



REFUNDING TRUST AGREEMENT

This Refunding Trust Agreement (the “Agreement”), dated as of June __, 2022, by and between the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (“EDGE” or “Issuer”) and Regions Bank, Nashville, Tennessee, as refunding trustee of the Issuer (the “Refunding Trustee”), in connection with the purchase of Federal Securities (hereinafter defined) and payment of the Refunded Bonds (defined herein).

W I T N E S S E T H:

The Memphis and Shelby County Port Commission (the “Port Commission”), pursuant to resolutions adopted by the Port Commission, the Council of the City of Memphis, Tennessee (the “City Council”) and the Board of Commissioners of the County of Shelby, Tennessee (the “County Commission”), have heretofore issued its Memphis and Shelby County Port Commission Development Revenue Bonds, Series 2011 currently outstanding in an aggregate principal amount of [\$_____] (the “Series 2011 Bonds”) of which [\$_____] is being refunded (the “Refunded Bonds”). The Issuer, pursuant to the Resolution (as hereinafter defined) is currently refunding all of the Refunded Bonds, as identified in **Exhibit I** attached hereto;

Concurrently with the execution and delivery hereof, the Issuer, pursuant to a resolution adopted by the Issuer on May 18, 2022, and approved by the City Council on _____, 2022 and the County Commission on _____, 2022 (collectively, the “Resolution”), is issuing [\$_____] aggregate principal amount of its Tennessee Revenue Refunding Bond, Series 2022 (the “Series 2022 Bond”), in part to provide moneys for deposit with the Refunding Trustee sufficient to provide for the payment of the principal of and interest on the Series 2011 Bonds on [July 11, 2022] (the “Redemption Date”), as referred to in **Exhibit I** attached hereto, and wishes to enter into this Agreement to carry out such purpose; and

The Refunding Trustee is the Refunding Trustee appointed pursuant to the Resolution.

NOW, THEREFORE, for and in consideration of these recited premises, and the mutual covenants hereinafter contained, receipt and legal sufficiency of which is hereby acknowledged, the EDGE and the Refunding Trustee agree as follows:

SECTION 1. Pledge of Refunding Bond Proceeds. To provide for the payment of the principal amount of the Refunded Bonds, redemption premium thereon, if applicable, plus interest on the Refunded Bonds to the Redemption Date, the Issuer hereby irrevocably deposits with the Refunding Trustee, in trust for the benefit of the holders of the Refunded Bonds, and irrevocably appropriates and sets aside exclusively for the payment of the Refunded Bonds, subject to the terms and conditions hereinafter set forth, [\$_____] derived from the proceeds of the sale of the Series 2022 Bond and [\$_____] representing other available moneys of the Issuer for a total cash deposit of [\$_____], which amount shall be deposited by the Refunding Trustee in the

Refunding Trust Fund hereinafter referred to, and the Refunding Trustee acknowledges receipt of the foregoing amount.

SECTION 2. Establishment of Fund; Deposits of Moneys and Securities. There is hereby created and established with the Refunding Trustee a special and irrevocable trust fund designated the “EDGE Tennessee Revenue Refunding Bond, Series 2022 Refunding Trust Fund” (the “Refunding Trust Fund”), to be held in the custody of the Refunding Trustee as a trust fund separate and apart from all other funds of the Issuer or of the Refunding Trustee, for the benefit of the holders of the Refunded Bonds. All moneys and obligations therein (including Federal Securities, as hereinafter defined) set aside and held in trust in the Refunding Trust Fund shall be applied and used solely for the payment of the Refunded Bonds (including principal thereof, redemption premium thereon, if applicable, and interest thereon), subject to Section 4 and Section 10.

SECTION 3. Purchase of Federal Securities.

(a) The Issuer hereby directs the Refunding Trustee to purchase, on [June __, 2022], with [\$ ____] of the amounts held in the Refunding Trust Fund as a result of the deposit thereto pursuant to Section 1 hereof, the securities more fully described in **Exhibit II** attached hereto (which are herein referred to as the “Federal Securities”), and to hold [\$ _____] in the Refunding Trust Fund as cash and not invested.

(b) The Issuer and the Refunding Trustee hereby acknowledge receipt from Public Financial Management LLC, Memphis, Tennessee (the “Financial Advisor”) of a report verifying that the Federal Securities mature as to principal and interest (without regard to any reinvestment of such Federal Securities) in such amounts and at such times as will assure, together with any money held in the Refunding Trust Fund, the availability of sufficient money to make payment of the principal of the Refunded Bonds, redemption premium thereon, if applicable, plus interest on such principal to the Redemption Date.

(c) The Issuer and the Refunding Trustee hereby agree, solely in reliance upon the report provided by the Financial Advisor referred to in Section 3(b) hereof, that the Federal Securities mature as to principal and interest (without regard to any reinvestment of such Federal Securities) in such amounts and at such times as will assure, together with any money held in the Refunding Trust Fund, the availability of sufficient money to make payment of the principal of the Refunded Bonds, redemption premium thereon, if applicable, plus interest on such principal to the Redemption Date.

SECTION 4. Substitution of Government Securities.

(a) Moneys deposited with the Refunding Trustee as described in Section 1 hereof and used to purchase the Federal Securities, may, at the written direction of the Issuer, be reinvested in direct non-callable obligations of, or direct non-callable non-prepayable obligations the principal of and interest on which are guaranteed by, the United States of America (the “Substitute Government Securities”), maturing as to principal and interest in such amounts and at such times as will assure the availability of sufficient moneys to make payment of the principal amount of the Refunded Bonds, redemption premium thereon, if applicable, plus interest on such Refunded Bonds on the Redemption Date, as set forth in Section 3 hereof; provided, however, that concurrently with such written direction, the Issuer shall provide the Refunding Trustee with (i) a certification of any independent certified public accountant that such reinvestment complies with

this Agreement, including this Section 4(a), and assuming that the earnings derived from the Substitute Government Securities either are not reinvested or are reinvested at a rate of 0% per annum, setting forth in reasonable detail the calculations underlying such certification, and (ii) an unqualified opinion of nationally recognized bond counsel to the effect that such reinvestment (A) will not cause any Series 2011 Bond to be subjected to treatment as an “arbitrage bond”, as defined in Section 148 of the Internal Revenue Code of 1986 (the “Code”) and the regulations adopted under such Section 148, as each is then in effect, and (B) is otherwise in compliance with this Agreement.

(b) Any reinvestment authorized by this Section 4 shall be accomplished by sale, transfer, request for redemption or other disposition of all or a portion of the Federal Securities then held in the Refunding Trust Fund with the proceeds thereof being applied simultaneously to the purchase of Substitute Government Securities, all as specified in the written direction of the Issuer.

SECTION 5. Report. Upon final payment of the Refunded Bonds, the Refunding Trustee shall deliver to the Issuer a final report with respect to the Refunding Trust Fund.

SECTION 6. Payment of Principal and Interest on the Refunded Bonds. On the respective redemption dates and interest payment dates of the Refunded Bonds, the Refunding Trustee shall transfer sufficient moneys from the moneys held in the Refunding Trust Fund for the payment of the principal, redemption premium, if any, and the interest on the Refunded Bonds becoming due on such dates.

SECTION 7. Irrevocable Deposit; Express Lien. The deposit of the moneys and Federal Securities in the Refunding Trust Fund shall constitute an irrevocable deposit in trust solely for the payment of the Refunded Bonds (including principal thereof, redemption premium thereon, if applicable, and interest thereon) on and prior to the Redemption Dates pursuant to the terms of the Resolution and this Agreement. The holders of the Refunded Bonds shall have an express lien on the principal of and interest on the Federal Securities, and on any moneys on deposit in the Refunding Trust Fund, until the proceeds thereof are paid out, used or applied in accordance with this Agreement.

SECTION 8. Redemption; Notice of Redemption. The Issuer hereby designates the Refunded Bonds for redemption on the dates and at the prices for the respective series set forth below:

<u>Series</u>	<u>Redemption Dates</u>	<u>Price</u>
2011 Bonds		100%

Such designations for redemption shall be, and are hereby declared to be, irrevocable upon the execution and delivery of this Agreement. The Issuer agrees to direct the Refunding Trustee, as Paying Agent and Registrar for the Refunded Bonds, to cause notices of redemption to be mailed not less than thirty (30) days prior to the respective dates fixed for redemption, by first class mail, postage prepaid, to the holders of the respective Refunded Bonds at their respective addresses appearing on the books of registry kept by the Paying Agent and Registrar for such Refunded Bonds as of the close of business on the forty-fifth (45th) day preceding the date fixed for redemption, in accordance with the resolutions authorizing the issuance of the Refunded Bonds.

The forms of the respective notices of redemption for the Refunded Bonds are set forth in **Exhibit III** attached hereto.

SECTION 9. Liability of the Refunding Trustee. The liability of the Refunding Trustee to make the payments required by this Agreement shall be limited to application of the funds deposited with it hereunder. The Refunding Trustee shall not be liable for any loss resulting from any investment made pursuant to this Agreement in compliance with the provisions hereof.

In the event of the Refunding Trustee's failure to account for any of the funds received by it, said funds shall be and remain the property of the Issuer in trust for the holders of the Refunded Bonds as herein provided, and if for any reason such funds cannot be identified, the assets of the Refunding Trustee shall be impressed with a trust for the amount thereof and, to the fullest extent permitted by law, the Issuer shall be entitled to a preferred claim upon such assets until identification of such funds is made.

SECTION 10. Termination; Payment; Income from Federal Securities.

(a) This Agreement shall terminate on the Final Redemption Date. On and after the Final Redemption Date, any moneys remaining on deposit in the Refunding Trust Fund following payment of principal and interest on the Refunded Bonds shall be transferred to the Issuer.

(b) All income from all Federal Securities in the hands of the Refunding Trustee pursuant to this Agreement which is not required for the payment of the principal and redemption premium, if applicable, of and interest on the Refunded Bonds on the Final Redemption Date shall be paid to the Issuer by the Refunding Trustee, without further authorization or direction.

SECTION 11. Fees of Refunding Trustee and Paying Agent.

(a) The Issuer shall pay upon request all necessary and proper fees, compensation and expenses of the Refunding Trustee pertaining to the Refunded Bonds, including, without limitation, reasonable compensation for all services rendered in the execution, exercise and performance of any of the duties to be exercised or performed pursuant to the provisions of this Agreement, which compensation shall not be limited by any provisions of law in regard to the compensation of a refunding trustee of any express trust, and all expenses, disbursements and advances incurred or made in accordance with any provisions of this Agreement (including the reasonable compensation and expenses and disbursements of counsel or persons not regularly in the employ thereof). The fees, compensation and expenses of the Refunding Trustee are not expected to exceed _____ dollars (\$_____). Subject to the provisions of Section 12 of this Agreement, the Refunding Trustee shall be entitled to indemnity from the Issuer against any loss, liability or expense incurred on its part arising out of or in connection with the acceptance or administration of the powers and duties of the trust created pursuant to the provisions of this Agreement, including the cost and expense of defending against any claim or liability in the premises; provided, however, that the Refunding Trustee shall not assert a lien or claim for payment of such compensation, expenses and disbursements of counsel, losses, liabilities and expenses prior to that of the holders of the Refunded Bonds upon any funds held by the Refunding Trustee under this Agreement.

(b) To the extent not paid out of the proceeds of sale of the Series 2022 Bond, the Issuer will pay the amounts described in Section 11(a) when billed from its revenues or other available moneys.

(c) The Refunding Trustee, as Refunding Trustee hereunder, acknowledges that the above-specified provisions for payment are satisfactory.

SECTION 12. Duties of Refunding Trustee; Evidence Upon Which Refunding Trustee May Act; Replacement of Refunding Trustee.

(a) The duties and obligations of the Refunding Trustee hereunder shall be determined solely by the express provisions of this Agreement and the Resolution, and the Refunding Trustee shall not be liable except for the performance of its duties and obligations as specifically set forth herein and therein and to act in good faith in the performance thereof, and no implied duties or obligations shall be incurred by the Refunding Trustee other than those specified herein and therein, and the Refunding Trustee shall be protected when acting or omitting to act in good faith upon the advice of counsel, who may be counsel to the Issuer. The Refunding Trustee acknowledges receipt of a certified copy of the Resolution.

(b) Subject to the provisions of Section 12(a) hereof, the Refunding Trustee may conclusively rely, as to the correctness of statements, conclusions and opinions therein, upon any certificate, report, consent, opinion, notice or other document furnished to the Refunding Trustee pursuant to any provision of this Agreement. Any request, consent, certificate, notice, appointment or other direction made or given by the Issuer to the Refunding Trustee shall be deemed to have been sufficiently made or given by the proper party or parties if executed on behalf of EDGE by an authorized officer thereof.

(c) If Regions Bank shall cease to be eligible to act as Refunding Trustee hereunder or shall resign as Refunding Trustee hereunder and if requested by the Issuer, such Refunding Trustee shall execute such agreements, assignments and other documents as shall be necessary to vest in a successor refunding trustee all the title, rights, duties and obligations of such bank under this Agreement and in the Federal Securities and other funds deposited or to be deposited or received by the Refunding Trustee under this Agreement. Upon acceptance by such successor refunding trustee of the trusts created hereunder and cash and investments held under this Refunding Trust Agreement are transferred to the new Refunding Trustee, all further title, rights, duties and obligations of Regions Bank under this Agreement shall cease and be discharged.

SECTION 13. Tax Covenant. Any other provision of this Agreement to the contrary notwithstanding, EDGE hereby covenants with the owners from time to time of the Series 2011 Bonds that it will not use, or permit the use of, any proceeds of the Refunded Bonds or the Series 2022 Bond, or of moneys or funds held by the Refunding Trustee under this Agreement that may be deemed to be the proceeds of the Refunded Bonds or the Series 2022 Bond pursuant to Sections 103 and 141 through 150 of the Code and regulations adopted thereunder, as each is then in effect, in a manner that would cause any of the Refunded Bonds or Series 2022 Bond to be subjected to treatment under said Sections 103 and 141 through 150 as an “arbitrage bond,” and to that end the Issuer shall comply with all applicable Internal Revenue Service regulations proposed and promulgated thereunder.

SECTION 14. Benefit of Agreement; Amendments. This Agreement is made pursuant to and in furtherance of the Resolution for the benefit of the Issuer and the holders from time to time of the Refunded Bonds. This Agreement shall not be repealed, revoked, altered or amended without the written consent of all such holders and the written consent of the Refunding Trustee; provided, however, that the Issuer and the Refunding Trustee may, without the consent of, or notice to, such holders, enter into such agreements supplemental to this Agreement as shall not adversely

affect the rights of such holders and as shall not be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Agreement;
- (b) to grant to, or confer upon, the Refunding Trustee for the benefit of such holders any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Refunding Trustee; and
- (c) to subject to this Agreement additional funds, securities or properties.

The Refunding Trustee shall be entitled to rely exclusively upon an unqualified opinion of counsel of recognized standing in the field of law relating to municipal bonds with respect to compliance with this Section 14, including (i) the extent, if any, to which any change, modification or addition affects the rights of the holders of the Refunded Bonds, and (ii) the extent, if any, to which any instrument executed hereunder complies with the conditions and provisions of this Section 14.

SECTION 15. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of EDGE or the Refunding Trustee to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Agreement, and the invalidity thereof shall in no way affect the validity of other provisions of this Agreement or of the Refunded Bonds, but the holders of the Refunded Bonds shall retain all the rights and benefits accorded them hereunder and under applicable provisions of law.

If any provisions of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

SECTION 16. Laws and Place of Enforcement of this Agreement. This Agreement shall be construed and interpreted in accordance with the laws of the State of Tennessee and any suits and actions arising out of this Agreement shall be instituted in a court of competent jurisdiction in the State of Tennessee.

SECTION 17. Definitions. All capitalized terms used in this Agreement, including the preambles hereto, which are not otherwise defined in this Agreement shall for all purposes of this Agreement have the respective meanings specified in the Resolution.

SECTION 18. Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

SECTION 19. Section Headings. The headings of the several Sections hereof shall be solely for purposes of convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Agreement.

[Signatures on Following Page]

[Signature page to Refunding Trust Agreement]

IN WITNESS WHEREOF, the parties have caused this Refunding Trust Agreement to be executed by their duly authorized officers as of the date first written above.

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

By: _____
Name: _____
Title: _____

ATTEST:

Secretary

REGIONS BANK
Nashville, Tennessee

By: _____
Elizabeth Lance, _____

EXHIBIT I
REFUNDED BONDS

<u>Series</u>	<u>Call Date</u>	<u>Interest Rates</u>	<u>Principal Amounts</u>	<u>Redemption Date</u>	<u>Redemption Price</u>
2011 Bonds		%	\$	07/11/2022	100%
			\$		

**REFUNDING TRUST REQUIREMENTS FOR
THE REFUNDING OF REFUNDED BONDS**

<u>Period Ending</u>	<u>Interest</u>	<u>Principal Redeemed</u>	<u>Total</u>
	\$		\$
		\$	
Total	\$	\$	\$

EXHIBIT II

FEDERAL SECURITIES

[U.S. Treasury Securities - State and Local Government Series]

<u>Issue Dates</u>	<u>Type of Securities</u>	<u>Type of SLGS</u>	<u>Maturity Dates</u>	<u>First Interest Payment Dates</u>	<u>Principal Amounts</u>	<u>Interest Rates</u>	<u>Max Rates</u>
	SLGS	Certificate			\$	%	%
							%

SLGS Summary

SLGS Rates File

\$

Total Certificates of Indebtedness

EXHIBIT III
FORM OF NOTICE OF REDEMPTION
MEMPHIS AND SHELBY COUNTY PORT COMMISSION
DEVELOPMENT REVENUE BONDS, SERIES 2011
(DATED SEPTEMBER 7, 2011)
MATURING APRIL 1, 2023 thru APRIL 1, 2036

NOTICE OF REDEMPTION IS HEREBY GIVEN to the holders of the outstanding Memphis and Shelby County Port Commission Development Revenue Bonds, Series 2011, maturing, as listed below, on April 1, 2023 through April 1, 2036 (the "Bonds"), that such Bonds are being called for conditional redemption on a current basis on July 11, 2022, at the redemption price set forth below, plus accrued interest to such date of redemption. The redemption is conditioned on the receipt of moneys for such redemption by the Refunding Trustee. The Issuer retains the right to rescind the notice on or prior to the scheduled redemption date and such notice shall be of no effect if the moneys are not so deposited or if the notice is rescinded.

Each Bond maturity date, principal amount, interest rate, redemption price and CUSIP number to be redeemed is as follows:

<u>Maturity Date</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Redemption Price</u>	<u>CUSIP No.*</u>
04/01/2023	\$ 1,480,000	5.250%	100.00%	586122AM5
04/01/2024	1,560,000	5.250%	100.00%	586122AN3
04/01/2025	1,640,000	5.250%	100.00%	586122AP8
04/01/2030	9,360,000	4.000%	100.00%	586122AW3
04/01/2035	11,610,000	5.000%	100.00%	586122AQ6
04/01/2036	2,680,000	4.375%	100.00%	586122AR4

On July 11, 2022, there shall become due and payable upon presentation and surrender of the Bonds at the office of Regions Bank, as Refunding Trustee, the redemption price, together with interest accrued on the Bonds to such redemption date and, **FROM AND AFTER JULY 11, 2022, INTEREST ON THE BONDS SHALL CEASE TO ACCRUE AND BE PAYABLE.**

Payment of the amounts due will be made only on presentation and surrender of the Bonds at the Office of the Refunding Trustee located at:

Regions Bank Corporate Trust Operations
250 Riverchase Parkway, E., 4th Floor
Birmingham, Alabama 35244
(866) 512-3479

In compliance with federal law, we are required to withhold taxes at the applicable rate from the amount of your holdings redeemed unless we are provided with your Social Security Number or Taxpayer Identification Number, properly certified or submitted on a W-9 Form. Please furnish a properly completed Form W-9 or exemption certificate or equivalent when presenting your bonds for payment.

Dated this ____ day of June 2022.

REGIONS BANK
Nashville, Tennessee

By: _____
Refunding Trustee

* THE ABOVE CUSIP NUMBER HAS BEEN ASSIGNED TO THE BONDS BY THE CUSIP SERVICE BUREAU OF STANDARD AND POOR'S CORPORATION AND IS INSERTED HEREIN FOR THE CONVENIENCE OF THE HOLDER(S) OF THE BONDS TO BE REDEEMED. NO REPRESENTATION IS MADE AS TO THE CORRECTNESS OR ACCURACY OF THE FOREGOING CUSIP NUMBER OR THE CUSIP NUMBER PRINTED ON THE BONDS.