

RESOLUTION NO. 2021-R-47

BE IT RESOLVED by the City Council of the City of Irondale, Alabama, as follows:

Section 1. Findings. The City Council (herein called the “Council”), which is the governing body of the City of Irondale, Alabama (herein called the “City”), has found and ascertained and does hereby declare as follows:

- (a) that it hereby approves the terms and conditions of that certain Amended and Restated Project Development, Funding and Cooperation Agreement, by and between the City and HEPLEEDS, LLC (“Developer”) in substantially the form attached hereto as Exhibit A (the “Agreement”), granting to Developer certain economic incentives with respect to that certain real property and the improvements thereon more particularly described therein as the “Project Site”; and, desires to issue a zero (0%) percent warrant to the extent authorized by the laws and Constitution of the State of Alabama and in order to comply with the laws of the State of Alabama and the *Constitution of Alabama of 1901*, as amended, including particularly Amendment No. 772, for the purpose of providing an Economic Incentives Grant (as defined herein) to Developer;
- (b) that the City has determined that the Agreement constitutes a public purpose and further enhances the public benefit and welfare by, among other things: promotion of local economic and commercial development and the stimulation of the local economy; increasing employment opportunities in the City; increasing the City's tax base, which will result in additional tax revenues for the City; promoting the location, relocation, expansion and retention of commercial enterprises in the City; and, preserving and improving the aesthetic quality of commercial development, inuring to the economic health of the City (collectively, the “Public Benefit”);
- (c) pursuant to the Agreement, the City is willing to provide economic incentives in the form of the Economic Incentives Grant as defined in the Agreement and to take certain other actions to issue a zero percent (0%) warrant and to validate the Agreement and such warrant;
- (d) it is in the best interests of the City and the taxpayers and citizens thereof for the City to provide the Economic Incentives Grant to Developer;
- (e) it is therefore necessary and desirable, and in the best interests of the City and the taxpayers and citizens thereof, for the City to issue its “Limited Obligation Warrant (HEPLEEDS Project), Series 2021” (the “Warrant”) so as to evidence the obligations of the City to Developer as set forth in the Agreement and to enter into the Agreement and issue the Warrant in order to effectuate the purposes of this Resolution;

(f) the Council heretofore, at a public meeting of the Council on June 2, 2021, satisfied the requirements of paragraph (c) of Section 94.01 of the *Constitution of Alabama of 1901* (“Amendment No. 772”) with respect to the Warrant and approved the proposed issuance of the Warrant by the City and the proposed Economic Incentives Grant to Developer, all in accordance with the applicable provisions of the Amendment No. 772, and the Council hereby determines that the expenditure of public funds, with respect to the Economic Incentives Grant, as described herein, is for the Public Benefit and will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities;

(g) as required under Amendment No. 772, the City published notice of such proposed action of the City Council of the City of Irondale in *The Birmingham News* on May 23, 2021 in accordance with the requirements of Amendment No. 772, a true and correct copy of which notice is set forth as Exhibit B hereto;

(h) the information set forth in such published notice is true and correct and the publication thereof is ratified and confirmed; and,

(i) for purposes of Amendment No. 772, the entity to whom or for whose benefit the City proposes to provide things of value is HEPLEEDS, LLC.

Section 2. Authorization of Agreement and its Execution and Delivery. The Council does hereby authorize and direct the Mayor of the City to execute and deliver, for and in the name and behalf of the City, the Agreement between the City and Developer. The Council does also hereby authorize and direct the City Clerk to affix the official seal of the City to the Agreement and to attest the same. The Agreement shall be in substantially the form attached hereto as Exhibit A.

Section 3. Authorization for Refund of ½ of Tax Revenue. In order to further provide for the Economic Incentives Grant and subject to Section 16 hereof, the Council does hereby authorize and direct the Mayor of the City to pay up to one-half (½) of the Tax Revenue (as defined below) generated by the Project Site in the manner and as provided in the Agreement. The total amount of sales taxes paid to Developer shall not exceed Six Million Four Hundred Thousand and 00/100 Dollars (\$6,400,000.00). The amounts due to Developer pursuant to this section will not bear any interest and shall be payable at the office of the Treasurer of the City, City Hall, Irondale, Alabama.

For purposes of this Resolution, the following terms shall have the following meaning ascribed to them:

“*Annual Period*” means the twelve (12) month period following the Incentive Commencement Date..

“*Economic Incentives Grant*” means an amount equal to fifty percent (50%) of Tax Revenue during each Annual Period beginning with the Incentive Commencement Date, subject to the Development Incentive Cap and the Term of this Agreement.

“*Incentive Commencement Date*” means the earlier of the date that Developer elects by written notice to the City or by October 1, 202 .

“*Tax Revenue*” is the total general City sales tax revenue (being City sales taxes the proceeds of which may be used by the City for any lawful purpose) generated and collected by the City from the Retail Center on the Project Site during the applicable Annual Period following the Incentive Commencement Date.

Section 4. Recall of Prior Warrant Issued, if any; Authorization of the Warrant. Any warrant issued to the Developer pursuant to the original Project Development, Funding and Cooperation Agreement, by and between the City and HEPLEEDS, LLC is hereby recalled and cancelled. No new warrant authorized pursuant to this Section 4 shall be effective and issued until the warrant issued under the original agreement has been returned to the City by Developer. Pursuant to the provisions of the constitution and laws of the State of Alabama, including particularly Section 11-47-2 of the *Code of Alabama* (1975), as amended, and Amendment No. 772, the City is hereby authorized to issue its “Zero (0%) Percent Warrant, Series 2021” (herein, as previously indicated, called the “Warrant”) so as to evidence the obligations set forth in this Resolution and the aforementioned Agreement. The Warrant shall be dated the date of its issuance, shall be in the principal amount of up to Six Million Four Hundred Thousand and 00/100 Dollars (\$6,400,000.00), and shall mature and be payable on the earlier to occur of: (a) ten (10) successive calendar years beginning on the Incentive Commencement Date and ending ten (10) successive calendar years therefrom; (b) the payment of Economic Incentives Grant payments to Developer in the total amount of Six Million Four Hundred Thousand and 00/100 Dollars (\$6,400,000.00) (the “Economic Incentives Grant Cap”); (c) mutual agreement and consent of the parties; or (d) as otherwise provided by the terms of this Agreement - (the occurrence of any of these events (a), (b), (c) or (d) shall be known herein as the “Maturity Date”). The Warrant shall not bear any interest. To the extent that any principal is unpaid on the Maturity Date, the same shall be cancelled and the City’s obligations under the Warrant deemed satisfied and of no further force and effect.

Section 5. Limited Obligation and Source of Payment. The indebtedness evidenced and ordered paid by the Warrant is and shall be a limited obligation of the City payable solely from up to fifty percent (50%) of the Tax Revenue produced and received by the City from the Project Site as set forth in the Agreement.

Section 6. General Faith and Credit Not Pledged. The general faith and credit of the City are not pledged for payment of the Warrant. The Warrant shall not be a general obligation of the City but shall be payable solely from up to fifty percent (50%) of the Tax Revenue produced and received by the City from the Project Site. Neither this Resolution nor the Warrant issued hereunder shall be deemed to impose upon the City any obligation to pay the principal of the Warrant or any other sum, except with the moneys herein directed to be paid from up to fifty percent (50%) of the Tax Revenue produced and received by the City from the Project Site. The Warrant and any payments required by this Resolution shall never constitute an indebtedness of the City within the meaning of any constitutional provision or statutory limitation whatsoever, except as may be provided in Amendment No. 772. None of the agreements, representations or warranties made or implied in this Resolution, or in the issuance of the Warrant, shall ever impose any pecuniary liability upon the City, except with respect to the moneys herein directed to be paid from up to fifty percent (50%) of the Tax Revenue produced and received by the City from the Project Site and except as required by the Agreement. Nothing herein contained, however, shall be construed to relieve the City from the performance of any of its agreements herein contained or in the Agreement or to relieve any of the officials of the City of any of their official duties.

Section 7. Mandatory Redemption and Prepayment. The Warrant will be subject to partial redemption and prepayment according to the terms of the Agreement until the Maturity Date, but only to the extent of any moneys realized by the City from up to fifty percent (50%) of the Tax Revenue produced and received by the City from the Project Site. The Treasurer of the City will determine the amount to be paid and will take such action as may be necessary under the provisions of this Resolution and the Agreement to exhaust, as nearly as may be practicable, the moneys realized and received by the City from up to fifty percent (50%) of the Tax Revenue to redeem principal amounts. After such application of all funds realized and received by the City from up to fifty percent (50%) of the Tax Revenue from the Project Site on the Maturity Date, the Warrant shall be deemed paid in full, and the City's obligations to Developer evidenced by the Warrant will be released and extinguished.

Section 8. Execution of the Warrant. The Warrant shall be executed on behalf of the City by its Mayor, who shall affix the official seal of the City to the Warrant, registered by the Treasurer, and the Warrant shall be attested by the City Clerk of the City. Said officers are hereby authorized and directed so to execute, seal and attest the Warrant, all in accordance with the provisions of Section 11 hereof.

Section 9. Form of the Warrant. The Warrant shall be in substantially the form attached hereto as Exhibit C, with appropriate insertions, omissions and other changes to comply with the provisions hereof and to reflect the appropriate date and principal amount.

Section 10. Authority of Mayor and City Clerk. The Mayor of the City and its City Clerk and/or City Treasurer are hereby authorized to effect matters and duties authorized in this Resolution at any time, for the purpose for which such obligation is herein authorized and, to deliver to Developer the Warrant in the stated principal amount of such obligation, when the Warrant is executed, sealed and attested as herein specified.

Section 11. Registration of Warrant. The Warrant shall be registered as to principal, and shall be transferable only on the registry books of the City. The City Clerk shall be the registrar and transfer agent of the City and shall keep at the City's office proper registry and transfer books in which it will note the registration and transfer of such Warrant as are presented for those purposes.

Section 12. Sale of the Warrant. For and in consideration of the obligations of the Parties set forth herein and in the Agreement and other good and valuable consideration, the Warrant is hereby transferred, assigned and set over unto Developer. The Warrant shall be registered in the name of Developer prior to the delivery thereof. The Mayor of the City is hereby authorized and directed to deliver the Warrant to Developer.

Section 13. General Authorization. The Mayor of the City, the Council President, the City Clerk, the City Treasurer and all other officers of the City and of the Council are hereby authorized and directed to take all such actions, and execute, deliver, seal and attest, and perform all such other agreements, undertakings, documents, instruments, notices, certificates, petitions and proceedings, with respect to the Agreement and the Warrant, as the Mayor and such officers shall determine to be necessary or desirable to carry out the provisions of this resolution or the Agreement or duly and punctually observe and perform all agreements and obligations of the City under the Agreement.

Section 14. Severability. The provisions of this Resolution are hereby declared to be severable. In the event any court of competent jurisdiction should hold any provision hereof to be invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Resolution.

Section 15. Validation. The City desires to validate the legality of all proceedings had or taken in connection with the issuance of the Warrant and the delivery of the Agreement, the validity of the means provided for the payment of the Warrant, and the validity of all covenants and provisions contained in the Agreement and the Warrant, by filing a petition against the taxpayers and citizens of the City in the Circuit Court of Jefferson County, Alabama. A complaint to validate such Warrant, Agreement, proceedings, and covenants shall be filed and validation proceedings shall be instituted in the name of the City and the members of the governing body of the City. Wallace, Jordan, Ratliff & Brandt, LLC, is hereby designated and appointed as the attorneys of the City to file such complaint, institute such proceedings, and to take all steps necessary to complete such validation proceedings in accordance with the provisions of Article 17 of Chapter 6 of Title 6 of the *Code of Alabama* (1975). Notwithstanding anything herein to the contrary, no moneys shall be paid to Developer prior to the completion of the validation as described herein.

Section 16. Condition Precedent. The obligations of the City under this Resolution and the Agreement are conditioned upon and subject to the validation of the City's obligations as further described in Section 15 of this Resolution and Section 4.2 and Article VI of the Agreement and compliance with the terms of the Agreement.

Section 17. Immediate Effect. This resolution shall take effect immediately.

ADOPTED this 2nd day of June, 2021.

David Spivey, City Council President

APPROVED:

James D. Stewart, Jr., Mayor

ATTESTED:

Lue Jackson, City Clerk

CERTIFICATION

I, Lue Jackson, City Clerk of the City of Irondale, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Irondale at its regular meeting held on June 2, 2021, as same appears in the minutes of record of said meeting.

Lue Jackson, City Clerk

Exhibit A

**Form of Amended and Restated
Project Development, Funding and Cooperation Agreement**

Exhibit B

Public Notice

LEGAL NOTICE OF PROPOSED ECONOMIC DEVELOPMENT ACTION AND RELATED PUBLIC EXPENDITURES BY THE CITY OF IRONDALE, ALABAMA

The City of Irondale, Alabama (the "City") gives notice that the governing body of the City will meet in public session at 6:00 p.m. on the 2nd day of June, 2021 at City Hall at 101 20th Street South in the City of Irondale, Alabama, for the purpose of considering such matters as may be properly presented thereto, including the authorization by the City pursuant to Amendment No. 772 to the *Constitution of Alabama of 1901*, as amended, of the terms, validation, delivery and performance by the City of that certain Amended and Restated Project Development, Funding and Cooperation Agreement (HEPLEEDS Project) (the "Amendment") by the City and HEPLEEDS, LLC, (the "Developer"), pursuant to which Amendment the City shall make economic development grants to the Developer as set forth in the Amendment of the net sales tax proceeds actually received by the City in the maximum aggregate amount of \$6,400,000 for a period of ten years from the commercial and retail development and facilities established by the Developer on Grants Mill Road in the City, in consideration of the public benefits to accrue from the establishment and the operation of such commercial and retail development and facilities by the Developer in the City.

The City seeks, by undertaking its obligations pursuant to the Amendment, (i) to advance the economic development and base of the City, as well as the prosperity and welfare of its citizens, (ii) to promote trade and commerce, (ii) to advance the public health, safety, convenience, order, prosperity, quality of life and general welfare of the city of Irondale, (iii) to increase the tax and revenue base of the City from increased commercial activity within the city, (iv) to increase the property values in the vicinity of the project site, and (v) to encourage additional economic activity in the area of the project.

The business entity to whom or for whose benefit the City propose to lend its credit or grant public funds or thing of value is the Developer.

All interested persons may examine and review the Agreement and make copies thereof at personal expense, and obtain further information about the information and matters addressed in this Notice, at the office of the City Clerk of the City during normal business hours before and after the meeting herein referenced.

Exhibit C

Form of Warrant

THIS WARRANT HAS NOT BEEN REGISTERED (i) UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON THE EXEMPTION PROVIDED BY SECTION 4(2) OF SAID ACT, OR (ii) UNDER ANY STATE SECURITIES LAW, IN RELIANCE UPON APPLICABLE EXEMPTIONS, AND MAY NOT BE TRANSFERRED WITHOUT REGISTRATION EXCEPT PURSUANT TO AN EXEMPTION THEREFROM.

THIS WARRANT DOES NOT BEAR INTEREST

UNITED STATES OF AMERICA
STATE OF ALABAMA

CITY OF IRONDALE
LIMITED OBLIGATION WARRANT
(HEPLEEDS DEVELOPMENT PROJECT)
SERIES 2021

No. R-1

DATED DATE:

June 2, 2021

MATURITY DATE:

As Determined in
Within Agreement

The CITY OF IRONDALE, a municipal corporation organized and existing under and by virtue of the laws of the State of Alabama (the "City"), for value received, hereby acknowledges itself indebted to

HEPLEEDS, LLC

(collectively, the "Holder") in a principal amount not exceeding

Six Million Four Hundred Thousand and 00/100 Dollars

(\$6,400,000.00)

and hereby orders and directs the Treasurer of the City to pay to the Holder such principal amount, without interest, in annual installments at such times, in such amounts and manner, and from such Tax Revenues on deposit in the Warrant Fund, all as provided in the within-referenced Authorizing Resolution and Agreement.

Authority for Issuance

This Warrant is issued pursuant to Resolution No. 2021-47 duly adopted by the governing body of the City on June 2, 2021 (the "Authorizing Resolution"), the authority of the Constitution and laws of the State of Alabama, including particularly and without limitation Amendment No. 772 of the *Constitution of Alabama of 1901*, as amended (collectively the "Enabling Law") and Section 11-47-2 of the *Code of Alabama* (1975), and that certain Development Agreement dated the above Dated Date by and between the City and HEPLEEDS, LLC (the "Agreement").

Capitalized terms used hereinbefore and hereinafter without definition shall have the respective meanings assigned thereto in the Agreement and the Authorizing Resolution.

This Warrant is issued pursuant to the Agreement in evidence of certain limited and contingent obligations of the City thereunder and is subject to the provisions of Article V thereof, which provisions of said Article V of the Agreement are incorporated in this Warrant and made a part hereof by this reference thereto as if set out in full herein.

Payment

The City shall pay all amounts becoming due and payable under the Agreement, the Authorizing Resolution, and this Warrant only to the Holder in whose name this Warrant is registered on the records of the City therefor as provided in, and subject to the terms, conditions and limitations of the Agreement. The principal of this Warrant shall be payable in lawful money of the United States of America. To the extent that any principal is unpaid on the Maturity Date as defined in the Authorizing Resolution, the same shall be cancelled and the City's obligations under the Warrant deemed satisfied and of no further force and effect.

Registration and Transfer

This Warrant is registered in the name of the Holder on the records of the City therefor. This Warrant may be transferred only as permitted in the Agreement and upon written direction of the registered owner or its legal representative, addressed to the City, presentation of this Warrant to the City accompanied by a written instrument of transfer, satisfactory to the City, duly executed by the registered owner or its attorney duly authorized in writing, and compliance with Section 7.6 of the Agreement. Upon presentation of this Warrant to the City for transfer, the City shall record such transfer on the said records of the City and execute and deliver, in exchange for this Warrant, a new warrant of like tenor hereof, registered in the name of the transferee in an aggregate principal amount equal to the unpaid portion of the principal of this Warrant. No charge shall be made for the privilege of transfer, but the registered owner of this Warrant requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto.

General

It is hereby recited, certified and declared that the indebtedness evidenced and ordered paid by this Warrant is lawfully due without condition, abatement or offset of any description (except as set forth in the Agreement), that this Warrant has been registered in the manner provided by law, that this Warrant represents a valid claim against the Warrant Fund, that all acts, conditions and things required by the Constitution and laws of the State of Alabama to happen, exist and be performed precedent to and in the execution, registration and issuance of this Warrant, the adoption of the Authorizing Resolution approving the Agreement, and the execution and delivery of the Agreement, have happened, do exist and have been performed in due time, form and manner as so required by law and that the principal amount of this Warrant, together

with all other indebtedness of the City, are within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

IN WITNESS WHEREOF, the City, acting by and through the City Council of the City, as the governing body thereof, has caused this Warrant to be executed in its name and on its behalf by the Mayor of the City, has caused its corporate seal to be affixed hereto and the same attested by the City Clerk of the City, and has caused this Warrant to be dated the date and year first above written.

CITY OF IRONDALE, ALABAMA

By: _____
Mayor

SEAL

Attest: _____
City Clerk

REGISTRATION CERTIFICATE

The undersigned hereby certifies that this Warrant has been duly registered as a conditional claim against the City of Irondale, in the State of Alabama, and the Warrant Fund referred to herein, and the Tax Revenue pledged to the payment hereof.

Treasurer of the City of Irondale, Alabama

VALIDATION CERTIFICATE

Validated and confirmed by judgment of the Circuit Court of Jefferson County, State of Alabama entered on the _____ day of _____, 20_____.

 /s/
Clerk of Circuit Court of Jefferson County, Alabama