



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 11/10/2022

File ID: TMP-2263

Department: Finance

Subject:

Type of Action: Approval/Action

Ordinance authorizing the City's \$16,574,000 Taxable General Obligation Warrant, Series 2022, and related actions and documents, to pay-off a portion of the outstanding Series 2010-B TIF revenue warrant of the City tendered for payment by the City.

Type of Document: Ordinance No.

Does this item need to be published? No

If yes, please list preferred date(s) of publication: _____

Finance Information:

Account Number: Various - TIF5

City Cost Amount: \$ N/A - All paid with Ad Valorem from TIF5.

Total Cost: Principle - \$16,574,000 plus interest.

Special Circumstances:

Grant Funded: \$ N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location:

Address: N/A

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

Additional Comments:

ORDINANCE NO. _____

**AN ORDINANCE
AUTHORIZING THE BORROWING OF \$16,574,000
AND THE ISSUANCE OF ONE
\$16,574,000 TAXABLE GENERAL OBLIGATION WARRANT
SERIES 2022
DATED NOVEMBER 17, 2022**

BE IT ORDAINED by the Mayor and City Council (herein together called the "Council") of the **CITY OF HUNTSVILLE, ALABAMA** (herein called the "City") as follows:

(a) the City heretofore issued to L.W. Redstone Company, LLC, a Delaware limited liability company (the "Company"), the City's Taxable Limited Obligation TIF Revenue Warrant, TIF5 - Series 2010-B, dated November 5, 2010 (the "Series 2010-B TIF Revenue Warrant"), under and pursuant to Ordinance No. 10-890 adopted by the Council on October 28, 2010, as amended by Ordinance No. 11-276, adopted by the Council on April 14, 2011; and

(b) the Series 2010-B TIF Revenue Warrant was delivered to the Company in furtherance of the obligations and agreements of the City and the Company set forth under that certain Annexation and Development Agreement dated March 25, 2010, between the City and the Company, as amended by that certain Modification No. 1 dated May 24, 2012 and Modification No. 2 dated October 10, 2013 (collectively, the "Development Agreement"); and

(c) pursuant to the Development Agreement, upon satisfaction of certain conditions the Company may elect to tender for payment a portion of the outstanding principal balance of the Series 2010-B TIF Revenue Warrant, and on October 1, 2022, the Company delivered the notice required under the Development Agreement for the tender and payment of a portion of the Series 2010-B TIF Revenue Warrant (such portion, the "Series 2010-B TIF Revenue Warrant Portion"); and

(d) in accordance with the requirements of the Development Agreement, the City and the Company have determined for the City to issue the Warrant herein authorized (said Warrant constituting a Tender Option Financing Obligation under and as defined in the Development Agreement), to make the tender payment to the Company necessary to retire the Series 2010-B TIF Revenue Warrant Portion (with the balance of principal of the Series 2010-B TIF Revenue Warrant remaining outstanding).

Section 2. (a) Pursuant to the applicable provisions of the Constitution of Alabama of 1901, as amended, and the Code of Alabama 1975, as amended, including without limitation, Section 11-47-2 and Section 11-81-4 thereof, and for the purpose of providing funds to pay the cost of retiring the Series 2010-B TIF Revenue Warrant Portion, the City is hereby

authorized to borrow from Truist Bank, a North Carolina banking corporation (herein called the "Lender") the sum of \$16,574,000, and, in evidence of the obligation of the City to repay the money so borrowed (the "Loan"), is hereby authorized to issue and deliver to the Lender a \$16,574,000 Taxable General Obligation Warrant, Series 2022 (herein called the "Warrant"). The Warrant shall be dated November 17, 2022 (which shall be the date on which the Loan evidenced thereby is made), shall be issued as a single fully registered warrant, shall be payable to the Lender, and shall bear interest at the rate of 5.31% per annum, computed on the basis of a 360-day year of twelve (12) consecutive thirty (30) day months. The principal of the Warrant shall be payable in maturing installments on March 1 in the following years and amounts:

| Year (March 1) | Maturing Amount |
|---------------------------|----------------------------|
| 2023 | \$ 550,000 |
| 2024 | 394,000 |
| 2025 | 416,000 |
| 2026 | 438,000 |
| 2027 | 462,000 |
| 2028 | 488,000 |
| 2029 | 514,000 |
| 2030 | 542,000 |
| 2031 | 572,000 |
| 2032 | 603,000 |
| 2033 | 636,000 |
| 2034 | 671,000 |
| 2035 | 707,000 |
| 2036 | 746,000 |
| 2037 | 786,000 |
| 2038 | 829,000 |
| 2039 | 875,000 |
| 2040 | 922,000 |
| 2041 | 972,000 |
| 2042 | 1,026,000 |
| 2043 | 1,081,000 |
| 2044 | 1,141,000 |
| 2045 | 1,203,000 |

Interest on the Warrant shall be due and payable on March 1, 2023, and on each September 1 and March 1 thereafter through and including the final maturity date of the Warrant (each such date, a "Payment Date"). Matured but unpaid installments of principal of the Warrant shall bear interest after maturity, until paid, at the rate of interest then in effect on the Warrant, plus 200 basis points. In the event a Payment Date is not a Business Day, the principal and interest due on such Payment Date (whether due upon scheduled maturity or by optional redemption) shall be payable on the then next succeeding Business Day. As used herein, "Business Day" means each day other than a Saturday, a Sunday, or any holiday on which Lender's offices in the City of Charlotte, North Carolina, are closed for business with the public. The City understands and

acknowledges that the rate of interest charged on this warrant is not necessarily the lowest rate charged by the Lender on its loans or other extensions of credit.

Section 3. Optional Redemption Privilege. (a) The City reserves and shall have the privilege of redeeming and paying, on November 1, 2032, and on any date thereafter, the principal of the Warrant at any time and from time to time, in whole or in part (but if in part, in multiples of \$1,000), without penalty or premium, upon not less than ten (10) Business Days' prior written notice to the Lender, at and for a price equal to the principal amount of the Warrant to be redeemed plus accrued interest thereon to the date set for redemption and payment. For the avoidance of doubt, in no event shall the Early Prepayment Fee (or any other fees or charges) be applicable for any redemption of the Warrant (or any portion thereof) pursuant to this Section 3(a).

(b) The City reserves and shall have the privilege of redeeming and paying the principal of the Warrant prior to November 1, 2032, at any time and from time to time, in whole or in part (but if in part, in multiples of \$1,000), upon not less than ten (10) Business Days' prior written notice to the Lender, at and for a price equal to the principal amount of the Warrant to be redeemed plus accrued interest thereon to the date set for redemption and payment and the amount of the Special Early Prepayment Fee. As used herein, "Special Early Prepayment Fee" shall mean an amount as shall be equal to the present value of the difference between (1) the amount that would have been realized by Lender on the prepaid amount for the remaining term of the Loan at the rate for fixed-rate payers in U.S. Dollar interest rate swaps as quoted by Bloomberg (the "Swap Rate") for a term corresponding to the term of the Warrant, interpolated to the nearest month, if necessary, that was in effect three Business Days prior to the origination date of the Warrant and (2) the amount that would be realized by Lender by reinvesting such prepaid funds for the remaining term of the loan at the Swap Rate for fixed-rate payers in U.S. Dollar interest rate swaps, interpolated to the nearest month, that was in effect three Business Days prior to the Loan repayment date; both discounted at the same interest rate utilized in determining the applicable amount in (2). Should the present value have no value or a negative value, the City may repay with no additional fee. Should Bloomberg no longer release rates for fixed-rate payers in U.S. Dollar interest rate swaps, Lender may substitute the Bloomberg index for rates for fixed-payers in U.S. Dollar interest rate swaps with another similar index as determined by Lender. Lender shall provide the City with a written statement explaining the calculation of the premium due, which statement shall, in absence of manifest error, be conclusive and binding.

(c) Any partial redemption of the outstanding principal amount of the Warrant pursuant to Section 3(a) or Section 3(b) hereof shall be applied in inverse order of maturity.

Section 4. Execution of the Warrant; Registration. (a) The Warrant shall be executed, and the corporate seal of the City shall be affixed thereto by the Mayor, and the City Clerk shall attest the same by affixing his signature thereto. The Warrant shall be registered in the records maintained by the City Treasurer as a claim against the City. Said officers are hereby authorized and directed so to execute and attest the Warrant, affix said seal thereto and make such registration.

(b) A registration certificate by the City, in substantially the form set forth in Section 6 hereof, duly executed by the manual signature of the City Clerk, shall be endorsed on the Warrant and shall be essential to its validity.

(c) The Warrant shall be registered as to both principal and interest in the name of the Lender and shall not be transferable except to an "accredited investor" as defined in the Securities and Exchange Act of 1933 (the "Securities Act") and the rules and regulations promulgated thereunder, or to a "qualified institutional buyer", as defined in the Securities Act and the rules and regulations promulgated thereunder, and only upon compliance with applicable State of Alabama and federal securities laws.

Section 5. General Obligation. The indebtedness evidenced and ordered paid by the Warrant is and shall be a general obligation of the City for payment of the principal of and the interest on which the full faith and credit of the City are hereby irrevocably pledged.

Section 6. Form of Warrant. The Warrant shall be in substantially the following form, with such changes therein as shall be necessary to comply with the provisions of this Ordinance:

(Form of Warrant)

THIS WARRANT MAY BE TRANSFERRED ONLY TO AN "ACCREDITED INVESTOR" AS DEFINED IN THE SECURITIES AND EXCHANGE ACT OF 1933 (THE "SECURITIES ACT") AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER, OR TO A "QUALIFIED INSTITUTIONAL BUYER", AS DEFINED IN THE SECURITIES ACT AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER, AND ONLY UPON COMPLIANCE WITH APPLICABLE STATE AND FEDERAL SECURITIES LAWS AND WITH THE ORDINANCE REFERRED TO HEREIN.

**UNITED STATES OF AMERICA
STATE OF ALABAMA**

CITY OF HUNTSVILLE

**TAXABLE GENERAL OBLIGATION WARRANT
SERIES 2022**

The City Treasurer of the **CITY OF HUNTSVILLE** (herein called the "City") a municipal corporation under the laws of the State of Alabama, is hereby ordered to pay to **TRUIST BANK**, a North Carolina banking corporation (herein called the "Lender"), or its permitted assigns, the principal sum of

SIXTEEN MILLION FIVE HUNDRED SEVENTY FOUR THOUSAND DOLLARS

in installments of principal maturing on March 1 in the following respective years and amounts:

| Year (March 1) | Maturing Amount |
|---------------------------|----------------------------|
| 2023 | \$ 550,000 |
| 2024 | 394,000 |
| 2025 | 416,000 |
| 2026 | 438,000 |
| 2027 | 462,000 |
| 2028 | 488,000 |
| 2029 | 514,000 |
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| 2036 | 746,000 |
| 2037 | 786,000 |
| 2038 | 829,000 |
| 2039 | 875,000 |
| 2040 | 922,000 |
| 2041 | 972,000 |
| 2042 | 1,026,000 |
| 2043 | 1,081,000 |
| 2044 | 1,141,000 |
| 2045 | 1,203,000 |

with interest on the then unpaid principal balance hereof at the rate of 5.31%, which rate shall be computed on the basis of a 360-day year consisting of twelve (12) consecutive thirty (30) day months. Interest on this Warrant shall be due and payable on March 1, 2023, and on each September 1 and March 1 thereafter through and including the final maturity date of this Warrant (each such date, a "Payment Date"). Matured but unpaid installments of principal of this Warrant shall bear interest after maturity, until paid, at the rate of interest then in effect on this Warrant plus 200 basis points. In the event a Payment Date is not a Business Day, the principal and/or interest, as the case may be, due on such Payment Date (whether due upon scheduled maturity, by optional redemption or otherwise) shall be payable on the then next succeeding Business Day. As used herein, "Business Day" means each day other than a Saturday, a Sunday, or any holiday on which the Lender's offices in the City of Birmingham, Alabama are closed for business with the public. The City understands and acknowledges that the rate of interest charged on the Warrant is not necessarily the lowest rate charged by the Lender on its loans or other extensions of credit.

The City reserves and shall have the privilege of redeeming and paying, at any time and from time to time, on November 1, 2032, and on any date thereafter, the principal hereof, in whole or in part (but if in part, in multiples of \$1,000), without penalty or premium,

upon not less than ten (10) Business Days' prior written notice to the Lender, at and for a price equal to the principal amount hereof to be redeemed plus accrued interest thereon to the date set for redemption and payment. Any partial redemption of the outstanding principal amount of this warrant shall be applied in inverse order of maturity. For the avoidance of doubt, in no event shall the Special Early Prepayment Fee hereinafter defined (or any other fees or charges) be applicable for any redemption of the Warrant (or any portion thereof) for any redemption of the Warrant (or portions thereof) by the City on or after November 1, 2032.

The City also reserves and shall have the privilege of redeeming and paying the principal of the Warrant, at any time and from time to time prior to November 1, 2032, in whole or in part (but if in part, in multiples of \$1,000), upon not less than ten (10) Business Days' prior written notice to the Lender, at and for a price equal to the principal amount of this Warrant to be redeemed plus (i) accrued interest thereon to the date set for redemption and (ii) payment of the Special Early Prepayment Fee (as such term is defined in the Authorizing Ordinance) as set forth in Section 3(b) of the Authorizing Ordinance.

Any partial redemption of the outstanding principal amount of the Warrant pursuant to either of the immediately foregoing paragraphs shall be applied in inverse order of maturity.

This Warrant has been issued pursuant to the applicable provisions of the constitution and laws of the State of Alabama, including without limitation Section 11-47-2 and Section 11-81-4 of the Code of Alabama 1975, as amended, and a November 10, 2022 ordinance (herein called the "Ordinance") adopted by the governing body of the City to provide funds for the purposes for which the City is authorized to borrow money under said laws.

This warrant evidences a valid general obligation of the City for payment of the principal of and the interest on which the City has irrevocably pledged its full faith and credit.

It is hereby certified that the indebtedness evidenced hereby has been duly and legally incurred and will at the maturity hereof become lawfully due without condition, abatement or offset of any description; that all conditions, actions and things required by the constitution and laws of the State of Alabama to exist, be performed and happen precedent to and on the issuance of this warrant, exist, have been performed and have happened; and that the indebtedness evidenced by this warrant, together with all other indebtedness of the City, was at the time the same was incurred and is now within every debt and other limit prescribed by the constitution and laws of the State of Alabama.

IN WITNESS WHEREOF, the City has caused this warrant to be executed and its official seal to be hereunto affixed by the Mayor and has caused the same to be attested by its City Clerk, both of whom have hereunto subscribed their signatures and are hereunto duly authorized and has caused this warrant to be dated November 17, 2022.

CITY OF HUNTSVILLE, ALABAMA

By: _____
Mayor

[SEAL]

Attest:

City Clerk

(Form of Certificate of Registration by City Treasurer)

I hereby certify that this Warrant was at the time of issuance (November 17, 2022) thereof duly registered by me as a claim against the **CITY OF HUNTSVILLE, ALABAMA**.

City Treasurer of the
CITY OF HUNTSVILLE, ALABAMA

Section 7. Representations and Warranties of the City. The City hereby represents and warrants to the Lender as follows:

(a) the City is duly organized as a municipal corporation under the laws of the State of Alabama,

(ii) the City has the corporate power and authority to own its properties and assets and to carry on its governmental functions as now being conducted,

(c) the City has the power to issue the Warrant and to consummate the transactions contemplated by the Ordinance and this Agreement,

(d) by proper action of the City Council of the City, the City has duly authorized the issuance and delivery of the Warrant and the consummation of the transactions contemplated therein and herein, and

(e) the Warrant is the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

Section 8. Sale and Delivery of Warrant. The Warrant is hereby sold to the Lender at and for a purchase price equal to the face amount of the Warrant (\$16,574,000). The City Treasurer is hereby authorized and directed to deliver the Warrant, which shall have been executed, sealed, attested and registered as herein provided, to the Lender. All proceeds from the sale of the Warrant (\$16,574,000) shall be remitted pursuant to written instructions delivered to the Lender by the Finance Director of the City.

Section 9. Use of Proceeds. All amounts paid to the City from the Loan and the Warrant shall be used to pay the costs of redeeming and retiring the Series 2010-B TIF Revenue Warrant Portion and to pay the costs of issuing the Warrant (including, without limitation, the fee of bond counsel to the City, the fee of the financial advisor to the City, and the fee of counsel to the Lender).

Section 10. Authorization of Documents. The Mayor, the City Clerk and the Finance Director, or either of them, are each hereby authorized and directed to execute such instruments, directions, orders, notices, agreements, certificates or other documents as shall be necessary or desirable in order to carry out the transactions contemplated by this Ordinance, including without limitation instruments or documents respecting the terms for wires from the Lender for payment of proceeds of the Warrant.

Section 11. Annual Audited Financial Statements. For each fiscal year of the City during which the Warrant is outstanding, the City shall cause to be delivered to the holder of the Warrant the audited financial statements of the City no later than 270 days after the end of such fiscal year. This obligation may be satisfied by the City by the timely filing of its audited financial statements on EMMA (or such substitute public repository for municipal filings established by the Municipal Securities Rulemaking Board or similar federal regulatory agency).

Section 12. Private Loan; Participations. (a) The City acknowledges and agrees that the Lender is acquiring the Warrant in evidence of a private loan and in that connection the Warrant shall not be (i) assigned a separate rating by any municipal securities rating agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) issued pursuant to any type of offering document or official statement, or (iv) assigned a CUSIP number by Standard & Poor's CUSIP Service.

(b) The City agrees that the Lender may from time to time enter into a participation agreement or agreements with one or more persons (the "Participants"), pursuant to which the Participants may be given participations in the Warrant and that the Participants may from time to time similarly grant to one or more other persons (also included in the term "Participants") sub participations in the Warrant; provided (i) no participation shall increase any liability of the City, (ii) the City shall not have any direct obligation to a Participant, whether respecting the payment of any portion of debt service on the Warrant, delivery of its audited financial statements, or otherwise, and (iii) the City shall correspond and deal only with the holder of the Warrant on any matters respecting the Warrant, the loan evidenced thereby, this Ordinance, or any matters relating to the foregoing. The holder of the Warrant may divulge to any Participant all information, reports, financial statements, certificates and documents obtained by it from the City. Prior to entering into any such participation agreement, the holder of the Warrant shall (i)

notify the City in writing of such participation and the identity of each Participant, and (ii) take commercially reasonable steps to protect the confidentiality of financial and other information of the City that may be provided by the holder of the Warrant to a Participant.

Section 13. Role of the Lender. The City understands, acknowledges and agrees as follows:

(i) that the Lender and its representatives are not registered municipal advisors and do not provide advice to municipal entities or obligated persons with respect to municipal financial products or the issuance of municipal securities (including regarding the structure, timing, terms and similar matters concerning municipal financial products or municipal securities issuances) or engage in the solicitation of municipal entities or obligated persons for the provision by non-affiliated persons of municipal advisory services and/or investment advisory services; and

(ii) with respect to this Ordinance, the Warrant, and any other information, materials or communications provided by the Lender: (a) the Lender and its representatives are not recommending an action to any municipal entity or obligated person; (b) the Lender and its representatives are not acting as an advisor to any municipal entity or obligated person and do not owe a fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to any municipal entity or obligated person with respect to this Financing Agreement, information, materials or communications; (c) the Lender and its representatives are acting for their own interests; and (d) the City has been informed that the City should discuss this Ordinance, the Warrant, and all matters relating thereto and any such other information, materials or communications with any and all internal and external advisors and experts that the City deems appropriate before acting on this Ordinance or any such other information, materials or communications.

Section 14. Creation of Contract. The provisions of this Ordinance shall constitute a contract between the City and the holder of the Warrant.

Section 15. Provisions of Ordinance Severable. The provisions of this Ordinance are hereby declared to be severable. In the event any provision hereof shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect any other portion of this Ordinance.

ADOPTED this the 10th day of November, 2022.

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

APPROVED this the 10th day of November, 2022.

Mayor of the City of
Huntsville, Alabama