



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 7/27/2023

File ID: TMP-3163

Department: Legal

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to execute an Omnibus Amendment to Applicable Supplement Development Agreements and Final Supplemental Development Agreement Roll-Up between the City of Huntsville, Alabama, and LW Redstone Company, LLC.

Resolution No.

Finance Information:

Account Number: TBD

City Cost Amount: NA

Total Cost: NA

Special Circumstances:

Grant Funded: NA

Grant Title - CFDA or granting Agency: NA

Resolution #: NA

Location: (list below)

Address:

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

RESOLUTION NO. 23-__

WHEREAS, the City and L.W. Redstone Company, L.L.C, a Delaware limited liability company (the "Owner") are parties to that certain Annexation and Development Agreement dated March 25, 2010 (the "Base Agreement"), as modified by Modification No. 1 to Annexation and Development Agreement dated May 24, 2012 and Modification No. 2 to Annexation and Development Agreement dated October 10, 2013 (the Base Agreement, as so modified, the "Agreement");

WHEREAS, under the Agreement, upon request from time to time by the Owner the City will construct and install various public capital improvements ("Public Improvements") on certain real property more particularly described in the Agreement for which the Owner is the beneficiary of a leasehold interest, all at a cost of not to exceed \$76,000,000 and paid with money advanced (an "Advance" or "Advances") by the Owner to the City; and

WHEREAS, each time the Owner identifies Public Improvements to be constructed, the same are described and memorialized in a supplement to the Agreement (a "Supplemental Development Agreement" or "SDA"), which Supplemental Development Agreement also identifies the maximum estimated cost of such Public Improvements (the "Maximum Cost"); and

WHEREAS, for each SDA the City issues a limited obligation warrant payable from TIF revenues to the Owner in an initial principal amount of not to exceed the Maximum Cost set forth in such SDA (an "Owner Warrant") under which the City may receive Advances from the Owner to pay the costs of the Public Improvements specified in such SDA; and

WHEREAS, the City has issued fourteen (14) separate series of Owner Warrants to the Owner aggregating not to exceed \$76,000,000 in initial principal amount, of which ten (10) have been identified as having remaining amounts aggregating \$3,098,721 available for Advance (the "Remaining Advance Amounts"), which such warrants are defined as the "Applicable Owner Warrants" in the Omnibus Amendment and Final SDA herein authorized and attached as Exhibit I hereto; and

WHEREAS, the Owner has represented to the City that it will not be requesting in the future that any of the Public Improvements referable to the Applicable Owner Warrants be constructed, but it has identified other Public Improvements that it desires to be financed and constructed under the Agreement as defined as the "Final Public Improvements" in the Omnibus Amendment and Final SDA herein authorized and attached as Exhibit I hereto; and

WHEREAS, because no additional Owner Warrants may be issued under the Agreement, the Parties have determined to enter into an Omnibus Amendment to Applicable Supplemental Development Agreements and Final Supplemental Development Agreement - Roll-Up, the form of which is attached as Exhibit I hereto, together with such changes and revisions as shall be determined by the Mayor (the "Omnibus Amendment and Final SDA"), so that the Remaining Advance Amounts may be used to finance the costs of the Final Public Improvements;

NOW, THEREFORE, BE IT RESOLVED that the Council hereby authorizes and approves the Development Agreement, and that the Mayor be and he is hereby authorized to execute on behalf of the City the Omnibus Amendment and Final SDA, along with such amendments, notices, certificates, instruments, agreements and other documents as shall be necessary or desirable in connection with the transactions contemplated by, or in furtherance of, those described or contemplated by the Omnibus Amendment and Final SDA. The City Clerk is hereby authorized to attest and sign the Omnibus Amendment and Final SDA, along with such amendments, notices, certificates, instruments, agreements and other documents as shall be necessary or desirable in connection with the transactions contemplated by, or in furtherance of, those described or contemplated by the Omnibus Amendment and Final SDA.

ADOPTED this the 27th day of July, 2023

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 27th day of July, 2023

Mayor of the City of
Huntsville, Alabama

Exhibit I
Form of Omnibus Amendment and Final SDA

**OMNIBUS AMENDMENT TO APPLICABLE
SUPPLEMENTAL DEVELOPMENT AGREEMENTS
AND
FINAL SUPPLEMENTAL DEVELOPMENT AGREEMENT - ROLL-UP**

This Omnibus Amendment to Applicable Supplemental Development Agreements and Final Supplemental Development Agreement - Roll-Up (this "Omnibus Amendment and Final SDA") is dated the 5th day of August, 2023, and is entered by and between the City of Huntsville, Alabama, a municipal corporation under the laws of the State of Alabama (the "City") and L.W. Redstone Company, L.L.C, a Delaware limited liability company (the "Owner"). The City and the Owner are herein referred to together from time to time as the "Parties".

R E C I T A L S

WHEREAS, the City and the Owner are parties to that certain Annexation and Development Agreement dated March 25, 2010 (the "Base Agreement"), as modified by Modification No. 1 to Annexation and Development Agreement dated May 24, 2012 and Modification No. 2 to Annexation and Development Agreement dated October 10, 2013 (the Base Agreement, as so modified, the "Agreement"); Capitalized terms used and not otherwise defined herein having the meaning given to them in the Agreement; and

WHEREAS, under the Agreement, upon request from time to time by the Owner, the City will construct and install various public capital improvements ("Public Improvements") on certain real property more particularly described in the Agreement for which the Owner is the beneficiary of a leasehold interest, all at a cost of not to exceed \$76,000,000 and paid with money advanced (an "Advance" or "Advances") by the Owner to the City; and

WHEREAS, each time the Owner identifies Public Improvements to be constructed, the same are described and memorialized in a supplement to the Agreement (a "Supplemental Development Agreement" or "SDA"), which Supplemental Development Agreement also identifies the maximum estimated cost of such Public Improvements (the "Maximum Cost"); and

WHEREAS, for each Supplemental Development Agreement, the City issues a limited obligation warrant payable from TIF revenues to the Owner in an initial principal amount of not to exceed the Maximum Cost set forth in such Supplemental Development Agreement (an "Owner Warrant") under which the City may receive Advances from the Owner to pay the costs of the Public Improvements specified in such Supplemental Development Agreement; and

WHEREAS, the City has issued fourteen (14) separate series of Owner Warrants to the Owner aggregating not to exceed \$76,000,000 in initial principal amount, all of which are set forth under the column entitled "Owner Warrants" on Appendix I hereto and which represent all Owner Warrants contemplated under the Agreement for the City to issue; and

WHEREAS, the most recent Supplemental Development Agreement and Owner Warrant (which also represents the last Owner Warrant available to be issued per the Agreement) were entered and issued, respectively, on August 4, 2023, consisting of the Supplemental Development

Agreement TIF5 – Series 2023 to Annexation and Development Agreement (the "2023 SDA") respecting the City's \$2,300,000 Taxable Limited Obligation TIF Revenue Warrant, TIF5 - Series 2023, dated August 5, 2023 (the "2023 Owner Warrant"), and the Owner and City anticipate the full \$2,300,000 available for Advances thereunder will be honored and spent over the next 12 to 16 months on the Public Improvements described in the 2023 SDA; and

WHEREAS, of the remaining thirteen (13) separate series of Owner Warrants and the Supplemental Development Agreements related thereto, the City has received the full amount of Advances permitted under the following three (3) Owner Warrants:

- (i) Supplemental Development Agreement TIF5 – Series 2010-B to Annexation and Development Agreement (the "2010-B SDA") respecting the City's \$20,000,000 Taxable Limited Obligation TIF Revenue Warrant, TIF5 - Series 2010-B, dated November 5, 2010 (the "2010-B Owner Warrant");
- (ii) Supplemental Development Agreement TIF5 – Series 2013-A to Annexation and Development Agreement (the "2013-A SDA") respecting the City's \$1,500,000 Taxable Limited Obligation TIF Revenue Warrant, TIF5 - Series 2013-A, dated March 11, 2013 (the "2013-A Owner Warrant"); and
- (iii) Supplemental Development Agreement TIF5 – Series 2021-A to Annexation and Development Agreement (the "2021-A SDA") respecting the City's \$6,000,000 Taxable Limited Obligation TIF Revenue Warrant, TIF5 - Series 2021-A, dated June 3, 2021 (the "2021-A Owner Warrant");

WHEREAS, the amount available for Advance under each of the following ten (10) Owner Warrants and related Supplemental Development Agreements has not been exhausted, which remaining amounts aggregate to the sum of \$3,098,721:

- (i) Supplemental Development Agreement TIF5 – Series 2010-A to Annexation and Development Agreement (the "2010-A SDA") respecting the City's \$10,000,000 Taxable Limited Obligation TIF Revenue Warrant, TIF5 - Series 2010-A, dated July 26, 2010 (the "2010-A Owner Warrant");
- (ii) Supplemental Development Agreement TIF5 – Series 2012-A to Annexation and Development Agreement (the "2012-A SDA") respecting the City's 3,000,000 Taxable Limited Obligation TIF Revenue Warrant, TIF5 - Series 2012-A, dated February 6, 2012 (the "2012-A Owner Warrant");
- (iii) Supplemental Development Agreement TIF5 – Series 2012-B to Annexation and Development Agreement (the "2012-B SDA") respecting the City's \$3,000,000 Taxable Limited Obligation TIF Revenue Warrant, TIF5 - Series 2012-B, dated June 4, 2012 (the "2012-B Owner Warrant");

- (iv) Supplemental Development Agreement TIF5 – Series 2017-A to Annexation and Development Agreement (the "2017-A SDA") respecting the City's \$1,000,000 Taxable Limited Obligation TIF Revenue Warrant, TIF5 – Series 2017-A, dated March 30, 2017 (the "2017-A Owner Warrant");
- (v) Supplemental Development Agreement TIF5 – Series 2017-B to Annexation and Development Agreement (the "2017-B SDA") respecting the City's \$4,000,000 Taxable Limited Obligation TIF Revenue Warrant, TIF5 – Series 2017-B, dated October 10, 2017 (the "2017-B Owner Warrant");
- (vi) Supplemental Development Agreement TIF5 – Series 2018-A to Annexation and Development Agreement (the "2018-A SDA") respecting the City's \$4,500,000 Taxable Limited Obligation TIF Revenue Warrant, TIF5 – Series 2018-A, dated August 29, 2018 (the "2018-A Owner Warrant");
- (vii) Supplemental Development Agreement TIF5 – Series 2019-A to Annexation and Development Agreement (the "2019-A SDA") respecting the City's \$1,700,000 Taxable Limited Obligation TIF Revenue Warrant, TIF5 – Series 2019-A, dated February 5, 2019 (the "2019-A Owner Warrant");
- (viii) Supplemental Development Agreement TIF5 – Series 2019-B to Annexation and Development Agreement (the "2019-B SDA") respecting the City's \$14,500,000 Taxable Limited Obligation TIF Revenue Warrant, TIF5 – Series 2019-B, dated May 30, 2019 (the "2019-B Owner Warrant");
- (ix) Supplemental Development Agreement TIF5 – Series 2020-A to Annexation and Development Agreement (the "2020-A SDA") respecting \$2,000,000 Taxable Limited Obligation TIF Revenue Warrant, TIF5 – Series 2020-A, dated April 9, 2020 (the "2020-A Owner Warrant"); and
- (x) Supplemental Development Agreement TIF5 – Series 2021-B to Annexation and Development Agreement (the "2021-B SDA") respecting the City's \$2,500,000 Taxable Limited Obligation TIF Revenue Warrant, TIF5 – Series 2021-B, dated August 2, 2021 (the "2021-B Owner Warrant");

WHEREAS, the Owner has represented to the City that it will not be requesting in the future that any of the Public Improvements described in the 2010-A SDA, the 2012-A SDA, the 2012-B SDA, the 2017-A SDA, the 2017-B SDA, the 2018-A SDA, the 2019-A SDA, the 2019-B SDA, the 2020-A SDA, and the 2021-B SDA (from time to time herein collectively called the "Applicable SDAs" and, individually, an "Applicable SDA") be made, but the Owner has

identified other public capital improvements at a Maximum Cost of \$3,098,721 hereinafter described and defined as the "Final Public Improvements" that it desires to be constructed and financed pursuant to the Agreement; and

WHEREAS, because no additional Owner Warrants may be issued under the Agreement, to enable the Final Public Improvements to be constructed and financed in accordance with the Agreement the Parties have determined to enter this Omnibus Amendment and Final SDA in order to (i) amend each Applicable SDA to reduce the Maximum Cost of the Public Improvements referable thereto by the amount shown under the column entitled "Remaining Amount Available for Advance" respecting such Applicable SDA as shown on Appendix I; (ii) provide for the construction and financing of the Final Public Improvements at an estimated maximum cost of not to exceed \$3,098,721; and (iii) provide that the costs of the Final Public Improvements be financed with Advances honored under the ten (10) Owner Warrants described above and issued in connection with the Applicable SDAs (from time to time herein collectively called the "Applicable Owner Warrants" and, individually, an "Applicable Owner Warrant"); and

WHEREAS, the aggregate remaining amount available for Advance under all Applicable Owner Warrants is \$3,098,721, and as to each Applicable Owner Warrant the sum available thereunder for Advances to pay Final Public Improvements shall in no event exceed the amount with respect to such Owner Warrant set forth in the column entitled "Remaining Amount Available for Advance" on Appendix I hereto. By way of example, the remaining amount available for Advance in connection with the 2010-A TIF5 Revenue Warrant is \$59,650, and the remaining amount available for Advance in connection with the 2021-B TIF5 Warrant is \$1,587,057;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Owner do hereby covenant and agree as follows:

A. AMENDMENT OF APPLICABLE SDAs; LIMIT ON PUBLIC IMPROVEMENTS

Each Applicable SDA is hereby amended so that the Maximum Cost available thereunder is reduced by the amount set forth for such Applicable SDA in the column entitled "Remaining Amount Available for Advance" on Appendix I hereto. By way of example, pursuant to the immediately preceding sentence the Maximum Cost set forth in the 2010-A SDA has been reduced by \$59,650 from \$10,000,000 to \$9,940,350.

The Owner hereby covenants and agrees not to request the construction or financing by the City of any Public Improvements under or in connection with any of the Applicable SDAs, and that other than the Public Improvements described and set forth in the 2023 SDA to be financed with Advances honored under the 2023 Owner Warrant, the Final Public Improvement shall be the only remaining public capital improvements to be constructed or financed under the terms of the Agreement.

B. IMPORTANT DATES (ESTIMATES ONLY)

Commencement of City work related to Agreement Section 6.2 August 5, 2023

Commencement of Owner development work	n/a
First ad valorem assessment of Owner's development work Pursuant to this Supplemental Development Agreement	n/a
First TIF Revenues received by City	n/a

C. OWNER IMPROVEMENTS - Scope of Work for Omnibus Amendment and Final SDA.

This Omnibus Amendment and Final SDA constitutes, among other things, the fifteenth (15th) supplement to the Agreement and continues funding for Secured Parcel Phase II Infrastructure Improvements by amending each Applicable SDAs to reduce from the Maximum Cost stated therein by the amount shown under "Remaining Amount Available for Advance" in Appendix I hereto respecting such Applicable SDA and that, in the aggregate, total \$3,098,721, to provide funding for construction services for the Goss Road extension of approximately 2,100 LF, mass earthwork over approximately 80 acres, and stormwater management improvements including detention facilities. The total estimated overall cost of the work necessary for the Secured Parcel Phase II Infrastructure Improvements to be funded by this Omnibus Amendment and Final SDA is the amount of \$3,098,721.00 for the work described herein.

Scopes of work and estimated costs and completion dates are summarized below:

SECURED PARCEL PHASE II INFRASTRUCTURE ENGINEERING SERVICES

These engineering design services for the Final Public Improvements may be funded by the amounts shown in the column entitled "Remaining Amount Available for Advance" on Appendix I respecting the Applicable Owner Warrants.

CONSTRUCTION SERVICES FOR THE SECURED PARCEL PHASE II

Construction services will be contracted for mass earthwork for approximately 80 acres, to include stormwater management improvements and for the Goss Road extension of approximately 2,100 LF, including all utilities (except sanitary sewer and aid-to-construction), streetlighting, communication duct bank, streetscape, and irrigation (collectively, the "Final Public Improvements"). The total estimated costs for this work to be budgeted and funded from this Omnibus Amendment and Final SDA is estimated to be \$3,090,221.00, or the remainder of the balance of the "Remaining Amount Available for Advance" on Appendix I left after the \$8,500 incidental legal and financial expenses and any engineering services not funded by the 2023 SDA.

The construction contract will be competitively bid in early summer 2023. The completion date of this project is estimated to be November 1, 2024.

CONTRACTS, CHANGE ORDERS, AND MODIFICATIONS IN EXCESS OF OMNIBUS AMENDMENT AND FINAL SDA

Any contracts, change orders, or modifications to the contracts awarded for the work described above in excess of the amount of funding established and authorized by this Omnibus Amendment and Final SDA or any other TIF 5 SDA shall not be authorized and executed unless funding for the change order or modification has been provided pursuant to a properly approved and executed agreement between the City and the Owner.

INCIDENTAL LEGAL AND FINANCIAL EXPENSES – Legal expenses for this Omnibus Amendment and Final SDA and, overall, this phase of work. Estimated cost \$8,500.00. Such cost shall be paid from an Advance under the 2010-A Owner Warrant.

D. ESTIMATED TIF REVENUES

First year Ad Valorem taxes	\$ <u>N/A</u>
First year PILOT per Agreement Section 7.7	\$ <u>N/A</u>
TOTAL	\$ <u>N/A</u>

E. CITY COST & APPLICABLE OWNER WARRANTS AMOUNT

Maximum amount of City costs and maximum aggregate amount of remaining Advances available under Applicable Owner Warrants:

Regarding such costs pursuant to this Omnibus Amendment and Final SDA	\$3,098,721.00
Maximum aggregate amount of remaining Advances under Applicable Owner Warrants	\$3,098,721.00

As to each Applicable Owner Warrant, the Parties agree that Advances for Final Public Improvements shall not exceed the amounts shown under the heading "Remaining Amount Available for Advance" on Exhibit I hereto for each such Applicable Owner Warrant. For example, not more than \$2,614 is available for Advance under the 2012-A Owner Warrant, and not more than \$1,587,057 is available for Advance under the 2021-B Owner Warrant, and all such Advances shall be used for or in connection with the Final Public Improvements as set forth herein.

ADVANCE TO COVER LEGAL FEES - The Owner and the City agree that an Advance shall be made and honored under an Applicable Owner Warrant in the amount of \$8,500 to cover the legal fees incurred in preparing this Omnibus Amendment and Final SDA. Such Advance shall be made under the 2010-A Owner Warrant.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Omnibus Amendment and Final SDA.

(“OWNER”)

L W REDSTONE COMPANY, LLC

By: _____

Name: _____

Its: _____

("CITY")

THE CITY OF HUNTSVILLE,
ALABAMA,
A municipal corporation

By: _____

Tommy Battle

Its: Mayor

ATTEST:

Shaundrika Edwards, City Clerk

APPENDIX I

<u>Owner Warrants</u>	<u>SDAs</u>	<u>Applicable SDAs</u>	<u>Applicable Owner Warrants</u>	<u>Owner Warrants Face Amount</u>	<u>Amount Already Advanced</u>	<u>Remaining Amount Available for Advance</u>
2010-A Owner Warrant	2010A – SDA	2010A – SDA	2010-A Owner Warrant	\$ 10,000,000	\$9,940,350	\$59,650 ¹
2010-B Owner Warrant	2010B – SDA	--	--	20,000,000	20,000,000	0.00
2012-A Owner Warrant	2012A – SDA	2012A – SDA	2012-A Owner Warrant	3,000,000	2,997,386	2,614
2012-B Owner Warrant	2012B – SDA	2012B – SDA	2012-B Owner Warrant	3,000,000	2,920,599	79,401
2013-A Owner Warrant	2013A - SDA	--	--	1,500,000	1,500,000	0.00
2017-A Owner Warrant	2017A – SDA	2017A – SDA	2017-A Owner Warrant	1,000,000	748,912	251,088
2017-B Owner Warrant	2017B – SDA	2017B – SDA	2017-B Owner Warrant	4,000,000	3,587,278	412,722
2018-A Owner Warrant	2018A – SDA	2018A – SDA	2018-A Owner Warrant	4,500,000	4,440,025	59,975
2019-A Owner Warrant	2019A – SDA	2019A – SDA	2019-A Owner Warrant	1,700,000	1,657,539	42,461
2019-B Owner Warrant	2019B – SDA	2019B – SDA	2019-B Owner Warrant	14,500,000	14,288,103	211,897
2020-A Owner Warrant	2020A – SDA	2020A – SDA	2020-A Owner Warrant	2,000,000	1,608,143	391,857
2021-A Owner Warrant	2021A – SDA	--	--	6,000,000	6,000,000	0.00
2021-B Owner Warrant	2021B – SDA	2021B – SDA	2021-B Owner Warrant	2,500,000	912,943	1,587,057
2023 Owner Warrant	2023 - SDA	2023 – SDA	--	<u>2,300,000</u>	<u>0.00</u>	<u>N/A²</u>
Totals				\$76,000,000	70,601,279	\$3,098,721

¹ An Advance shall be made on the date of the execution and delivery of this Omnibus Amendment and Final SDA under the 2010-A Owner Warrant in the amount of \$8,500 to cover legal fees incident to the preparation of this document, thereby reducing the amount of Advances available under the 2010-A Owner Warrant to \$51,150, and the total aggregate amount of Advances available under the Applicable Owner Warrants to \$3,090,221.

² The 2023 SDA and 2023 Owner Warrant closed August 4, 2023. As noted earlier, the Owner and City anticipate the Maximum Cost of the Public Improvements described in the 2023 SDA will be covered, in full, by Advances under the 2023 Owner Warrant. For this reason this an "N/A" is shown here so as to reflect the available amount under all Applicable SDAs and all Applicable Owner Warrants.