b>	<b>27</b>
SECTION 8.1. Prepayment of the Note and Termination of the Loan Agreement.....	27
SECTION 8.2. Direction of Investments.....	28
<b>ARTICLE IX. EVENTS OF DEFAULT AND REMEDIES .....</b>	<b>28</b>
SECTION 9.1. Events of Default.....	28
SECTION 9.2. Remedies.....	29
SECTION 9.3. Disposition of Funds.....	30
SECTION 9.4. Nonexclusive Remedies.....	30
SECTION 9.5. Attorney's Fees and Expenses.....	30
SECTION 9.6. Effect of Waiver.....	30
SECTION 9.7. Waiver of Stay or Extension.....	30
SECTION 9.8. Bank May File Proofs of Claim.....	30
SECTION 9.9. Restoration of Positions.....	31
SECTION 9.10. Suits to Protect the City Project.....	31
SECTION 9.11. Performance by Third Parties.....	31
SECTION 9.12. Exercise of the Bank's Remedies by Trustee.....	31
<b>ARTICLE X. GENERAL .....</b>	<b>32</b>
SECTION 10.1. Amounts Remaining in Funds.....	32
SECTION 10.2. Notices.....	32
SECTION 10.3. Binding Effect.....	33
SECTION 10.4. Severability.....	33
SECTION 10.5. Amendments, Changes, and Modifications.....	33
SECTION 10.6. Execution Counterparts.....	33
SECTION 10.7. Required Approvals.....	33
SECTION 10.8. Limitation on the Bank's Liability.....	33
SECTION 10.9. Representations of City.....	34
SECTION 10.10. Survivorship of Obligations.....	34
SECTION 10.11. Administrative Fees, Attorney's Fees and Costs.....	34
SECTION 10.12. Release.....	34
SECTION 10.13. Choice of Law; Venue.....	34

**THIS LOAN AGREEMENT**, dated May \_\_, 2022 (this "**Loan Agreement**"), is by between the **MISSISSIPPI DEVELOPMENT BANK**, a public body corporate and politic of the State of Mississippi (the "**State**"), exercising essential public functions (the "**Bank**") and organized under the provisions of Sections 31-25-1 et seq., Mississippi Code of 1972, as from time to time amended (the "**Bank Act**"), and the **CITY OF PASCAGOULA, MISSISSIPPI**, a political subdivision organized and validly existing under the Constitution and laws of the State (the "**City**") and a "governmental unit" within the meaning of the Bank Act.

**WITNESSETH:**

**WHEREAS**, the Bank is authorized by the provisions of the Bank Act, to, among other things, loan money to local governmental units for any purposes set forth under the Bank Act and to finance such assistance to such local governmental units by the issuance of revenue bonds; and

**WHEREAS**, the Bank is further authorized to issue revenue bonds for the purpose of providing funds to pay all or a part of the cost of providing the aforementioned loans to local governmental units and to pledge or assign any money, rents, charges, fees or other revenues and any proceeds derived from the loans with such local governmental units; and

**WHEREAS**, the Bank has duly authorized as a project under the Bank Act the financing of the City Project (as hereinafter defined); and

**WHEREAS**, the Bank has duly authorized the issuance, as provided in the Indenture (as hereinafter defined), of its Mississippi Development Bank Special Obligation Bonds, Series 2022 (Pascagoula, Mississippi Capital Improvements Project) (the "**Series 2022 Bonds**") pursuant to the Bank Act in the aggregate principal amount of \$\_\_\_\_\_; and

**WHEREAS**, the Series 2022 Bonds are to be issued pursuant to and secured by an Indenture of Trust (as the same may be amended, supplemented and restated, the "**Indenture**") dated of even date herewith, by and between the Bank and the Trustee (as hereinafter defined); and

**WHEREAS**, in order to provide financing for the City Project, the proceeds of the Series 2022 Bonds will be loaned to the City by the Bank pursuant to this Loan Agreement which loan will be secured by a promissory note (as the same may be amended, supplemented and restated, the "**Note**") whereby the amount of payments to be paid to the Bank by the City under the Note shall be sufficient to pay the principal of, premium, if any, and interest on the Series 2022 Bonds as and when the same shall become due and payable; and

**WHEREAS**, to further secure the payment of the Series 2022 Bonds, the Bank has or will assign its rights in the Note and this Loan Agreement (except certain rights retained by the Bank) to the Trustee; and

**WHEREAS**, to further secure the payment of the Series 2022 Bonds, the City will provide for the payment of debt service on the Series 2022 Bonds from (a) any lawfully available revenues of the City, including, without limitation, available amounts of the City's General Fund, and (b) certain Tax Monies as described in Section 4.8 hereof.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THIS LOAN AGREEMENT WITNESSETH:**

That the parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, do hereby agree as follows:

**ARTICLE I.**

**DEFINITIONS, EXHIBITS AND MISCELLANEOUS**

**SECTION 1.1. Definitions.**

Terms used herein, unless the context hereof shall require otherwise, shall have the following meanings, and any other terms used herein and not defined herein shall have the meanings given such terms in Section 1.01 of the Indenture unless the context or use thereof indicates another or different meaning or intent.

#### **Act**

“Act” shall mean the Bank Act and the City Act.

#### **Additional Charges**

“Additional Charges” shall mean the payments required by Section 4.4 of this Loan Agreement.

#### **Administrative Expenses**

“Administrative Expenses” shall mean the reasonable and necessary fees, costs or expenses incurred or payable by the City to the Bank pursuant to this Loan Agreement or the Indenture, including, compensation and expenses paid to or incurred by the Trustee or any paying agent under the Indenture.

#### **Annual Budget**

“Annual Budget” shall mean the budget or amended budget in effect as provided in or adopted pursuant to Section 6.6 hereof.

#### **Authorized City Representative**

“Authorized City Representative” shall mean any person or persons at the time designated to act on behalf of the City by a written certificate, signed on behalf of the City by the Mayor or the President of the Governing Body, the City Clerk or other duly authorized Person and the City Clerk or other authorized member of the Governing Body or Person and furnished to the Bank and the Trustee, containing the specimen signature of each such person.

#### **Bank**

“Bank” shall mean the Mississippi Development Bank, a public body corporate and politic of the State, exercising essential public functions and organized under the provisions of the Bank Act.

#### **Bank Act**

“Bank Act” shall mean Sections 31-25-1 et seq., Mississippi Code of 1972, as amended and supplemented from time to time.

#### **Basic Payments**

“Basic Payments” shall mean the payments required by Section 4.2 of this Loan Agreement.

#### **Bond Counsel**

“Bond Counsel” shall mean an attorney or firm of attorneys approved by the City and the Bank that is nationally recognized in the area of municipal law and matters relating to the exclusion of interest on state and local government bonds from gross income under federal tax law, including particularly compliance with Section 148(f) of the Code. Bond Counsel shall initially mean Butler Snow LLP, Ridgeland, Mississippi.

**Bond Documents**

“Bond Documents” shall mean the Indenture, this Loan Agreement, the Note, the Tax Intercept Agreement, the Tax Certificate and all other agreements, instruments, documents, notices of assignment, schedules, assignments, pledges, powers of attorney, leases, trust account agreements, certificates, consents, contracts, notices, and all other written matter and all amendments, modifications, supplements, extensions and restatements thereof and thereto, and all agreements, notes, documents or instruments delivered in substitution therefor, or in lieu thereof, whether heretofore, now, or hereafter executed by or on behalf of the City, or any other person which are delivered to the Trustee, the Bank or any participant with respect to the transactions contemplated in the Indenture.

**Bond Register**

“Bond Register” shall mean the registration records of the Bank kept by the Trustee to evidence the registration and transfer of the Series 2022 Bonds.

**Bondholder**

“Bondholder,” “Holder” or “holder of Series 2022 Bonds” or “owner of Series 2022 Bonds” or any similar term shall mean the Registered Owner of any Series 2022 Bond in whose name a Series 2022 Bond is registered in the Bond Register.

**Capital Improvements Fund**

“Capital Improvements Fund” shall mean the fund by that name established by Section 5.1 hereof.

**Certificate**

“Certificate” shall mean, as the case may be, either (a) a signed document attesting to or acknowledging the circumstances, representations or other matters therein stated or set forth or (b) a signed document setting forth matters to be determined by an Authorized City Representative pursuant to this Loan Agreement.

**City**

“City” shall mean the City of Pascagoula, Mississippi.

**City Act**

“City Act” shall mean Sections 21-33-301 et seq et seq., Mississippi Code of 1972, as amended and/or supplemented from time to time.

**City Clerk**

“City Clerk” shall mean the duly appointed and/or acting City Clerk of the City.

**City Project**

“City Project” shall mean together, providing projects as authorized under the City Act, including but not limited to (i) constructing, maintaining, reconstructing, improving, and repairing roads and streets and acquiring rights-of-way therefore if necessary; (ii) erecting, repairing, improving, extending or maintaining waterworks or water distribution systems, and repairing, improving and extending the same; (iii) establishing erecting, repairing, improving, extending or maintaining sanitary, storm, drainage or sewerage systems; (iv) constructing, maintaining, reconstructing, improving, and repairing bridges and

culverts; and (v) for other authorized purposes under the Act, including funding capitalized interest, if applicable and paying the costs of borrowing.

### **City Revenues**

“City Revenues” shall mean any lawfully available revenues of the City, which include, without limitation, available amounts of the City’s General Fund.

### **Closing Date**

“Closing Date” shall mean, in connection with the Series 2022 Bonds, the date on which the Series 2022 Bonds are delivered by the Bank to, and paid for by, the Lender and, in connection with the Loan, the date on which the Note is delivered to the Bank.

### **Code**

“Code” or “Internal Revenue Code” shall mean the Internal Revenue Code of 1986, as amended, and all applicable Treasury Regulations promulgated thereunder, and any successor thereto.

### **Costs of the City Project**

“Costs of the City Project” shall mean, to the extent permitted by the Act and the Code and as applicable, whether incurred prior to or after the date of this Loan Agreement, all moneys necessary to fund the City Project.

### **Depository**

“Depository” shall mean any bank, trust company or national banking association selected by the City and approved by the Trustee as a depository of monies and securities held under the provisions of this Loan Agreement, and its successor or assign or successors or assigns.

### **Discharge Date**

“Discharge Date” shall mean the date on which all Outstanding Series 2022 Bonds are discharged under Article IX of the Indenture.

### **Event of Default**

“Event of Default” shall mean any of the events set forth in Section 9.1 hereof.

### **Fiduciary**

“Fiduciary” or “Fiduciaries” shall mean the Trustee, the paying agent, the Depository or any or all of them, as may be appropriate.

### **Fiscal Year**

“Fiscal Year” shall mean, when used with respect to the City, a period beginning on **October 1** in any year and ending on September 30 of the following year or such other twelve-month period as may be adopted by the City in accordance with law.

### **Fund**

“Fund” shall mean any fund described in Article VI of the Indenture.

**General Account**

“General Account” shall mean the account by that name established by Section 6.02 of the Indenture.

**Governing Body**

“Governing Body” shall mean the Mayor and City Council of the City.

**Indenture**

“Indenture” shall mean the Indenture of Trust, dated May \_\_, 2022, by and between the Bank and Trustee, as the same may from time to time be amended or supplemented as therein provided.

**Interest Payment Date**

“Interest Payment Date” shall mean any date on which interest or principal is payable on the Bonds, and for the Series 2022 Bonds, May 1 and November 1 of each year, commencing November 1, 20\_\_, until all principal and interest on the Series 2022 Bonds is paid in full.

**Investment Securities**

“Investment Securities” shall have the meaning ascribed thereto in the Indenture.

**Issuance Expenses**

“Issuance Expenses” shall mean any and all costs and expenses relating to the issuance, sale and delivery of the Series 2022 Bonds, and the execution and delivery of this Loan Agreement, the Indenture and the Note, including, but not limited to, all fees and expenses of legal counsel, financial consultants, feasibility consultants and accountants, the initial fees and expenses of the Trustee, any fee to be paid to the Bank, fees of the Placement Agent, bond or reserve fund insurance premiums, credit enhancements or liquidity facility fees, the preparation and printing of this Loan Agreement, the Note, the Indenture, the Tax Intercept Agreement, any preliminary official statement and final official statement, the Series 2022 Bonds, and all other related closing documents, and all other expenses relating to the issuance, sale and delivery of the Series 2022 Bonds required to be paid from the proceeds of the Series 2022 Bonds and any other costs which are treated as “issuance costs” within the meaning of Section 147(g) of the Code.

**Lender**

“Lender” shall mean \_\_\_\_\_ and its successors and assigns.

**Loan**

“Loan” shall mean the loan of the Net Proceeds by the Bank to the City as described in Section 4.1 hereof.

**Loan Agreement**

“Loan Agreement” shall mean this Loan Agreement, dated May \_\_, 2022, by and between the Bank and the City, as the same may from time to time be amended or supplemented as provided herein and in the Indenture.



## **Loan Proceeds**

“Loan Proceeds” shall mean the Net Proceeds of the sale of the Series 2022 Bonds and investment earnings thereon, if any, held by the City.

## **Mayor**

“Mayor” shall mean the duly elected and/or acting Mayor of the City.

## **Net Bond Proceeds**

“Net Bond Proceeds” shall mean proceeds from the sale of the Series 2022 Bonds at the public offering price including accrued interest, if any, from the dated date of the Series 2022 Bonds to the date of delivery thereof, including interest earnings thereon.

## **Net Proceeds**

“Net Proceeds” shall mean Net Bond Proceeds, including any interest earnings thereon, less (a) accrued interest, if any, and (b) such Net Bond Proceeds used to pay or reimburse for the payment of Issuance Expenses and any other neutral costs paid under the Indenture.

## **Note**

“Note” shall mean that certain Promissory Note (Pascagoula, Mississippi Capital Improvements Project), dated May \_\_, 2022, delivered by the City payable to the order of the Bank in the original principal amount of \$\_\_\_\_\_ in the form set forth in **Exhibit A**.

## **Note Payments**

“Note Payments” shall mean all payments required to be paid by the City under the Note.

## **Opinion of Bond Counsel**

“Opinion of Bond Counsel” shall mean an opinion by a nationally recognized firm experienced in matters relating to the tax exemption for interest payable on obligations of states and their instrumentalities and political subdivisions under federal law, and which is acceptable to the Bank and the Trustee.

## **Outstanding**

“Outstanding” shall mean all Series 2022 Bonds which have been authenticated and delivered by the Trustee under the Indenture, including any Series 2022 Bonds held by the Bank, except:

- (a) Series 2022 Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity;
- (b) Series 2022 Bonds deemed paid under Article IX of the Indenture; and
- (c) Series 2022 Bonds in lieu of which other Series 2022 Bonds have been authenticated under Section 3.05, 3.06 or 3.10 of the Indenture.

## **Parity Indebtedness**

“Parity Indebtedness” shall mean indebtedness of the City, the payments of which are secured by a lien on City Revenues on a parity with the lien securing the Note but excluding the Note.

**Placement Agreement**

“Placement Agreement” shall mean the Placement Agreement, dated \_\_\_\_\_, 2022, by and among the Placement Agent, the Bank and the City in connection with the Series 2022 Bonds.

**Placement Agent**

“Placement Agent” shall mean Raymond James & Associates, Inc., Memphis, Tennessee.

**Project**

“Project” shall mean providing financing to (a) fund a loan to the City under the Loan Agreement in order to finance the City Project, and (b) paying Costs of Issuance for the Series 2022 Bonds.

**Redemption Account**

“Redemption Account” shall mean the account by that name established by Section 6.02 of the Indenture.

**Redemption Price**

“Redemption Price,” when used with respect to any Series 2022 Bond to be redeemed, shall mean the price at which it is to be redeemed pursuant to the Indenture.

**Series 2022 Bonds**

“Series 2022 Bonds” shall mean the \$\_\_\_\_\_ Mississippi Development Bank Special Obligation Bonds, Series 2022 (Pascagoula, Mississippi Capital Improvements Project) issued pursuant to the Indenture.

**State**

“State” shall mean the State of Mississippi.

**Tax Certificate**

“Tax Certificate” shall mean the Tax Regulatory Agreement and Arbitrage Certificate by and between the Bank and the City delivered as of the Closing Date.

**Tax Intercept Agreement**

“Tax Intercept Agreement” shall mean the Tax Intercept Agreement, dated May \_\_, 2022, by and between the City and the Bank and accepted by the Trustee, as set forth in Section 4.8 hereof, securing the Series 2022 Bonds, as the same may be amended or supplemented as provided therein.

**Tax Monies**

“Tax Monies” shall have the meaning given to it in Section 4.8 hereof.

**Term of this Loan Agreement**

“Term of this Loan Agreement” shall mean the period of time commencing on the date of this Loan Agreement and terminating on the final maturity date of the Series 2022 Bonds or upon earlier termination of this Loan Agreement under Section 8.1 hereto, whichever date occurs sooner.

## Term Sheet

“Term Sheet” means the term sheet of the Lender dated \_\_\_\_\_, 2022 relating to the terms of its purchase of the Series 2022 Bonds.

## Treasury Regulations

“Treasury Regulations” shall mean all proposed, temporary or permanent federal income tax regulations then in effect and applicable.

## Trustee

“Trustee” shall mean \_\_\_\_\_, \_\_\_\_\_, Mississippi, or any successor trustee appointed, qualified and then acting as such under the provisions of the Indenture.

**SECTION 1.2. Exhibits.** The form of the Note is attached as **Exhibit A** hereto and by reference made a part of this Loan Agreement:

**SECTION 1.3. City's Acts.** Where the City is permitted or required to do or accomplish any act or thing hereunder, the City may cause the same to be done or accomplished by a third party selected by the City with the same force and effect as if done or accomplished by the City.

### **SECTION 1.4. Rules of Interpretation.**

(a) The words “herein” and “hereof” and “hereunder” and words of similar import, without reference to any particular section or subdivision, refer to this Loan Agreement as a whole rather than to any particular section or subdivision of this Loan Agreement.

(b) References in this Loan Agreement to any particular article, section or subdivision hereof are to the designated article, section or subdivision of this Loan Agreement as originally executed.

(c) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; and all computations provided for herein shall be made in accordance with generally accepted accounting principles consistently applied and applied on the same basis as in prior years.

(d) The Table of Contents and titles of articles and sections herein are for convenience only and are not a part of this Loan Agreement.

(e) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine and vice versa.

(f) Articles, sections, subsections and clauses mentioned by number only are those so numbered which are contained in this Loan Agreement.

(g) For purposes of this Loan Agreement and the Indenture, a petition in bankruptcy shall be deemed dismissed only if either (a) the petition is dismissed by order of a court of competent jurisdiction and no further appeal rights exist from such order or (b) the City notifies the Trustee that such a dismissal has occurred.

(h) Any opinion of counsel required hereunder shall be a written opinion of such counsel.

## **ARTICLE II.**

### **REPRESENTATIONS OF THE BANK AND CITY**

**SECTION 2.1.** Representations by the Bank. The Bank makes the following representations as the basis for the undertakings on the part of the Bank herein contained:

(a) The Bank is a public body corporate and politic of the State, exercising essential public functions and organized under the provisions of the Bank Act.

(b) The Bank has full power and authority to enter into the transactions contemplated by this Loan Agreement, the Indenture and the other Bond Documents to which it is a party and to perform its obligations hereunder and thereunder.

(c) The Bank is not in default under any provisions of the laws of the State material to the performance of its obligations under this Loan Agreement, the Indenture, the Tax Intercept Agreement and the other Bond Documents.

(d) The Bank has been duly authorized to execute and deliver this Loan Agreement, the Indenture, the Tax Intercept Agreement and the assignment of the Note to the Trustee and the other Bond Documents to which it is a party and by proper action has duly authorized the execution and delivery hereof and thereof and as to the Bank, this Loan Agreement, the Indenture, the Tax Intercept Agreement, the assignment of the Note to the Trustee and the other Bond Documents to which it is a party are valid and legally binding and enforceable in accordance with their terms, except to the extent that the enforceability thereof may be limited (1) by bankruptcy, reorganization, or similar laws limiting the enforceability of creditors' rights generally or (2) by the availability of any discretionary equitable remedies.

(e) The loan of the Net Proceeds by the Bank to the City in order to provide financing for the Project, as provided by this Loan Agreement, will further the purposes of the Bank Act, to wit: to assist local governmental units in obtaining financing for those purposes set forth under the Bank Act in furtherance of its governmental purpose.

(f) Under existing statutes and decisions no taxes on income or profits are imposed on the Bank.

(g) There is not pending any suit, action or proceeding against the Bank before or by any court, arbitrator, administrative agency or other governmental authority which materially and adversely affects the validity, as to the Bank, of this Loan Agreement or the Indenture or any other Bond Documents to which it is a party, any of its obligations hereunder or thereunder or any of the transactions contemplated hereby or thereby.

(h) No officer, member or public official of the Bank has either a direct or indirect financial interest in this Loan Agreement nor will any public official either directly or indirectly benefit financially from this Loan Agreement.

**SECTION 2.2. Representations and Warranties and Covenants of the City.** The City represents, covenants and warrants as follows:

(a) The City is a political subdivision of the State duly organized and validly existing under the Constitution and the laws of the State and the City is a "local governmental unit" within the meaning of the Bank Act.

(b) The execution, delivery and performance by the City of this Loan Agreement, the Tax Intercept Agreement and the Note and each of the other Bond Documents to which it is a party are (1)

within the City's governmental powers, and (2) have been duly authorized by all necessary actions of the governing body of the City.

(c) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the City of this Loan Agreement, the Tax Intercept Agreement, the Note and the other Bond Documents to which the City is a party.

(d) The Project comprises an authorized purpose within the meaning of the Act, and it is presently intended and reasonably expected that the City has and will continue to operate the City Project and the System.

(e) The Net Proceeds, together with any other funds to be contributed to the City Project by the City or otherwise in accordance with this Loan Agreement, will be sufficient to pay the Costs of the City Project.

(f) The City has reviewed and approved the provisions of the Indenture and the other Bond Documents.

(g) To the best of City's knowledge, no public official of the City has either a direct or indirect financial interest in this Loan Agreement nor will any public official either directly or indirectly benefit financially from this Loan Agreement or the other Bond Documents.

(h) This Loan Agreement, the Tax Intercept Agreement, the Note and the other Bond Documents to which the City is a party are legal, valid and binding obligations of the City, and are enforceable against the City, in accordance with their respective terms, except to the extent that the enforceability thereof may be limited (1) by bankruptcy, reorganization, or similar laws limiting the enforceability of creditors' rights generally or (2) by the availability of any discretionary equitable remedies.

(i) There is no pending action or proceeding before any court, governmental agency or arbitrator against or directly involving the City and, to the best of the City's knowledge, there is no threatened action or proceeding affecting the City or any of its assets before any court, governmental agency or arbitrator (1) which, in any case, may materially and adversely affect the financial condition or operations of the City, (2) which seeks to restrain or would otherwise have a material adverse effect on the transactions contemplated herein, or (3) which would affect the validity or enforceability of this Loan Agreement, the Tax Intercept Agreement, the Note or the other Bond Documents.

(j) The City is not in default in the payment or performance of any of its obligations or in the performance of any mortgage, indenture, lease, contract or other agreement, instrument or undertaking to which it is a party or by which it or any of its assets may be bound, which default would have a material and adverse effect on the governmental functions, operations, assets or condition, financial or otherwise, of the City, either individually or taken as a whole. No Event of Default hereunder or an "event of default" under the Note or any other Bond Document has occurred and is continuing. The City is not in default under any order, award or decree of any court, arbitrator, or governmental authority binding upon or affecting it or by which any of its assets may be bound or affected which default would have a material adverse effect on the governmental functions, operations, assets or condition, financial or otherwise, of the City, either individually or taken as a whole, and no such order, award or decree adversely affects the ability of the City to carry on its governmental functions as currently conducted or the ability of the City to perform its obligations under this Loan Agreement, the Tax Intercept Agreement, the Note and the other Bond Documents to which it is a party.

(k) The City is not a party to any contract or agreement or subject to any restriction which materially and adversely affects its governmental functions, its property or assets, or financial condition. The City is not a party to, or otherwise subject to any provision contained in, any instrument evidencing indebtedness of the City, any agreement relating thereto or any other contract or agreement (including

their charters) which restricts or otherwise limits the incurring of the indebtedness to be represented by this Loan Agreement, the Note and the other Bond Documents to which it is a party.

(l) The City is in compliance with all laws, orders, regulations and ordinances of all federal, foreign, state and local governmental authorities binding upon or affecting the governmental functions, operation or assets of the City, except for laws, orders, regulations and ordinances the violation of which would not, in the aggregate, have a material and adverse effect on the City's financial condition.

(m) There is no fact known to the City which materially adversely affects or in the future may (so far as the City can now foresee) materially adversely affect the property, assets or financial condition of the City which has not been set forth in this Loan Agreement, the Note or in the other Bond Documents, prior to the date hereof in connection with the transactions contemplated hereby or thereby.

(n) The City hereby incorporates herein and makes each of the representations and warranties contained in the other Bond Documents to which it is a party, operative and applicable for the benefit of the Bank and the Trustee and the owners of the Series 2022 Bonds as if the same were set forth at length herein.

(o) The City has approved the terms and provisions of the Indenture and the other Bond Documents.

(p) The City has not received notice of, and has no knowledge of, (1) an proceedings, whether actual, pending or threatened, for the taking under the power of eminent domain or any similar power or right, of all or any portion of the City Project or the System; or (2) any damage to or destruction of any portion of the City Project or the System; or (3) any zoning, building, fire or health code violations in respect of the City Project or the System or any portion thereof which have not heretofore been corrected or (4) proceedings, whether actual, pending or threatened, the outcome of which may adversely impact the City Revenues.

(q) So long as the Series 2022 Bonds or Note remain outstanding, the City shall not permit any indebtedness to be issued, incurred or guaranteed, the payments of which are payable from or secured by a lien on City Revenues, in whole or in part, on a basis senior to the lien securing the Note

**SECTION 2.3. Survival.** The foregoing representations, covenants and warranties of the City shall be continuing and shall survive the execution and delivery of this Loan Agreement, the Tax Intercept Agreement, the Note and the other Bond Documents. The disbursement of Loan Proceeds from the Capital Improvements Fund shall constitute a certification by the City that the aforesaid representations, covenants and warranties are true and correct in all material respects as of the date of such disbursement.

## **ARTICLE III.**

### **APPLICATION OF LOAN PROCEEDS; PAYMENT OF COSTS OF CITY PROJECT**

#### **SECTION 3.1. Application of Loan Proceeds.**

(a) Simultaneously with the delivery of the Series 2022 Bonds by the Trustee on the Closing Date, the Net Proceeds therefor in the amount of \$\_\_\_\_\_ (\$\_\_\_\_\_.00 par amount of Series 2022 Bonds, less \$\_\_\_\_\_ for the payment of Issuance Expenses) will be transferred by the Trustee, as the assignee for the Bank under the Loan Agreement and the Note, as follows:

\$\_\_\_\_\_ of Net Proceeds shall be paid to the Trustee for deposit in the Capital Improvements Fund to be held by the Trustee, for the benefit of the City, and used to pay the Costs of the City Project.

(b) City Project. The City shall construct and equip or cause to be constructed and equipped the City Project. The City shall obtain all approvals requisite to the construction and installation of the City Project and shall construct and install the City Project in compliance with all federal, state and local laws and regulations; provided however, no such law or laws and regulations shall discriminate against the City. Upon completion of the City Project, the City will furnish to the Trustee and the Bank, if requested, copies of all required permits and authorizations authorizing the occupancy and uses of the City Project for the purposes contemplated by the City. The City will take such action and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers to complete their contracts, including the correction of any defective work. Any amounts recovered as damages, refunds, adjustments or otherwise in connection with the foregoing (a) if the City has corrected, at its own expense, the matter which gave rise to such default or breach, shall be paid to the City or (b) if the City has not corrected, at its own expense, the matter which gave rise to such default or breach, shall be paid to the Trustee for deposit into the Capital Improvements Fund, unless recovered after delivery of the Completion Certificate and full disposition of the Capital Improvements Fund in accordance with Section 3.4, in which case they shall be paid into the General Account under the Indenture.

#### **SECTION 3.2. Completion of Construction.**

The City shall construct and install the City Project with all reasonable dispatch and shall cause the City Project to be completed on or before May \_\_, 2025 (the "Completion Date").

#### **SECTION 3.3. Payment for City Project .**

(a) Payments of costs of the City Project by the City, including costs of the City Project expended or incurred as of the time of delivery of the Series 2022 Bonds, shall be made from time to time by the Trustee out of the Capital Improvements Fund upon presentation to the Trustee of a requisition (the form of which is attached hereto as **EXHIBIT B**) from the City (with copies to be furnished to the Bank upon its request), as prepared by the City pursuant to the invoices or statements from a contractor, vendor or other payee or other document reasonably acceptable and on file with the City.

(b) Construction costs may have to be paid in advance of work or while work is in progress, but prior to acceptable completion. The City may at its discretion make payments for such construction costs based on its reasonable reliance upon expected acceptable completion of such work.

(c) Money in the Capital Improvements Fund, except as otherwise provided herein, shall be used solely for making disbursements by the Trustee for payment of the Costs of the City Project as provided in this Article and pursuant to each requisition submitted to the Trustee.

#### **SECTION 3.4. Completion of City Project .**

The completion of the City Project shall be evidenced to the Trustee (and the Bank upon its request) by a certificate of completion (the "Completion Certificate") signed by an Authorized City Representative to the effect that, except for amounts retained by the City for the payment of costs of the City Project not then due and payable, which shall be retained as provided in Section 3.5, the City Project has been constructed and installed and substantially completed as of a date stated in such Completion Certificate to the City's satisfaction, and is suitable and sufficient for its purposes.

The Completion Certificate shall specify the date as of which construction of the City Project was substantially completed. Notwithstanding the foregoing, the Completion Certificate shall state that it is given without prejudice to any rights the Bank or the City may have against third parties which may exist at the date of such Completion Certificate or which may subsequently come into being. If additional payments out of the Capital Improvements Fund are then required, such payments shall be delivered by the City in the form specified in Section 3.3(a).

Upon receipt of the items specified in this Section and in Section 3.3, the City shall requisition from the Trustee payment to the City, or any payee designated by the City of the amount requested, including any amount withheld pursuant to this Section 3.4.

### **SECTION 3.5. Disposition of Surplus Funds.**

If any moneys remain in the Capital Improvements Fund (excluding moneys earned on investments made pursuant to the Indenture) after the Completion Date and after payment of all costs then due and payable, such moneys (except for amounts retained in the Capital Improvements Fund for payment of costs of the City Project incurred but not then due and payable, which amounts shall, notwithstanding anything to the contrary contained in Section 3.4 hereof, be disbursed by the City on the terms and conditions set forth in Section 3.3 hereof) shall be used to either to redeem a portion of the principal of the Series 2022 Bonds at par in the manner provided in the Indenture or if directed by the Bank and the City used to pay the principal and interest coming due on the Series 2022 Bonds on the next Interest Payment Date as provided in the Indenture. Interest earned from investments and held in the Capital Improvements Fund held by the Trustee under this Loan Agreement, is to be used by the City for the City Project and to the extent not needed for the City Project will be used by the City to pay interest on Series 2022 Bonds accrued during and following the construction of the City Project until fully utilized, and not to redeem Series 2022 Bonds.

### **SECTION 3.6. Insufficient Series 2022 Bond Proceeds.**

If the moneys in the Capital Improvements Fund, including interest earned thereon, are not sufficient to pay fully the complete costs of the City Project, the City will nonetheless complete the City Project and will, at its sole expense, pay all such additional expenses as may be necessary to complete the City Project and shall equip it for operation. The Bank does not make any warranty, either express or implied, that the moneys which will be paid into the Capital Improvements Fund, and which, under the provisions of this Loan Agreement, will be available for payment of the Costs of the City Project, will be sufficient to pay all such costs. If after exhaustion of the moneys in the Capital Improvements Fund, including the interest earned thereon held in the Capital Improvements Fund, the City pays any portion of the Costs of the City Project, it shall not be entitled to any reimbursement therefor from the Bank, the Trustee or the Bondholders, nor shall it be entitled to any diminution or postponement of the Basic Payments or Additional Charges payable hereunder and under the Series 2022 Note.

### **SECTION 3.7. Payment of Costs by the City.**

The City agrees that it will provide any and all money required for the prompt and full payment of:

- (i) All legal (including Bond Counsel and counsel to the City, the Placement Agent, the Bank and the Trustee), financial advisor, municipal bond insurance and accounting fees and expenses, administrative and rating agency fees (if any), printing and engraving costs and other expenses incurred and to be incurred with respect to (i) the authorization, sale, validation and



issuance of the Series 2022 Bonds, or (ii) the preparation of this Loan Agreement, the Indenture, the Series 2022 Note and all other documents necessary to the Bond Closing or required by this Loan Agreement or the Indenture;

(ii) Premiums on all insurance; and

(iii) All reasonable fees and expenses of the Trustee and paying agent under the Indenture.

### **SECTION 3.8. Issuance of Series 2022 Bonds.**

The Bank has contracted for the sale of the Series 2022 Bonds authorized by the Indenture, and the City has and does approve the terms of the Indenture. Forthwith upon execution of this Loan Agreement and the Indenture, or as soon thereafter as practicable, the Bank will execute the Series 2022 Bonds and cause them to be authenticated by the Trustee and delivered to the Placement Agent in accordance with the Private Placement Agreement upon payment of the purchase price and filing with the Trustee of the opinion of Bond Counsel as to the legality of the Series 2022 Bonds and the furnishing of all other documents required by this Loan Agreement and the Indenture to be furnished before delivery. The Bank will then cause the proceeds of the Series 2022 Bonds to be transmitted to the Trustee.

## **ARTICLE IV.**

### **THE LOAN, BASIC PAYMENTS AND ADDITIONAL CHARGES**

**SECTION 4.1. The Loan.** The Bank agrees, upon the terms and conditions herein specified, to lend to the City the Net Proceeds received by the Bank from the sale of the Series 2022 Bonds, by causing such Net Proceeds to be deposited with the Trustee and the City, as applicable, for disposition as provided herein and in the Indenture. The amount of the Loan shall also be deemed to include any "discount" or any other amount by which the aggregate price at which the Bank sells the Series 2022 Bonds to the Lender is less than the aggregate principal amount of the Series 2022 Bonds, plus accrued interest. The obligation of the Bank to make the Loan shall be deemed fully discharged upon so depositing the Net Proceeds with the Trustee as set forth herein and in the Indenture.

**SECTION 4.2. Basic Payments.** Subject to the provisions for prepayment set forth in Section 8.1 hereof, the City agrees to pay the Loan as follows:

(a) The City shall pay to the Trustee for the account of the Bank an amount equal to the aggregate principal amount of the Series 2022 Bonds Outstanding and, as interest on its obligation to pay such amount, an amount equal to interest on the Series 2022 Bonds, such amounts to be due (1) semiannually as to interest, as provided for in the Indenture, no later than five (5) days prior to May 1 and November 1 of each year, commencing \_\_\_\_\_, 20\_\_ through and including \_\_\_\_\_ 1, 20\_\_, in the amounts and in the manner provided in the Indenture for the payment of interest on the Series 2022 Bonds on such dates until all principal and interest on the Series 2022 Bonds is paid in full, and (2) annually as to principal as provided for in the Indenture, no later than five (5) days prior to May 1 of each year, commencing \_\_\_\_\_, 20\_\_ through and including \_\_\_\_\_ 1, 20\_\_, in an amount equal to the principal scheduled to become due on such Interest Payment Date or at maturity or earlier redemption, all in order that the Bank can cause amounts to be deposited in the General Account of the General Fund under the Indenture for the payment of the principal of, Redemption Price, premium, if any, and interest on the Series 2022 Bonds, whether at maturity, upon redemption, sinking fund redemption, upon purchase or otherwise; provided, however, that the obligation of the City to make any such payment hereunder shall be reduced by the amount of any reduction under the Indenture of the amount of the corresponding payment required to be made by the Bank thereunder.

(b) The City shall timely remit to the Trustee for deposit into the Redemption Account the amounts required for the payment of the purchase or Redemption Price including accrued interest on

Outstanding Series 2022 Bonds being redeemed or purchased for retirement, and in each such case, such amounts shall be applied by the Trustee to such payments.

(c) On the first day of April and October of each year, commencing \_\_\_\_\_ 1, 20\_\_ and ending after all principal and interest on the Series 2022 Bonds have been paid in full, the City shall provide to the Trustee and the Lender a Certificate executed by an Authorized the City Representative, if, and only if, the City has determined that it has insufficient lawfully available revenues or funds to make the payments due under this Section 4.02 and/or Section 4.04; however, such certificate is not required if it is determined that there are sufficient legally available revenues or funds to make the payments due under this Section 4.02 and/or Section 4.04.

**SECTION 4.3. Pledge of City Revenues.** The Note will be an obligation of the City payable solely from the monies, rights and interests pledged under this Loan Agreement as set forth in the immediately succeeding paragraph. The Note will never constitute a general obligation of the City or, within the meaning of any constitutional or statutory limitation, a debt, liability, or obligation of the State or any political subdivision of the State other than the City, and neither the full faith and credit nor taxing power of the State or any political subdivision thereof, including the City, is pledged to the payment of such principal, premium, if any, and interest except as set forth herein; however the City is obligated to make payments on the Note from its general fund and from any other funds lawfully available therefor. The City has not pledged the levy of any taxes for the repayment of the Note. The Note initially issued under this Loan Agreement shall be issued for the purposes of providing funds to finance the City Project and paying Issuance Expenses for the Series 2022 Bonds and the Note.

Pursuant to the terms of this Loan Agreement, the principal of and interest on the Note and other amounts due under this Loan Agreement are to be paid from City Revenues. The City hereby covenants in this Loan Agreement to take such action as may be necessary to include all the Note Payments and amounts due under this Loan Agreement in its Annual Budget. In addition, the Bank Act and this Loan Agreement provide for the intercept of Tax Monies from the Mississippi Department of Revenue and any other State agency, department or commission created under State law if the City is deficient in its payments due under this Loan Agreement or the Note.

The obligation of the City to make Note Payments and pay amounts due under this Loan Agreement constitutes an unconditional binding obligation of the City in accordance with the terms of the Note and this Loan Agreement, respectively. The City shall make said payments with any City Revenues including from any source lawfully available therefor as such source may be determined in its sole discretion. Except as stated in the Indenture, nothing in this Loan Agreement or the Note creates a lien of any kind or character whatsoever upon any funds, income or revenue now existing or hereafter held, collected, received, anticipated by, or available to the Governing Body, or prevents or restricts the Governing Body at any time from pledging, obligating or creating specific liens upon funds, income or revenues, to or for the payment of any bonds, notes or certificates of the Governing Body or for any other purpose whatsoever. The City has not pledged or levied and will not pledge or levy any form of taxation for the payment of the Note or amounts due under this Loan Agreement.

The obligations of the City under the Note and this Loan Agreement are special obligations and are not general obligations and do not constitute a pledge of the full faith and credit of the City, the State or any political subdivision or agency thereof within the meaning of any constitutional or statutory provision or limitation; however the City is obligated to make the payments on the Note from its general fund and from any other funds lawfully available therefor.

So long as the Series 2022 Bonds or Note remain outstanding, the City shall not permit any indebtedness to be issued, incurred or guaranteed, the payments of which are payable from or secured by a lien on City Revenues, in whole or in part, on a basis senior to the lien securing the Note.

**SECTION 4.4. Additional Charges.** The City agrees to pay as additional charges, when due, each and all of the following:

(a) all Issuance Expenses to the extent not paid from the proceeds of the Series 2022 Bonds;

(b) to or upon the order of the Trustee, upon demand, all fees of the Trustee for services rendered under the Indenture and all fees and charges of the paying agent, registrars, legal counsel, accountants, public agencies and others incurred in the performance on request of the Trustee of services required under the Indenture for which the Trustee and such other persons are entitled to payment or reimbursement; provided that after payment in full thereof the City may, without creating a default hereunder, contest in good faith the necessity or reasonableness of any such services, fees or expenses other than the Trustee's fees for ordinary services as set forth in the Indenture, paying agency fees and any fees or charges of public agencies;

(c) to the Bank and the Trustee, the Administrative Expenses, and all other reasonable expenses incurred by the Bank and the Trustee in relation to the Series 2022 Bonds which are not otherwise specifically required to be paid by the City under the terms of this Loan Agreement and all indemnity payments required to be made under Section 7.3;

(d) any and all out-of-pocket costs and expenses (including, without limitation, the reasonable fees and expenses of any counsel, accountants or other professionals) incurred by the Trustee or the Bank at any time, in connection with (1) the preparation, negotiation and execution of this Loan Agreement, the Indenture, the Tax Intercept Agreement, the Note, and all other Bond Documents, any amendment of or modification of this Loan Agreement, the Indenture, the Tax Intercept Agreement, the Note or the other Bond Documents (including in connection with any sale, transfer, or attempted sale or transfer of any interest herein to a participant or assignee); (2) any litigation, contest, dispute, suit, proceeding or action, whether instituted by the Bank, the Trustee, the City or any other person in any way relating to the Series 2022 Bonds, the Note or the other Bond Documents; (3) any attempt to enforce any rights of the Trustee or the Bank against the City or any other person which may be obligated to the Trustee and/or the Bank by virtue of this Loan Agreement, the Note, the other Bond Documents or any other Series 2022 Bonds related documents; and (4) performing any of the obligations relating to or payment of any obligations of the City hereunder in accordance with the terms hereof or any other Bond Documents; and

(e) Reserved; and

(f) All amounts owed under the Tax Certificate.

**SECTION 4.5. City's Obligations Unconditional.** The City will not suspend or discontinue any Basic Payments or Additional Charges, and will perform and observe all of its other agreements in this Loan Agreement, and, except as expressly permitted in Section 8.1 hereof, will not terminate this Loan Agreement for any cause, including, but not limited to, any acts or circumstances that may constitute failure of consideration, destruction or damage to the City Project or the System, the taking of the City Project or the System by condemnation or otherwise, the lawful prohibition of the use of the City Project or the System, the interference with such use by an Person, the invalidity or unenforceability or lack of due authorization or other infirmity of this Loan Agreement or the Note, or any other Bond Document, the failure to receive or insufficiency of amounts of Tax Monies or otherwise or lack of right, power or authority of the Bank to enter into this Loan Agreement, commercial frustration of purpose, bankruptcy or insolvency of the Bank or the Trustee, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State or any political subdivision thereof, or failure of the Bank to perform and observe any agreement, whether express or implied or any duty, liability or obligation arising out of or connected with this Loan Agreement or the Note or any other Bond Document, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Basic Payments, Additional Charges and other amounts payable by the City hereunder shall be paid in full when due without any delay or diminution whatever.

**SECTION 4.6. Assignment of the Bank's Rights.** As security for the payment of the Series 2022 Bonds, the Bank hereby pledges the amounts payable hereunder and under the Note and

hereby assigns, without recourse or liability, to the Trustee, the Bank's rights under this Loan Agreement (except certain rights retained by the Bank) and under the Note. The rights pledged and assigned by the Bank hereunder will include the right to receive payments hereunder (except the right to receive payments, if any, under Section 4.4, 6.7, 7.3, 9.5, 10.8 and 10.11 hereof) and the Bank hereby directs the City to make said payments directly to the Trustee. The City herewith assents to such assignment and will make payments under this Loan Agreement and the Note directly to the Trustee without defense or setoff by reason of any dispute between the City and the Trustee. The Bank and the City hereby agree that the Trustee is fully authorized and directed to enforce all rights and remedies hereunder (except certain rights retained by the Bank) as provided for under the terms and conditions of this Loan Agreement and the Indenture.

**SECTION 4.7. City's Remedies.** Nothing contained in this Article shall be construed to release the Bank from the performance of any of its agreements herein, and if the Bank should fail to perform any such agreements, the City may institute such action against the Bank as the City may deem necessary to compel the performance so long as such action for specific performance shall not violate the City's agreements in Section 4.5 or diminish or delay the amounts required to be paid by the City pursuant to Sections 4.2 and 4.4 of this Loan Agreement. The City acknowledges however and agrees that any pecuniary obligation of the Bank created by or arising out of this Loan Agreement shall be payable solely out of the proceeds derived from this Loan Agreement or the sale of the Series 2022 Bonds.

**SECTION 4.8. Agreement Withholding City Monies to Satisfy Delinquent Payments.** As provided for in the Bank Act, the City and the Bank have entered into and the Trustee has accepted the Tax Intercept Agreement, whereby the City has covenanted, agreed and authorized the Mississippi Department of Revenue or any other State agency, department or commission created pursuant to State law to (a) withhold all or any part of any monies which the City is entitled to receive from time to time pursuant to any law and which is or may be in possession of the Mississippi Department of Revenue or any other State agency, department or commission created pursuant to State law (the "**Tax Monies**") and (b) pay same over to the Trustee (as assignee of the Bank) to satisfy any delinquent payment under Section 4.2 and 4.4 of this Loan Agreement (the "**Delinquent Payment**").

If on the fifteenth (15<sup>th</sup>) day of April and October of each year, beginning October 15, 2022, the Trustee has not received sufficient City Revenues pursuant to Section 4.2(a) of this Loan Agreement to timely make the payments under Sections 4.2 and/or 4.4 hereof, the Bank has authorized and directed the Trustee under the Tax Intercept Agreement to file the Tax Intercept Agreement and a statement of deficiency setting forth the amount of any Delinquent Payment with the Mississippi Department of Revenue or any other State agency, department or commission created pursuant to State law, thereby directing the Mississippi Department of Revenue or any other State agency, department or commission created pursuant to State law to pay any Tax Monies directly to the Trustee on behalf of the Bank to satisfy any Delinquent Payment, all as permitted under the Bank Act. In any event if the City fails to make timely payments as provided in Section 4.2 and 4.4 hereof, the Trustee is further directed in the Indenture and the Tax Intercept Agreement to file the Tax Intercept Agreement with the Mississippi Department of Revenue or any other State agency, department or commission created pursuant to State law and take further action to recover Tax Monies under the Tax Intercept Agreement. To the extent the Bank Act requires the Bank rather than the Trustee to file the Tax Intercept Agreement with the Mississippi Department of Revenue or other state agency, department or commission created pursuant to State law, the Bank shall take all action required under the Bank Act to recover such Tax Monies for application under the Tax Intercept Agreement Indenture to pay amounts due on the Series 2022 Bonds. The Trustee is hereby directed to pay any Tax Monies into the General Account of the General Fund to be applied in accordance with Section 6.05 of the Indenture.

**SECTION 4.9. Respecting the Indenture.** The City hereby acknowledges notice of, and hereby consents to (a) the assignment provisions contained in the Granting Clauses of the Indenture, and (b) all terms and conditions set forth in the Indenture, and, intending to be legally bound, hereby agrees with the Bank and the Trustee to perform, accept and be bound by any terms and conditions expressly applicable to the City set forth in the Indenture.



## ARTICLE V.

### CAPITAL IMPROVEMENTS FUND

**SECTION 5.1. Establishment of Capital Improvements Fund.** The Capital Improvements Fund is hereby created and established as funds under this Loan Agreement. The amounts in the Capital Improvements Fund shall be held by the Trustee. All monies or securities received by the Trustee pursuant to this Loan Agreement shall be held and applied only in accordance with the provisions hereof.

#### **SECTION 5.2. Application of Monies Held in Capital Improvements Fund.**

(a) There shall be deposited into the Capital Improvements Fund, the amount required to be so deposited by the provisions of Section 3.1 hereof. There may also be paid into the Capital Improvements Fund, at the option of the City, any monies received by the City or the Trustee from any other source, unless required to be otherwise applied as provided by this Loan Agreement. All earnings, if any, on the investment of monies in the Capital Improvements Fund shall be accumulated therein for the purposes set out in this Section 5.2.

(b) Except as otherwise provided in this Loan Agreement and the Indenture, amounts in the Capital Improvements Fund shall be applied only to pay the costs of the City Project.

(c) To the extent that amounts available to make payments on the Note are insufficient or unavailable therefor, or upon the occurrence of any Event of Default, amounts on deposit in the Capital Improvements Fund shall be applied to pay the Note when due.

**SECTION 5.3. Investment of Monies Held by Any Fiduciary.** Monies in the Capital Improvements Fund, if any, shall be invested to the fullest extent possible in Investment Securities, provided that the maturity date or the date on which such Investment Securities may be redeemed at the option of the holder thereof shall coincide as nearly as practicable with (but in no event later than) the date or dates on which monies in the Capital Improvements Fund for which the investments were made will be required for the purpose thereof.

Any Fiduciary may make any investment permitted by this Section 5.3 through its own investment department.

The income or interest earned by or increment to the Capital Improvements Fund due to the investment thereof shall be retained therein and applied toward the purposes set forth in Section 5.2 hereof.

The City or any Fiduciary shall sell at the best price obtainable, or present for redemption, any obligation purchased by it as an investment whenever it shall be necessary in order to provide monies to meet any payment or transfer from the Capital Improvements Fund.

**SECTION 5.4. Liability of Fiduciaries for Investments.** A Fiduciary shall not be liable or responsible for the making of any investment authorized by the provisions of this Article V in the manner provided in this Article V or for any loss resulting from any such investment so made, except for its own negligence or willful misconduct.

## ARTICLE VI.

### COVENANTS

**SECTION 6.1. Affirmative Covenants of the City.** Until the termination date and thereafter until no amount is due or owing to the Bank hereunder, the City shall comply with each of the

covenants, undertakings and agreements set forth in this Article VI unless the Trustee and the Bank shall otherwise consent in writing which consent may be withheld in their sole and absolute discretion.

**SECTION 6.2. Covenants in Bond Documents.** The City shall keep and perform all covenants and agreements set forth in the Indenture and each and every other Bond Document to which it is a party, which covenants are incorporated herein by reference as if fully set forth herein.

**SECTION 6.3. Conduct of Government Operations.** The City shall maintain its existence as a political subdivision and “local governmental unit” within the meaning of the Bank Act organized and validly existing under the Constitution and laws of the State. The City will comply with all applicable laws and regulations of any federal, state or local governmental authority, except for such laws and regulations, the violation of which would not, in the aggregate, have a material adverse effect on the City’s financial condition.

**SECTION 6.4. Payment of Indebtedness.** The City shall pay any indebtedness for which it is liable when due and shall not permit any default to occur under any document evidencing or securing any such indebtedness.

**SECTION 6.5. Performance of Obligations.** The City shall observe and perform its obligations under this Loan Agreement, the Note, the other Bond Documents to which it is a party and the other agreements relating to the transaction contemplated hereby to which it is a party or by which it is bound and shall not suffer or permit any default or Event of Default to exist hereunder or an “event of default” thereunder. The City shall use its good faith efforts to cause the other parties to the other Bond Documents to deliver notices and documents required to be delivered to the Bank and cause such parties to observe and perform those obligations and covenants contained in the Bond Documents required to be observed and performed thereunder.

**SECTION 6.6. Annual Budget and Financial Reporting.** The City shall before the beginning of any Fiscal Year, prepare and file with the Trustee, if requested, its Annual Budget showing estimated operating expenses, debt service and City Revenues for such Fiscal Year. Such Annual Budget may set forth such additional material as the City may determine and may be amended during the Fiscal Year if determined necessary by the City or as a result of unforeseen circumstances. The City shall provide Lender with its Comprehensive Annual Financial Report within 365 days of the close of each Fiscal Year. Additionally, the City agrees to provide Lender with such other financial information as the Lender may reasonably request, including but not limited to its annual budget for any prior or current fiscal year or any subsequent fiscal year.

**SECTION 6.7. Environmental Indemnity.** Without limitation on any other provision hereof or in the other Bond Documents, the City, to the extent permitted by law, hereby agrees to indemnify and hold the Trustee and the Bank harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any kind whatsoever (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any of the following (collectively, “**Environmental Laws**”): the Comprehensive Environmental Response, Compensation, and Liability Act, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, now or hereafter in force, regulating, relating to, or imposing liability or standards of conduct concerning any hazardous material) paid, incurred, suffered by or asserted against the Bank and/or the Trustee as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of, the City: (a) the presence of any hazardous material on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release of any hazardous material at (1) the City Project, (2) any other real property in which the City holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust the beneficial interest in which is owned, in whole or in part, by the City) or (3) an off-site location if the liability or obligation relates to the prior generation or use of hazardous material at the City Project or (b) any liens against the City Project, or any part of either of them, permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligations of the City or under any Environmental Laws, or (c) any actual or asserted liability or obligations of the Bank under any Environmental Law relating to the City Project or the City’s, or

any of the predecessors' possession, use or activities at or relating to the City Project. Notwithstanding any other provision of this Loan Agreement, the covenants, indemnities and obligations provided for in this paragraph shall be continuing and shall survive the payment, performance, satisfaction, discharge, cancellation, termination and release of the other obligations of the City under this Loan Agreement.

Without limitation on any other provision hereof, the City shall use and maintain the City Project or cause the City Project to be used and maintained in accordance and compliance with all applicable Environmental Laws.



## ARTICLE VII.

### CITY'S COVENANTS

**SECTION 7.1. Covenant for the Benefit of the Trustee and the Bondholders.** The City recognizes the authority of the Bank to assign its interest in and pledge monies receivable under this Loan Agreement (other than certain payments required to be made to the Bank under Sections 4.4, 6.7, 7.3, 9.5, 10.8 and 10.11) to the Trustee as security for the payment of the principal of and interest and redemption premium, if any, on the Series 2022 Bonds, and the payment of all fees and expenses of the Trustee; and hereby agrees to be bound by, and joins with the Bank in the grant of a security interest to the Trustee in any rights and interest the City may have in Tax Monies and sums held in the Funds described in Article VI of the Indenture pursuant to the terms and conditions of the Indenture, all to secure payment of the Series 2022 Bonds. Each of the terms and provisions of this Loan Agreement is a covenant for the use and benefit of the Trustee and the Holders of the Series 2022 Bonds, so long as any thereof shall remain Outstanding; but upon payment in full of the Series 2022 Bonds in accordance with Article IX of the Indenture and of all fees and charges of the Trustee and any paying agent, all references in this Loan Agreement to the Series 2022 Bonds, the Holders thereof and the Trustee shall be ineffective, and neither the Trustee nor the Bondholders shall thereafter have any rights hereunder, save and except those that shall have theretofore vested or that arise from provisions hereunder which survive termination of this Loan Agreement.

**SECTION 7.2. Certificate of Compliance and Other Reports.** The City will at the request of the Trustee, and at the City's expense, furnish to the Trustee and the Bank at such times and in such form as the Trustee may reasonably require a copy of reports containing such information as is necessary to comply with any lawful reporting or continuing registration requirements imposed by any agency of the State under the Bank Act, the State's Blue Sky Laws or any other applicable State law as it now exists or may hereafter be amended or any agency of any other state in which the Series 2022 Bonds have been sold or placed, or such information as necessary to comply with federal securities law.

**SECTION 7.3. Indemnification.** The City, will, to the fullest extent permitted by law, protect, indemnify and save the Bank, the Lender and Trustee and their elected and appointed officials, board members, officers, agents, and employees and any person who controls the Bank or Trustee within the meaning of the Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses of the Bank), taxes, causes of action, suits, claims, demands and judgments of any nature arising from:

(a) violation of any agreement, provision or condition of this Loan Agreement, the Series 2022 Bonds or the Indenture except a violation by the Bank;

(b) any statement or information relating to the expenditure of the proceeds of the Series 2022 Bonds contained in the Tax Certificate or similar document furnished by the City to the Bank which, at the time made, is misleading, untrue or incorrect in any material respect; and

(c) any untrue statement or alleged untrue statement of a material fact contained in any offering material relating to the sale, placement or remarketing of the Series 2022 Bonds (as from time to time amended or supplemented) or arising out of or based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary in order to make the statements therein not misleading, or failure to properly register or otherwise qualify the sale or placement of the Series 2022 Bonds or failure to comply with any licensing or other law or regulation which would affect the manner whereby or to whom the Series 2022 Bonds could be sold; and

(d) any audit or investigation by the Internal Revenue Service regarding or affecting the Series 2022 Bonds.

Promptly after receipt by the Bank or any such other indemnified person, as the case may be, of notice of the commencement of any action with respect to which indemnity may be sought against the City

under this Section, such person will notify the City in writing of the commencement thereof, and, subject to the provisions hereinafter stated, the City shall assume the defense of such action (including the employment of counsel, who shall be counsel reasonably satisfactory to the Bank, or such other person as the case may be, and the payment of expenses). Insofar as such action shall relate to any alleged liability with respect to which indemnity may be sought against the City, the Bank or any such other indemnified person shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall not be at the expense of the City unless the employment of such Counsel has been specifically authorized by the City. The City shall not be liable to indemnify any person for any settlement of any such action effected without its consent.

The provisions of this Section 7.3 shall survive the payment and discharge of the Series 2022 Bonds.

#### **SECTION 7.4. Tax Covenants.**

(a) In order to maintain the exclusion of interest on the Series 2022 Bonds from gross income of the holders thereof for federal income tax purposes, and for no other purpose, the City covenants to comply with the applicable requirements of the Code. In furtherance of the covenant contained in the preceding sentence, the City agrees to comply with the Tax Certificate executed by the City on the date of the issuance and delivery of the Series 2022 Bonds, as such Tax Certificate may be amended from time to time.

(b) The City covenants and agrees with the Trustee and the Bondholders that the City shall not take any action or omit to take any action, which action or omission, if reasonably expected on the date of initial issuance and delivery of the Series 2022 Bonds, would cause the Series 2022 Bonds to be “private activity bonds” or “arbitrage bonds” within the meaning of Sections 141(a) and 148(a), respectively, of the Code, or any successor provisions.

(c) Upon the authentication and delivery of the Series 2022 Bonds, the City shall furnish to the Trustee certificates of the Authorized City Representative of the City to the effect that, on the basis of the facts, estimates and circumstances in existence on the date of such authentication and delivery, it is not expected that the proceeds of the Series 2022 Bonds will be used in a manner that would cause such Series 2022 Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code and Treasury Regulations thereunder, and in such certificates the City shall set forth such facts and circumstances which may be in brief and summary terms, and shall state that to the best of the knowledge and belief of such Authorized City Representative, there are no other facts or circumstances that would materially change the expectations expressed in such certificate.

(d) The City shall operate the City Project in such a manner as is necessary in order to maintain the exclusion of interest on the Series 2022 Bonds from gross income of the Holders thereof for federal income tax purposes under Section 103(a) of the Code.

(e) Notwithstanding any other provisions of this Loan Agreement to the contrary, so long as necessary in order to maintain the exclusion of interest on the Series 2022 Bonds from gross income of the Holders thereof for federal income tax purposes under Section 103(a) of the Code, the covenants contained in this Section 7.4 shall survive the payment of the Series 2022 Bonds and the interest thereon, including any payment or defeasance thereof pursuant to Articles IV and IX of the Indenture.

### **ARTICLE VIII.**

#### **CITY'S OPTIONS**

##### **SECTION 8.1. Prepayment of the Note and Termination of the Loan Agreement.**

(a) Unless an Event of Default has occurred and is continuing, the City shall have the option to direct the Trustee to call for redemption prior to maturity the Outstanding Series 2022 Bonds, in whole

or in part, but only to the extent as provided in and pursuant to the parameters of Section 4.01 of the Indenture. The Series 2022 Bonds to be redeemed shall be redeemed at a price equal to 100% of their principal amount plus accrued interest as set forth in Section 4.01 of the Indenture upon not less than thirty (30) but no more than forty-five (45) days prior written notice. The City acknowledges that the Series 2022 Bonds are also subject to mandatory sinking fund redemption to the extent provided in the Indenture. In the event the Series 2022 Bonds are called for redemption in whole or in part under the Indenture, a Basic Payment shall be made to the Trustee by the City in the amount of principal, premium, if any, plus accrued interest and all other fees due hereunder and under the Indenture to effectuate said redemption.

(b) If, after the City exercises its option to redeem all Series 2022 Bonds, no Series 2022 Bonds remain Outstanding, the Indenture is discharged, and the City has satisfied all of its obligations hereunder and under the Note, the Trustee and the Bank shall execute and deliver to the City such instruments as the City reasonably determines are necessary to terminate this Loan Agreement. All further obligations of the City hereunder, except as set forth in Sections 6.7, 7.3, 7.4, 9.5, 10.8 and 10.11, shall thereupon terminate.

(c) The City shall pay to the Trustee at least five (5) days prior to the Discharge Date, an amount equal to the Trustee's and any paying agent's fees and expenses owed under the Indenture, accrued and to accrue until final payment and redemption of the Series 2022 Bonds and all other advances, fees, costs and expenses reasonably incurred and to be incurred on or before the Discharge Date by the Trustee and any paying agent under the Indenture and by the Bank under this Loan Agreement.

(d) On the Discharge Date, a closing shall be held at the principal office of the Trustee, or any other office mutually agreed upon. Upon termination of this Loan Agreement as provided for in this Section 8.1, the Bank will cause the Trustee to deliver a release of the Indenture and the estate created by this Loan Agreement and the Note, and all further obligations of the City hereunder, except under Sections 6.7, 7.3, 7.4, 9.5, 10.8 and 10.11 shall thereupon terminate; provided, however, that the City shall also remain obligated to pay or reimburse the Bank and Trustee for the payment of all other fees, costs and expenses unaccounted for in the sum paid in accordance with subsection (c) above and reasonably incurred before or subsequent to such closing in connection with the Series 2022 Bonds.

**SECTION 8.2. Direction of Investments.** Except during the continuance of an Event of Default, the City shall have the right during the Term of this Loan Agreement to direct the Trustee to invest or reinvest all monies held for the credit of the Funds established by Article VI of the Indenture and held by the Trustee, in Investment Securities, subject, however, to the further conditions of Article VIII of the Indenture.

## **ARTICLE IX.**

### **EVENTS OF DEFAULT AND REMEDIES**

**SECTION 9.1. Events of Default.** Any one or more of the following events is an Event of Default under this Loan Agreement, and the term "Event of Default," wherever used herein, means any one of the following events, whatever the reason for such default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body:

- (a) if the City shall fail to pay any Basic Payments due under this Loan Agreement;
- (b) if the City shall fail to pay any Additional Charges on or before the date that the payment is due and shall continue to be in arrears for fifteen (15) days after the due date thereof;
- (c) if the City shall fail to observe and perform or shall breach any other covenant, condition or agreement on its part under this Loan Agreement or any other Bond Document to which it is a party for

a period of fifteen (15) days after mailing of a notice to it by the Bank or the Trustee, specifying such default or breach and requesting that it be remedied; and provided that if the failure stated in the notice can be cured, but cannot be corrected within fifteen (15) days, the Bank and Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the City within said fifteen (15) days and is diligently pursued, for an additional thirty (30) days;

(d) if the City shall be dissolved or is no longer a “local governmental unit” within the meaning of the Bank Act;

(e) if any representation or warranty made by the City herein, or by an officer or representative of the City in any document or certificate furnished the Trustee or the Bank in connection herewith or therewith or pursuant hereto or thereto, shall prove at any time to be, in any material respect, incorrect or misleading as of the date made;

(f) the occurrence of an “event of default” under any other Bond Document which is not cured within the time period provided therefor, if any; and/or

(g) if there is a petition filed, declaration or proceeding in bankruptcy or other insolvency, reorganization, arrangement, moratorium, readjustment of debt, or liquidation regarding the City; and/or

(h) the State or the City is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a liquidator or trustee of the State or the City or any of its property is appointed by court order or takes possession of such property and such order remains in effect or such possession continues for more than sixty (60) days.

## **SECTION 9.2. Remedies.**

(a) Whenever any Event of Default specified in Section 9.1(a), (d), (g) or (h) above shall have happened and be continuing, the Trustee, shall declare all the Basic Payments payable for the remainder of the Term of this Loan Agreement (an amount equal to that necessary to pay in full the Note and the accrued and unpaid interest thereon assuming acceleration of the Series 2022 Bonds under the Indenture and to pay all other indebtedness thereunder) to be immediately due and payable whereupon the same shall become immediately due and payable by the City to the Trustee but only if the acceleration of payment of Series 2022 Bonds has been declared by the Trustee under Section 10.02 of the Indenture.

(b) Whenever any Event of Default shall have occurred and be continuing any one or more of the following remedial steps may also be taken to the extent permitted by law:

(1) the Trustee or the Bank may take whatever action at law or in equity may appear necessary or appropriate to collect all sums then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement, covenant, representation or warranty of the City, under this Loan Agreement, the Note or other Bond Document; or to otherwise compensate the Bank, the Trustee or the Bondholders for any damages on account of such Event of Default, including but not limited to the Tax Intercept Agreement and to collect moneys including Tax Monies thereunder and under the Bank Act; and

(2) the Bank with prior notice to the Trustee (without the prior written consent of the Trustee if the Trustee is not enforcing the Bank’s right in a manner to protect the Bank or is otherwise taking action that brings adverse consequences to the Bank) may take whatever action at law or in equity may appear necessary or appropriate to enforce its rights of indemnification under Section 7.3 hereof and to collect all sums then due and thereafter to become due to the Bank under Section 4.4, 6.7, 7.3, 9.5, 10.8 and 10.11 of this Loan Agreement. Notwithstanding

the foregoing, the Bank is not precluded from exercising any of its rights reserved to it as set forth in this Section, even if the Trustee is exercising the rights of the Bank hereunder; and

(3) The Trustee or Lender may require the City to transfer all amounts remaining in the Capital Improvements Fund to the Trustee for application to pay principal, premium if any and interest on the Series 2022 Bonds.

**SECTION 9.3. Disposition of Funds.** Any amounts collected pursuant to action taken under Section 9.2 above (other than sums collected for the Bank on account of its rights to indemnification and certain direct payments to be made to the Bank under Sections 4.4, 7.3 and 9.5 hereof) shall be applied in accordance with the provisions of the Indenture.

**SECTION 9.4. Nonexclusive Remedies.** No remedy herein conferred upon or reserved to the Bank or Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or 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 Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bank (or the Trustee) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or be required by law.

**SECTION 9.5. Attorney's Fees and Expenses.** If an Event of Default shall exist under this Loan Agreement and the Bank or the Trustee should employ attorneys or incur other expenses for the collection of any amounts due hereunder, or the enforcement of performance of any obligation or agreement on the part of the City, the City will upon demand pay to the Bank or the Trustee the reasonable fees of such attorneys and such other expenses so incurred.

**SECTION 9.6. Effect of Waiver.** In the event any agreement contained in this Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**SECTION 9.7. Waiver of Stay or Extension.** The City covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any appraisal, valuation, stay, or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Loan Agreement and the City (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Bank or the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**SECTION 9.8. Bank May File Proofs of Claim.** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the State, City or the City Project, the Tax Monies, City Revenues, the Lender, Trustee or the Bank with the prior consent of the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Bank and the Trustee (for themselves and on behalf of Bondholders) (including any claim for the reasonable compensation, expenses, disbursements and advances of the Bank and Trustee, their agents and counsel) allowed in such judicial proceeding, and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same.

**SECTION 9.9. Restoration of Positions.** If the Bank or the Trustee have instituted any proceeding to enforce any right or remedy under this Loan Agreement or the Note or any other Bond Document, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Bank or the Trustee, then and in every such case the City and the Bank shall, subject to any determination in the proceeding, be restored to the positions they held prior to commencement of such proceedings, and thereafter all rights and remedies of the Bank and the Trustee shall continue as though no such proceeding had been instituted.

**SECTION 9.10. Suits to Protect the City Project.** If the City shall fail to do so after thirty (30) days prior written notice from the Bank or the Trustee, the Bank shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the City Project or any portion thereof, by any acts which may be unlawful or in violation of this Loan Agreement, and such suits and proceedings as the Bank may deem expedient to protect its interests in the City Project or any portion thereof, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, such enactment, rule or order would impair or adversely affect the City Project or be prejudicial to the interests of the Bondholders.

**SECTION 9.11. Performance by Third Parties.** The Bank may permit third parties to perform any and all acts or take such action as may be necessary for and on behalf of the City to cure any Event of Default hereunder. The acceptance by the Bank or the Trustee of any such performance by third parties shall not in any way diminish or absolve the City of primary liability hereunder.

**SECTION 9.12. Exercise of the Bank's Remedies by Trustee.** Whenever any Event of Default shall have happened and be subsisting the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the Bank under this Article IX.

## ARTICLE X.

### GENERAL

**SECTION 10.1. Amounts Remaining in Funds.** Except during the continuance of an Event of Default, any amounts remaining in the Funds created under Article VI of the Indenture and held by the Trustee, upon expiration or earlier termination of this Loan Agreement, as provided herein, and after adequate provision has been made for payment in full of the Series 2022 Bonds, in accordance with Article IX of the Indenture, any Additional Charges payable to the Trustee and the Bank, including paying agent's fees and expenses, and all other amounts required to be paid under this Loan Agreement, the Indenture and the other Bond Documents, shall forthwith be paid to the City by the Trustee except as provided in Section 3.08 of the Indenture.

**SECTION 10.2. Notices.** All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given five (5) days following mailing when mailed by registered or certified mail or commercially expedited delivery service, with proper address as indicated below. The Bank, the City and the Trustee may, by written notice given by each of them to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as 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 Bank: Mississippi Development Bank  
723 Riverside Drive, Suite 300  
Jackson, MS 39202  
Attention: Executive Director

To the City: City of Pascagoula, Mississippi  
109 South Front Street  
Pascagoula, MS 38821  
Attention: City Clerk

To the Trustee:

To the Lender:

**SECTION 10.3. Binding Effect.** This Loan Agreement shall inure to the benefit of and shall be binding upon the Bank and the City and their respective successors and assigns.

**SECTION 10.4. Severability.** In the event any provisions of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 10.5. Amendments, Changes, and Modifications.** Except as otherwise provided in this Loan Agreement or in the Indenture, subsequent to the issuance of the Series 2022 Bonds and before the lien of the Indenture is satisfied and discharged in accordance with its terms, this Loan Agreement and the other Bond Documents may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee, the City and the Bank, except with respect to additional Parity Indebtedness issued solely to refund the Note.

**SECTION 10.6. Execution Counterparts.**

This Loan Agreement 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 10.7. Required Approvals.** Consents and approvals required by this Loan Agreement to be obtained from the City, the Bank or the Trustee shall be in writing.

**SECTION 10.8. Limitation on the Bank's Liability.** It is understood and agreed by the City and the Holders that no covenant, provision or agreement of the Bank herein or in the Series 2022 Bonds or in any other document executed by the Bank in connection with the issuance, sale and delivery of the Series 2022 Bonds, or any obligation herein or therein imposed upon the Bank or breach thereof, shall give rise to a pecuniary liability of the Bank or a charge against its general credit or shall obligate the Bank financially in any way except with respect to this Loan Agreement and the Note and the application of revenues therefrom and the proceeds of the Series 2022 Bonds. No failure of the Bank, unless wrongful, to comply with any term, condition, covenant or agreement herein or therein shall subject the Bank to liability for any claim for damages, costs or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Loan Agreement and the Note or revenues therefrom or proceeds of the Series 2022 Bonds. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit or general funds of the Bank. In making the agreements, provisions and covenants set forth herein, the Bank has not obligated itself except with respect to this Loan Agreement and the application of revenues hereunder as hereinabove provided. The Series 2022 Bonds constitute special obligations of the Bank, payable solely from City Revenues pursuant to this Loan Agreement and the Indenture and Tax Monies pursuant to the Tax Intercept Agreement and the Bank Act, and do not now and shall never constitute an indebtedness or a loan of the credit of the Bank, the State or any political subdivision thereof or a charge against general taxing powers within the meaning of any constitutional or statutory provision whatsoever. It is further understood and agreed by the City and the Holders that the Bank shall incur no pecuniary liability hereunder and shall not be liable for any expenses related hereto. If, notwithstanding the provisions of this Section, the Bank incurs any expense, or suffers any losses, claims or damages or incurs any liabilities, the City, to the extent allowed by law, will indemnify and hold harmless the Bank from the same and will reimburse the Bank for any legal or other expenses incurred by the Bank in relation thereto, and this covenant to indemnify, hold harmless and reimburse the Bank shall survive delivery of and payment for the Series 2022 Bonds. All references to the Bank under this Section 10.8 shall include its employees, directors, attorneys and/or agents as applicable.

**SECTION 10.9. Representations of City.** All representations made in this Loan Agreement by the City are based on the City's independent investigation of the facts and law, and accordingly no such representations are made in reliance upon any representations made or legal advice given by the Bank, Bond Counsel, or any of its appointed or elected officials, agents, officers or employees.

**SECTION 10.10. Survivorship of Obligations.** All obligations of the City under Sections 4.4, 6.7, 7.3, 7.4, 10.8 and 10.11 hereof shall survive payment of the Series 2022 Bonds or earlier termination of this Loan Agreement.

**SECTION 10.11. Administrative Fees, Attorney's Fees and Costs.** The City shall reimburse the Bank, upon demand, for all costs and expenses, including without limitation attorneys' fees, paid or incurred by the Bank in connection with (a) the discussion, negotiation, preparation, approval, execution and delivery of the Series 2022 Bonds, the Indenture, this Loan Agreement, the Note, the Tax Intercept Agreement and the documents and instruments related hereto or thereto; (b) any amendments or modifications to any of the foregoing documents, instruments or agreements and the discussion, negotiation, preparation, approval, execution and delivery of any and all documents necessary or desirable to effect such amendments or modifications; (c) the servicing and administration of the Loan during the term hereof or thereafter; and (d) the enforcement by the Bank during the term hereof or thereafter of any of the rights or remedies of the Bank hereunder or under the foregoing documents, or any document, instrument or agreement related hereto or thereto, including, without limitation, costs and expenses of collection in the Event of Default, whether or not suit is filed with respect thereto.



**SECTION 10.12. Release.** The City hereby acknowledges and agrees that the Bank shall not be liable to the City, and, to the extent allowed by law, hereby releases and discharges the Bank from any liability, for any and all losses, costs, expenses (including attorneys' fees), damages, judgments, claims and causes of action, paid, incurred or sustained by the City as a result of or relating to any action, or failure or refusal to act, on the part of the Bank, the Trustee or any other party with respect to the City Project, the Series 2022 Bonds, the Indenture, this Loan Agreement, the Note, the Tax Intercept Agreement, or the documents and transactions related hereto or thereto or contemplated hereby or thereby, including, without limitation, the exercise by the Trustee or any third party of any of its rights or remedies pursuant to any of such documents.

**SECTION 10.13. Choice of Law; Venue.** This Loan Agreement has been delivered in Jackson, Mississippi. The provisions of this Loan Agreement and all rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State and to the extent they preempt such laws, the laws of the United States of America.

**IN WITNESS WHEREOF**, the Bank and the City have caused this Loan Agreement to be executed by their duly authorized officers.

(SEAL)

**MISSISSIPPI DEVELOPMENT BANK**

By \_\_\_\_\_  
Executive Director

ATTEST:

By \_\_\_\_\_  
Secretary

(SEAL)

**CITY OF PASCAGOULA, MISSISSIPPI**

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

ATTEST:

By \_\_\_\_\_  
City Clerk

**ACKNOWLEDGED AND ACCEPTED BY:**

\_\_\_\_\_, as Trustee

By \_\_\_\_\_  
Authorized Signatory

EXHIBIT A

FORM OF NOTE

\$ \_\_\_\_\_

PROMISSORY NOTE  
(PASCAGOULA, MISSISSIPPI CAPITAL IMPROVEMENTS PROJECT )

Dated May \_\_, 2022

City of Pascagoula, Mississippi (the "**City**"), a political subdivision organized and validly existing under the Constitution and laws of the State of Mississippi (the "**State**"), for value received, hereby promises to pay, in immediately available funds, to the order of the Mississippi Development Bank (the "**Bank**") or its assigns, the aggregate principal sum equal to the outstanding principal amount of the Series 2022 Bonds (as hereinafter defined) outstanding up to a maximum principal amount of \$ \_\_\_\_\_ together with interest on the unpaid principal balance thereof from the date hereof until fully and finally paid, premium, if any, together with all taxes levied or assessed on this Note or the debt evidenced hereby against the holder hereof and all other amounts payable by the City under the Loan Agreement (as hereinafter defined). This Note shall bear interest at the same interest rates as the interest rates on the Series 2022 Bonds.

This Note has been executed under and pursuant to a Loan Agreement, dated, May \_\_, 2022, between the Bank and the City (as supplemented and amended, the "**Loan Agreement**") which Loan Agreement is incorporated herein in its entirety by reference. This Note is issued to evidence the obligation of the City under the Loan Agreement to repay the loan made by the Bank to the City from the proceeds of its \$ \_\_\_\_\_ Special Obligation Bonds, Series 2022 (Pascagoula, Mississippi Capital Improvements Project), dated as of their date of delivery (the "**Series 2022 Bonds**"), together with interest thereon at the interest rate or rates as defined and set forth in the Indenture (as hereinafter defined), premium, if any, and all other amounts, fees, penalties, premiums, adjustments, expenses, counsel fees and other payments of any kind required to be paid by the City under the Loan Agreement. The Loan Agreement includes provisions permitting the City, at its election, to prepay this Note, in whole or in part, all as more particularly described in the Indenture and the Loan Agreement. The Loan Agreement includes provisions permitting the Trustee (as hereinafter defined), at the direction of the Bondholders, to require mandatory prepayment of this Note at certain times and under certain circumstances, all as set forth in the Indenture. In the event that the terms of this Note conflict with the terms of the Indenture or the Loan Agreement, the terms of the Indenture or the Loan Agreement shall control.

If the City shall fail to pay on the due date therefor, whether by acceleration or otherwise, any principal, premium, if any, or interest owing hereunder, then interest shall accrue on such unpaid amounts from the date due until and including the date on which such amounts are paid in full.

The Loan Agreement and this Note have been assigned to \_\_\_\_\_, \_\_\_\_\_, Mississippi, as Trustee (the "**Trustee**") pursuant to an Indenture of Trust, dated May \_\_, 2022, by and between the Bank and the Trustee (as supplemented and amended, the "**Indenture**"). Such assignment is made as security for the payment of the Series 2022 Bonds issued by the Bank pursuant to the Indenture and is subject to the reservation of certain unassigned rights of the Bank under the Loan Agreement.

As provided in the Loan Agreement and subject to the provisions thereof, payments hereon are to be made at the principal office of the Trustee as shown in the Loan Agreement in an amount which, together with other monies available therefor pursuant to the Indenture, will equal the amount payable as principal of, premium, if any, and interest on the Series 2022 Bonds outstanding on such due date.

The City shall make payments on this Note on the dates and in the amounts specified herein and in the Loan Agreement and in addition shall make such other payments as are required pursuant to the

Loan Agreement, the Indenture and the Series 2022 Bonds. Upon the occurrence of an “event of default”, as defined in the Indenture or the Loan Agreement, the principal of, premium, if any, and interest on this Note may be declared immediately due and payable as provided in the Loan Agreement. Upon any such declaration the City shall pay all costs, disbursements, expenses and reasonable counsel fees of the Bank and the Trustee in seeking to enforce their rights under the Loan Agreement and this Note.

The City waives diligence, demand, presentment for payment, notice of nonpayment, protest and notice of protest, notice of any renewals or extension of this Note, and all rights under any statute of limitations. Any delay on the part of the Bank or the Trustee in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent or continuing default.

All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by registered or certified mail or commercially expedited delivery service, with proper address as indicated below. The Bank, the City and the Trustee may, by written notice given by each of them to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Note. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the Bank: Mississippi Development Bank  
735 Riverside Drive, Suite 300  
Jackson, MS 39202  
Attention: Executive Director

To the City: City of Pascagoula, Mississippi

To the Trustee: \_\_\_\_\_

This Note has been delivered in Jackson, Mississippi. The provisions of this Note and all rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State and to the extent they preempt such laws, the laws of the United States.

The City agrees that Trustee shall have the right to proceed against the City or its property in a court in any location to enable the Trustee to realize on such property, or to enforce a judgment or other court order entered in favor of Trustee. The City, to the extent allowed by law, agrees that it shall not assert any permissive counterclaims in any proceeding brought in accordance with this provision by the Trustee or the Bank to realize on such property, or to enforce a judgment or other court order in favor of Trustee and waives any objection that it may have to the location of the court in which the Trustee has commenced a proceeding described in this paragraph.

**IN WITNESS WHEREOF**, the undersigned has caused this Note to be executed in its name and, if applicable, its corporate seal to be hereunto affixed and attested to by its duly authorized officers all as of the day and year first above written.

(SEAL)

**CITY OF PASCAGOULA, MISSISSIPPI**

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

ATTEST:

By \_\_\_\_\_  
City Clerk

**ASSIGNMENT OF NOTE**

**FOR VALUE RECEIVED**, the Mississippi Development Bank hereby assigns and transfers, without recourse, this Note to U. S. Bank National Association, \_\_\_\_\_, Mississippi, as Trustee under the Indenture herein mentioned, provided, however, that the rights pledged and assigned hereunder do not include unassigned rights reserved by the Mississippi Development Bank in Sections 4.4, 6.7, 7.3, 9.5, 10.8 or 10.11 of the Loan Agreement, dated May \_\_, 2022, by and between the Mississippi Development Bank and City of Pascagoula, Mississippi.

Date: May \_\_, 2022

(SEAL)

**MISSISSIPPI DEVELOPMENT BANK**

By \_\_\_\_\_  
Executive Director