

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: 15.i.

Meeting Type: Regular

Meeting Date: Aug 13, 2015

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

Development Agreement for CityCentre Development Project.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Development Agreement between the City of Huntsville and CityCentre I, LLC. (Tract 2).

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

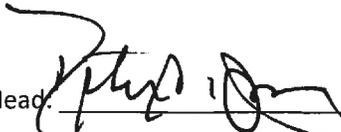
Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

[Empty box for providing details on why the action is required, recommended, and what council action will provide, allow, and accomplish, along with any other helpful information.]

Associated Cost: _____

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head:  _____

Date: Aug 12, 2015

RESOLUTION NO. 15-_____

WHEREAS the City Council of the City of Huntsville, Alabama, does hereby declare that the Mayor be, and he is hereby authorized to enter into a Development Agreement by and between the City of Huntsville and CityCentre1, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Development Agreement by and between the City of Huntsville and CityCentre I, LLC," consisting of Twenty-one (21) pages, including Exhibits, and the date of August 13, 2015, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 13th day of August, 2015.

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

APPROVED this the 13th day of August, 2015.

Mayor of the City of
Huntsville, Alabama



DEVELOPMENT AGREEMENT

by and between

THE CITY OF HUNTSVILLE

and

CITYCENTRE I LLC

Dated: _____, 2015



DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is made and entered into on and as of this ___ day of _____, 2015 (the "Effective Date"), by and between the City of Huntsville, a municipal corporation under the laws of the State of Alabama (the "City"), and CityCentre I LLC, an Alabama limited liability company ("Company").

WITNESSETH

WHEREAS, pursuant to that certain Ground Lease Agreement of even date herewith (the "Ground Lease"), the Company has ground leased from the City approximately 2.8 acres of real property located in and around an area within the City more particularly described on Exhibit A hereto (the "Phase I Development Area") for development of a mixed-use commercial project with sufficient onsite parking and consisting of, at a minimum, (a) a hotel not to exceed 150 hotel rooms with a flag brand reasonably acceptable to the City (the "Phase I Hotel") and (b) a retail component with a minimum of 25,000 square feet (the "Phase I Additional Commercial Facilities") and, together with the Phase I Hotel, "Phase I of the Project");

WHEREAS, as further set forth in the Ground Lease, the Company has been granted an option to either ground lease or purchase from the City approximately 2.5 acres of real property located in and around an area within the City more particularly described on Exhibit B hereto (the "Phase II Development Area") for development of a mixed-use commercial project with sufficient onsite parking and consisting of, at a minimum, (a) a hotel with a minimum of 100 hotel rooms with a flag brand reasonably acceptable to the City (the "Phase II Hotel"), (b) certain other mixed-use components reasonably acceptable to the City (the "Phase II Additional Commercial Facilities") and, together with the Phase II Hotel, "Phase II of the Project") (Phase I of the Project together with Phase II of the Project are herein referred to, collectively, as the "Project");

WHEREAS, as part of the development of Phase I of the Project, the City has completed the demolition and removal of any and all structures, improvements, footings, foundations and construction debris from the Phase I Development Area, and the City will be responsible for enclosing (the "Culvert Work") that portion of the culvert located on and adjacent to the Phase I Development Area within the area shown crosshatched on Exhibit D hereto (the "Culvert Area");

WHEREAS, as part of the development of Phase I of the Project, the City will also (a) make all utilities available from underground to the property line of the Phase I Development Area at a location determined by the City, which may be in their existing location to the extent such utilities are already available at the property line, including electricity, gas, water, sanitary sewer and telephone (the "Utility Work"), and (b) construct all streetscape and hardscape features along the perimeter (within existing public rights-of-way) of the Phase I Development Area and along all public roadways bordering the Phase I Development Area including but not limited to modifications to Williams Avenue to facilitate pedestrian access between the Project and Big Spring International Park consistent with the results of the traffic study commissioned by the City, installation of sidewalks, irrigation, landscaping, hardscapes, civic art, decorative lighting and related improvements, all as determined by the City in its reasonable discretion after

consultation with the Company during the design process, except as specifically provided in this Agreement to the contrary (the “Hardscape Work” and together with the Utility Work, the “City’s Offsite Work”);

WHEREAS, the Development Area is situated in and around an area highly suited for important urban expansion, redevelopment and renewal, and contains key parcels in Downtown Huntsville, Alabama on Williams Avenue across from Big Spring International Park and the Von Braun Center (the “Downtown Area”) that are integral to the City’s ongoing efforts to facilitate redevelopment and improved commerce, public entertainment and quality of life improvements in the entire Downtown Area; and

WHEREAS, the development of the Project is expected to be a major catalyst for the expansion, redevelopment and renewal efforts described above in the Downtown Area.

NOW THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I
DEVELOPMENT OF THE PROJECT

1.1 Phase I.(a) The Company hereby covenants and agrees to use its commercially reasonable efforts to design, develop, and construct the Phase I Hotel and the Phase I Additional Commercial Facilities within the Phase I Development Area pursuant to the construction and development schedule set forth on Exhibit C attached hereto. The Company agrees to use commercially reasonable efforts to cause commencement of construction (hereinafter defined) of the first building in Phase I of the Project to occur no later than sixty (60) days after receipt of all permits required for the construction of such building, subject to force majeure; provided, however, that the Company shall cause commencement of construction of such first building in Phase I on or before March 11, 2016 (the “Phase I Commencement Deadline”) in accordance with city zoning and other applicable city codes and standards, subject to the City issuing all permits required for the construction of such building.

(b) As used in this Agreement, “commencement of construction” shall be deemed to have occurred at such time as, with respect to the facility to be constructed, the Company has caused to be poured and completed the foundation and all footings for the first building located on Phase I of the Project; and “force majeure” means acts of the public enemy, acts of any government in either its sovereign or proprietary capacity (other than acts taken by the City in accordance with this Agreement), fires, floods, hurricanes, epidemics, quarantine restrictions, freight embargoes, or unusually severe weather (not including normal seasonal inclement weather).

1.2 The City’s Work. The City hereby covenants and agrees to use its commercially reasonable efforts to design, develop, construct and install (a) the Utility Work, to be completed on or before ninety (90) days after the expiration of the Inspection Period provided for in the Ground Lease, subject to force majeure (the “Phase I Delivery Date”), (b) the Culvert Work, to

be completed on or before June 1, 2016, (c) the Hardscape Work pursuant to the schedule agreed upon under the terms of the Ground Lease, and (d) to the extent required, use commercially reasonable efforts to cause the zoning of the Phase I Development Area for Phase I of the Project to allow for the development and usage as contemplated for Phase I of the Project. The City shall perform modifications to Williams Avenue to facilitate access between Phase I of the Project and Big Spring International Park consistent with the results of the traffic study commissioned by the City and shall install the plantings around it at the City's expense. The City shall plant grass within the unpaved portion of the Culvert Area, and any additional landscaping or hardscape improvements within the Culvert Area shall be subject to the City's prior written consent and shall be at the Company's expense. Notwithstanding the foregoing, the Company acknowledges and agrees that the Company shall be responsible, at the Company's sole expense, for any grading and/or compaction work deemed necessary by the Company to cause the Phase I Development Area to be in a "pad ready" condition for construction and to construct Phase I of Project.

1.3 Project Coordinators. Each of the City and the Company agree to designate one or more project coordinators to monitor and coordinate the acquisition, design, permitting, and construction of the Project.

1.4 Approvals. The City agrees to use reasonable efforts to facilitate the prompt processing of City approvals for the construction and development of the Project, it being the understanding of the parties hereto that nothing in this Section 1.4 or elsewhere in this Agreement is, or shall be deemed to be, an agreement of the City to waive any City approvals required for the Project.

1.5 Option for Phase II. The City agrees to grant an exclusive option to the Company for the development of Phase II of the Project (the "Phase II Option"), in accordance with the Ground Lease. This Phase II Option is subject to the City's relocation of the existing aquatic center at the City's expense from the Phase II Development Area to a nearby location acceptable to the City, as more particularly described in the Ground Lease, upon the additional terms and conditions set forth therein. The Phase II Option shall expire on the earlier of (a) the second (2nd) anniversary of the date of the issuance of certificate of occupancy for the first building in Phase I; or (b) October 1, 2018 (the "Phase II Option Expiration Date"). The Company may exercise the Phase II Option at any time prior to the Phase II Option Expiration Date by delivering written notice to the City of such exercise and by delivering to Land Title of Alabama, as escrow agent, an earnest money deposit in the amount of \$60,000.00.

1.6 Third Party Beneficiary. The City agrees to require its contractor(s) performing the City's work described in Section 1.2 above to include the Company as a third party beneficiary.

1.7 Insurance. (a) To the extent such coverages are available to its contractor, the City will require its contractor to carry insurance coverage as specified below for not less than the following limits, unless a greater amount is required by law.

(i) Workers' Compensation insurance with statutory limits or if no statutory limits exist, with minimum limits of \$1,000,000 per occurrence. The Workers' Compensation policy will be primary insurance and non-contributing with respect to persons directly engaged in the performance of the City's Offsite Work and the Culvert Work..

(ii) Employer's Liability insurance with minimum limits of \$2,000,000 for each employee for bodily injury by accident and for each employee for bodily injury by disease.

(iii) Commercial General Liability insurance (excluding Automobile Liability), including liability for this project and blanket coverage, Personal and Advertising Injury, Products-Completed Operations (including Broad Form Property Damage), Medical Payments, Contractor's Protective, Bodily Injury, and Property Damage, with minimum limits of \$2,000,000 per occurrence, \$3,000,000 general annual aggregate and completed operations aggregate, \$500,000 personal and advertising injury per occurrence, and \$5,000 medical expense. Such Commercial General Liability insurance shall also contain contractual liability coverage with minimum limits of \$2,000,000 per occurrence, and \$3,000,000 in the aggregate, insuring all liability assumed by Developer pursuant to this Agreement. The Products-Completed Operations coverage shall remain in force and effect for a period of two (2) years following completion of the City's Offsite Work and the Culvert Work.

(iv) Umbrella/Excess Liability Insurance (excluding Automobile Liability), including coverage for bodily injury, personal injury and property damage liability, with minimum limits of \$10,000,000 per occurrence and annual general aggregate. There will be a three (3) year sunset clause for reporting of claims subsequent to the two (2) year completed operations period.

(v) "All Risk" Builder's Risk Insurance, also known as Course of Construction Insurance, with minimum limits in an amount that will cover full construction costs of the property as of the date it will be completed and ready for occupancy. This coverage shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing, and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements.

(vi) Commercial/Business Automobile Liability insurance with minimum combined single limits of \$2,000,000 per occurrence (bodily injury and property damage liability).

(b) The City shall require its general contractor to cause each insurance company, including those of its subcontractors and sub-subcontractors (i) to issue the insurance on an occurrence basis, (ii) to provide defense coverage for liability insurance policies as an additional benefit and not within the limits of liability, (iii) to issue an endorsement to all policies stating that the policies are primary and that the Company's policies are excess, secondary and noncontributing, (iv) to issue an endorsement to all policies to provide a waiver of subrogation in favor of the Company, and (v) to issue an endorsement to all policies, except the workers'

compensation and employer's liability insurance policies, to include the Company and its subsidiaries, affiliates, officers, directors, employees, and agents as "additional insureds." The insurance company or companies shall not exclude from coverage allegations of the negligence, strict liability, or gross negligence, whether sole or otherwise, of the "additional insureds," but coverage may be excluded if there has been a final judicial decision from which there is no further right to appeal of the negligence, strict liability or gross negligence of the "additional insureds." Additionally, the insurance company or companies shall not include any Third Party Beneficiary Exclusion in the policies required herein. The City shall cause its general contractor to provide a waiver of subrogation against the Company and its subsidiaries, affiliates, officers, directors, employees and agents for such coverages that are consistent with the City's normal business practices.

(c) The City shall require its contractor to provide to the City and the Company before the City's Offsite Work or the Culvert Work is started, and at least thirty (30) days prior to the expiration of a policy or policies of insurance in effect during the term of this Agreement, a certificate or certificates of insurance evidencing all required insurance in this Agreement.

1.8 Lien Waivers/Lien Removal. The City agrees to require its contractors to provide to the City and the Company final lien waivers for all labor, suppliers, materialmen, contractors and subcontractors no later than fifteen (15) days after completion of the Culvert Work. The City shall require payment and performance bonds for the Culvert Work.

1.9 Bonds. The City shall require payment and performance bonds for the Culvert Work.

ARTICLE II REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of the City.

(a) The City is a municipal corporation under the laws of the State of Alabama, and the execution, delivery and performance of this Agreement has been duly authorized by the governing body of the City.

(b) Neither the execution and delivery of this Agreement, nor the performance hereof, by the City requires any consent of, filing with or approval of, or notice to, or hearing with any person or entity, and any governmental or quasi-governmental authority, whether domestic or foreign, which has not been obtained.

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the City, to the knowledge of the City, violates, constitutes a default under or a breach of (i) any agreement, instrument, contract, mortgage or indenture to which the City is a party or to which the City or its assets are subject, or (ii) any judgment, decree, order, ordinance, rule, regulation, consent or resolution applicable to the City or any of its assets.

(d) There is not now pending nor, to the knowledge of the City, threatened, any litigation affecting the City which questions (i) the validity of the City, (ii) the officers of the City or the manner in which any were appointed or elected to such positions, or (iii) the subject matter of this Agreement.

2.2 Representations and Warranties of Company.

(a) The Company is duly organized and validly existing as a limited liability company under the laws of the State of Alabama, and has duly authorized its execution, delivery and performance of this Agreement.

(b) Neither the execution and delivery of this Agreement, nor the performance hereof, by the Company requires any consent of, filing with or approval of, or notice to, or hearing with any person or entity or other owner of the Company, as well as any other affiliate of the Company, and any governmental or quasi-governmental authority, whether domestic or foreign), which has not been obtained.

(c) Neither the authorization, execution and delivery of, nor the performance of, this Agreement by the Company, to the knowledge of the Company, violates, constitutes a default under or a breach of (i) the Company's operating agreement or other organizational documents of the Company, (ii) any agreement, instrument, contract, mortgage or indenture to which the Company is a party or to which the Company or its assets are subject, or (iii) any judgment, decree, order, ordinance, rule, regulation, consent or resolution applicable to the Company or any of its assets.

(d) There is not now pending nor, to the knowledge of the Company, threatened, any litigation affecting the Company which questions (i) the validity or organization of the Company, (ii) the officers of the Company or the manner in which any were appointed or elected to such positions, or (iii) the subject matter of this Agreement.

ARTICLE III GROUND LEASE

3.1 General. (a) The Ground Lease shall be executed and delivered simultaneously with the execution of this Agreement.

(b) The Ground Lease shall contain mutually acceptable terms respecting the payment of rent ("Rent") by the Company, as follows: commencing upon the earlier to occur of (i) the issuance of a certificate of occupancy for the hotel to be constructed on Phase I or (ii) January 6, 2017 (the "Rent Commencement Date"), the Company shall pay monthly rent to the City at the rate \$52,700.00 per annum. Rent shall continue to become due and payable thereafter on the first day of each month during the term of the Ground Lease in the amount of \$4,391.67 per month. From and after the actual date of completion of the Utility Work, the Company shall be responsible for the payment of all taxes, insurance, utilities and operating costs for the Phase I Development Area.

(c) The Ground Lease shall contain such other terms and conditions as are mutually agreeable to the City and the Company including, among others, the following:

(i) A “design charrette” meeting process for the development of mutually agreeable plans and specifications for the design and construction of Phase I of the Project.

(ii) A 90-day inspection period for the Company to inspect the Phase I Development Area and determine whether to proceed with Phase I of the Project (the “Inspection Period”).

(iii) The term of the Ground Lease shall be for 99 years commencing on the Rent Commencement Date. The Company shall maintain and operate Phase I of the Project in a commercially reasonable manner consistent, as of any time of determination, with the standards set forth in the Ground Lease.

(iv) The Company shall cause Phase I of the Project to be insured as set forth in the Ground Lease by an insurance company licensed and qualified to do business in the State of Alabama, with the limits set forth in Section 1.7.

(v) Reasonable event of default and remedies provisions respecting (a) failure of the Company to timely pay Rent when due, (b) failure of the Company to properly insure, maintain, repair, refurbish and otherwise operate and manage Phase I of the Project, and (c) failure of other covenants and agreements by each of the parties to the Lease.

ARTICLE IV TERM AND TERMINATION; ASSIGNMENT

4.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue in effect until the obligations of the parties required under this Agreement have been fully performed and discharged or such earlier time as this Agreement is terminated in accordance with the terms hereof.

4.2 Termination. This Agreement shall automatically terminate in the event of the termination of the Ground Lease. Upon any termination of this Agreement, all obligations of the parties hereunder shall terminate and be of no further force or effect, except for the indemnities contained herein and any and all other obligations that are designated to survive termination of this Agreement.

4.3 Restrictions on Assignment; Conditions Precedent. Except as otherwise expressly set forth below in this Section 4.3, the Company shall not have the right to assign or otherwise transfer its rights or obligations under this Agreement, and any purported assignment, transfer, encumbrance or hypothecation of this Agreement or any of the rights or obligations hereunder in violation of this Section 4.3 shall be null and void and of no force or effect. Notwithstanding the

foregoing, if, and to the extent, permitted herein, the Company may transfer its rights under this Agreement only upon the satisfaction of each of the following conditions precedent:

(a) The Company shall be in compliance with all of its obligations hereunder as of the effective date of the proposed assignment, and

(b) With the exception of assignment to an entity related to or affiliated with the Company or principals of the Company, the proposed transferee shall be subject to the City's prior approval (which such approval shall not be unreasonably withheld, conditioned or delayed), and

(c) Prior to the effective date of the proposed transfer, the Company and proposed transferee have delivered to the City an executed and acknowledged assignment and assumption agreement ("Assumption Agreement") reasonably acceptable to the City. Such Assumption Agreement shall include provisions regarding: (i) the rights and interest proposed to be transferred to the proposed transferee; (ii) the obligations of the Company under this Agreement that the proposed transferee will assume; and (iii) the proposed transferee's acknowledgment that such transferee has reviewed and agrees to be bound by this Agreement. The Assumption Agreement shall also include the name, form of entity, and address of the proposed transferee, and shall provide that the transferee assumes the obligations of the assigning Company to be assumed by the transferee in connection with the proposed transfer.

ARTICLE V EVENTS OF DEFAULT AND REMEDIES

5.1 Event of Default by the City.

(a) Any one or more of the following shall constitute an event of default under this Agreement by the City (herein called a "City Event of Default") (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) the dissolution or liquidation of the City, or the filing by the City of a voluntary petition in bankruptcy, or the City's seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the City as a bankrupt, or any assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or if a petition or answer is filed by the City proposing the adjudication of the City as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such

petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within 60 days; or

(ii) Except as otherwise provided in Section 4.2, failure by the City to perform or observe any of its agreements or covenants contained in this Agreement, which failure shall have continued for a period of thirty (30) calendar days after written notice thereof from the Company, unless (A) the Company shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof, the City has commenced and is diligently pursuing appropriate corrective action, or (C) the City is by reason of force majeure at the time prevented from performing or observing the agreement or covenant with respect to which the City is delinquent.

(b) If a City Event of Default exists, the Company may proceed to protect its rights hereunder by suit for specific performance as its sole and exclusive remedy. Nothing herein shall in any way be construed as requiring the Company to undertake or complete any element of the City's Offsite Work. The Company shall not be entitled to any damages whatsoever, including, without limitation, any incidental or consequential damages, whether arising at law or in equity, following an uncured City Event of Default.

Section 5.2 Events of Default by the Company.

(a) Any one or more of the following shall constitute an event of default under this Agreement by the Company (herein called a "Company Event of Default") (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) at any time prior to the completion by Company of its obligations hereunder, the Company is dissolved or liquidated, or the filing by the Company of a voluntary petition in bankruptcy, or the Company seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its property, or the adjudication of the Company as a bankrupt, or any assignment by the Company for the benefit of its creditors, or the entry by the Company into an agreement of composition with its creditors, or if a petition or answer is filed by the Company proposing the adjudication of the Company as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within sixty (60) days; or

(ii) except as otherwise provided in Section 4.2, failure by the Company to perform or observe any of its agreements or covenants contained in this Agreement, which failure shall have continued for a period of thirty (30) calendar days after written notice thereof from the City, unless (A) the City shall agree in writing to an extension of such period prior to its expiration, or (B) during such thirty (30) day period or any extension thereof, the Company has commenced and is diligently pursuing appropriate corrective action, or (C) the Company is by reason of force majeure at the time prevented from performing or observing the agreement or covenant with respect to which it is delinquent.

(b) If a Company Event of Default exists, the City may proceed to protect its rights hereunder by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of the Company herein contained. The City shall not be entitled to any incidental or consequential damages, whether arising at law or in equity, following an uncured Company Event of Default.

Section 5.3 Remedies Subject to Applicable Law. All rights, remedies and powers provided in this Article V may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article V are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

ARTICLE VI NOTICES

6.1 Delivery of Notices. All notices, statements, demands, consents and other communications (“Notices”) required or permitted to be given by any party to another party pursuant to this Agreement or pursuant to any applicable law or requirement of public authority shall be properly given only if the Notice is: (a) made in writing (whether or not so stated elsewhere in this Agreement); (b) given by one of the methods prescribed in Section 6.2; and (c) sent to the party to which it is addressed at the address set forth below or at such other address as such party may hereafter specify by at least ten (10) calendar days’ prior written notice:

If to the City:

City of Huntsville
Attention: Mayor
308 Fountain Circle
P.O. Box 308
Huntsville, Alabama 35804
Fax: (256) 427-5121

With a copy to the attention of:

City of Huntsville
Attention: City Attorney

308 Fountain Circle
P.O. Box 308
Huntsville, Alabama 35804
Fax: (256) 427-5121

With a copy to the attention of: S. Roderick Kanter, Esq.
Bradley Arant Boult Cummings LLP
One Federal Place
1819 5th Avenue North
Birmingham, AL 35203
Phone: (205) 521-8517
Fax: (205) 488-6517

If to Company: CityCentre I LLC
Attention: Mr. Remy Gross, III
4245 Balmoral Dr., Suite 204
Huntsville, AL 35802
Phone: (256) 489-4157
Fax: (855) 335-9636

With a copy to the attention of: Jeremy D. Cohen, Esq.
Hartman Simons & Wood LLP
6400 Powers Ferry Road NW, Suite 400
Atlanta, GA 30339
Phone: (770) 951-6788
Fax: (770) 303-1172

6.2 Methods of Delivery. Notices may be either: (a) delivered by hand; (b) delivered by a nationally recognized overnight courier which maintains evidence of receipt; (c) delivered by certified or registered mail, return receipt requested, postage prepaid; or (d) sent by facsimile transmission during normal business hours with a confirmation copy to follow by either (i) registered or certified mail, return receipt requested, postage prepaid, or (ii) a nationally recognized overnight courier which maintains evidence of receipt. Notices shall be effective on the date of receipt. If any Notice is not received or cannot be delivered due to a change in address of the receiving party, of which notice was not properly given to the sending party, or due to a refusal to accept by the receiving party, such Notice shall be effective on the date delivery is attempted.

ARTICLE VII MISCELLANEOUS

7.1 Negation of Partnership. The parties specifically acknowledge that none of the parties is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between or among any two or more of the parties, or cause them to

be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any person who is not a party or a permitted transferee pursuant to Section 4.3; and nothing in this Agreement shall limit or waive any rights any one or more of the parties may have or acquire against any third person with respect to the terms, covenants or conditions of this Agreement.

7.2 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any of the real property described or referred to herein, or any buildings or improvements constructed thereon, to the general public, for the general public, or for any public use or purpose whatsoever.

7.3 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

7.4 Exhibits. The exhibits, to which reference is made herein, are deemed incorporated into this Agreement in their entirety by reference thereto.

7.5 Amendment. Except as expressly provided in this Agreement, this Agreement may be modified or amended only by a written instrument, executed by each of the parties to this Agreement.

7.6 Entire Agreement. This written Agreement, the exhibits hereto, and the Ground Lease contain all the representations and the entire agreement among the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement and except as provided in the Ground Lease, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and exhibits hereto. Neither the conduct nor actions of the parties, nor the course of dealing or other custom or practice between or among the parties or any of them, shall constitute a waiver or modification of any term or provision of this Agreement.

7.7 Ambiguity. The terms, conditions and provisions of this Agreement were agreed to in arm's length negotiations in which each Party was represented by independent counsel of its own choosing. Accordingly, in the event of any ambiguity in this Agreement, such ambiguity shall not be resolved against any Party deemed the principal draftsman of this Agreement or the provision of this Agreement at issue.

7.8 Further Assurances; Covenant to Sign Documents. Each party shall take all actions and do all things, and execute, with acknowledgment or affidavit if required, any and all documents and writings, which may be necessary or proper to achieve the purposes and objectives of this Agreement.

7.9 Governing Law. This Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of Alabama.

7.10 Counterpart Execution. For convenience, this Agreement may be executed by the parties in multiple counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same Agreement.

7.11 Liabilities of the City. The Company understands, acknowledges and agrees that the obligations of the City as set forth herein are limited by the limitations imposed on public bodies, municipalities and public corporations by the Constitution of the State of Alabama.

7.12 No Waiver. No consent or waiver, express or implied, by any party hereto or to any breach or default by any other party in the performance by such other party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of any other party or to declare such other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any party hereto shall be construed to waive or limit the need for such consent in any other or subsequent instance.

7.13 Intentionally Omitted.

7.14 Limitations on Transfer. No transfer of any portion of the Phase I Development Area shall affect the City's obligations hereunder unless the Company releases such obligations or liens in writing. Except as expressly limited by this Section 7.14, the Company acknowledges and agrees that the City may otherwise transfer the Phase I Development Area including, without limitation, in connection with any reconfiguration of the City's organizational and governmental structure so long as any such transfer is to another local governmental entity.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed and delivered on its behalf by its duly authorized officer, on and as of the Effective Date.

CITY OF HUNTSVILLE

By: _____
Mayor

CITYCENTRE I LLC, an Alabama
limited liability company

By: _____ (SEAL)
Name: _____
Its: _____

EXHIBIT A

PHASE I DEVELOPMENT AREA

Legal Description of Tract 2 (CityCentre I Property)

ALL THAT PART OF SECTION 1, TOWNSHIP 4 SOUTH, RANGE 1 WEST OF THE HUNTSVILLE MERIDIAN, MADISON COUNTY ALABAMA MORE PARTICULARLY DESCRIBED AS FOLLOWS: \

COMMENCE AT THE NORTHEAST CORNER OF BLOCK 22 OF URBAN RENEWAL PROJECT ALA R-32, BIG SPRING AREA, HUNTSVILLE ALABAMA, AS RECORDED IN PLAT BOOK 8, PAGE 22-23, AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE, MADISON COUNTY, ALABAMA; THENCE NORTH 90 DEGREES WEST FOR A DISTANCE OF 579.04 FEET TO THE POINT; THENCE NORTH 00 DEGREES EAST FOR A DISTANCE OF 48.59 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PROPERTY:

THENCE FROM THE POINT OF BEGINNING NORTH 63 DEGREES 56 MINUTES 42 SECONDS WEST FOR A DISTANCE 180.00 FEET TO A POINT;

THENCE NORTH 77 DEGREES 49 MINUTES 03 MINUTES WEST FOR A DISTANCE OF 114.98 FEET TO A POINT ON THE EAST RIGHT OF WAY MARGIN OF MONROE STREET;

THENCE NORTH 21 DEGREES 25 MINUTES 08 SECONDS EAST FOR A DISTANCE OF 122.77 FEET ALONG SAID EAST RIGHT OF WAY MARGIN TO A POINT;

THENCE ALONG SAID EAST RIGHT OF WAY MARGIN ALONG A CURVE TO THE LEFT WITH A RADIUS OF 288.00 FEET AND AN ARC LENGTH OF 115.61 FEET, HAVING A CHORD BEARING AND DISTANCE OF NORTH 09 DEGREES 55 MINUTES 09 SECONDS EAST TO A POINT;

THENCE NORTH 01 DEGREES 34 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 49.28 FEET ALONG SAID EAST RIGHT OF WAY MARGIN TO A POINT;

THENCE LEAVING SAID EAST RIGHT OF WAY MARGIN ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 184.00 FEET AND AN ARC LENGTH OF 125.59 FEET, HAVING A CHORD BEARING AND DISTANCE OF NORTH 17 DEGREES 58 MINUTES 25 SECONDS EAST AND 123.17 FEET, TO A POINT;

THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 78.13 FEET AND AN ARC LENGTH OF 105.55 FEET, HAVING A CHORD BEARING AND DISTANCE OF NORTH 68 DEGREES 01 MINUTES 32 SECONDS EAST AND 97.70 FEET, TO A POINT;

THENCE SOUTH 34 DEGREES 43 MINUTES 17 SECONDS EAST FOR A DISTANCE OF 20.97 FEET TO A POINT;

THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 310.20 FEET AND AN ARC LENGTH OF 155.74 FEET, HAVING A CHORD BEARING AND DISTANCE OF SOUTH 76 DEGREES 14 MINUTES 41 SECONDS EAST AND 154.11 FEET, TO A POINT;

THENCE NORTH 87 DEGREES 38 MINUTES 32 SECONDS EAST FOR A DISTANCE OF 12.38 FEET TO A POINT;

THENCE SOUTH 02 DEGREES 21 MINUTES 28 SECONDS EAST FOR A DISTANCE OF 21.22 FEET TO A POINT;

THENCE SOUTH 16 DEGREES 03 MINUTES 24 SECONDS WEST FOR A DISTANCE OF 327.35 FEET TO A POINT;

THENCE SOUTH 73 DEGREES 56 MINUTES 36 SECONDS EAST FOR A DISTANCE OF 31.09 FEET TO A POINT;

THENCE SOUTH 06 DEGREES 31 MINUTES 05 SECONDS EAST FOR A DISTANCE OF 64.41 FEET TO A POINT;

THENCE SOUTH 28 DEGREES 38 MINUTES 16 SECONDS WEST FOR A DISTANCE OF 82.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.82 ACRES, MORE OR LESS.

EXHIBIT B

PHASE II DEVELOPMENT AREA

(The Option Tract)

ALL THAT PART OF SECTION 1, TOWNSHIP 4 SOUTH, RANGE 1 WEST OF THE HUNTSVILLE MERIDIAN, MADISON COUNTY ALABAMA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF BLOCK 22 OF URBAN RENEWAL PROJECT ALA R-32, BIG SPRING AREA, HUNTSVILLE ALABAMA, AS RECORDED IN PLAT BOOK 8, PAGE 22-23, AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE, MADISON COUNTY, ALABAMA;

THENCE NORTH 90 DEGREES WEST FOR A DISTANCE OF 579.04 FEET TO THE POINT; THENCE NORTH 00 DEGREES EAST FOR A DISTANCE OF 48.59 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PROPERTY:

THENCE SOUTH 28 DEGREES 38 MINUTES 16 SECONDS WEST FOR A DISTANCE OF 317.46 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY MARGIN OF DAVIS CIRCLE;

THENCE ALONG A CURVE TO THE LEFT ALONG SAID RIGHT-OF-WAY MARGIN WITH A RADIUS OF 50.00 FEET AND AN ARC LENGTH OF 61.17 FEET TO A POINT;

THENCE LEAVING SAID DAVIS CIRCLE RIGHT-OF-WAY AND ALONG THE NORTH MARGIN OF THE PROPOSED DAVIS CIRCLE RIGHT-OF-WAY EXTENSION, ROADWAY CURRENTLY UNDER CONSTRUCTION, ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 200.54 FEET AND AN ARC LENGTH OF 475.01 FEET, HAVING A CHORD BEARING AND DISTANCE OF NORTH 81 DEGREES 36 MINUTES 42 SECONDS WEST AND 199.05 FEET TO A POINT;

THENCE ALONG SAID NORTH MARGIN OF PROPOSED DAVIS CIRCLE RIGHT-OF-WAY EXTENSION NORTH 69 DEGREES 31 MINUTES 03 SECONDS WEST FOR A DISTANCE OF 19.16 FEET TO A POINT;

THENCE ALONG SAID NORTH MARGIN OF PROPOSED DAVIS CIRCLE RIGHT-OF-WAY EXTENSION ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 50.00 FEET AND AN ARC LENGTH OF 90.95 FEET, HAVING A CHORD BEARING AND DISTANCE OF NORTH 17 DEGREES 24 MINUTES 30 SECONDS WEST AND 78.92 FEET TO A POINT ON THE EAST RIGHT-OF-WAY MARGIN OF MONROE STREET;

THENCE NORTH 34 DEGREES 42 MINUTES 02 SECONDS EAST FOR A DISTANCE OF 12.72 FEET ALONG SAID MONROE STREET EAST RIGHT OF WAY MARGIN;

THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 124.52 FEET AND AN ARC LENGTH OF 62.00 FEET, HAVING A CHORD BEARING AND DISTANCE OF NORTH 44 DEGREES 14 MINUTES 05 SECONDS EAST AND 61.36 FEET ALONG SAID MONROE STREET EAST RIGHT-OF-WAY MARGIN;

THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 563.14 FEET AND AN ARC LENGTH OF 145.73 FEET, WITH A CHORD BEARING AND DISTANCE OF NORTH 28 DEGREES 50 DEGREES 40 SECONDS EAST AND 145.32 FEET ALONG SAID MONROE STREET EAST RIGHT-OF-WAY MARGIN;

THENCE NORTH 21 DEGREES 13 MINUTES 30 DEGREES EAST FOR A DISTANCE OF 126.84 FEET ALONG SAID MONROE EAST RIGHT-OF-WAY MARGIN;

THENCE LEAVING SAID RIGHT-OF-WAY SOUTH 77 DEGREES 49 MINUTES 03 SECONDS EAST FOR A DISTANCE OF 114.98 FEET TO A POINT;
THENCE SOUTH 63 DEGREES 56 MINUTES 42 SECONDS EAST FOR A DISTANCE OF 180.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.48 ACRES, MORE OR LESS.

EXHIBIT C

CONSTRUCTION AND DEVELOPMENT SCHEDULE

Tract #1 – Multi-Family

Pull construction permits: June 10, 2016

Commencement Date: August 10, 2016

Completion Date: Oct. 4, 2017

Parking Deck for Tract #1

Pull construction permits: August 10, 2016

Commencement Date: September 10, 2016

Completion Date: November 4, 2017

Tract #2 – Hotel No. 1 and Retail

Pull construction permits: January 11, 2016

Commencement Date: March 11, 2016

Completion Date: January 6, 2017

Parking Deck for Tract #2

Pull construction permits: March 11, 2016

Commencement Date: May 11, 2016

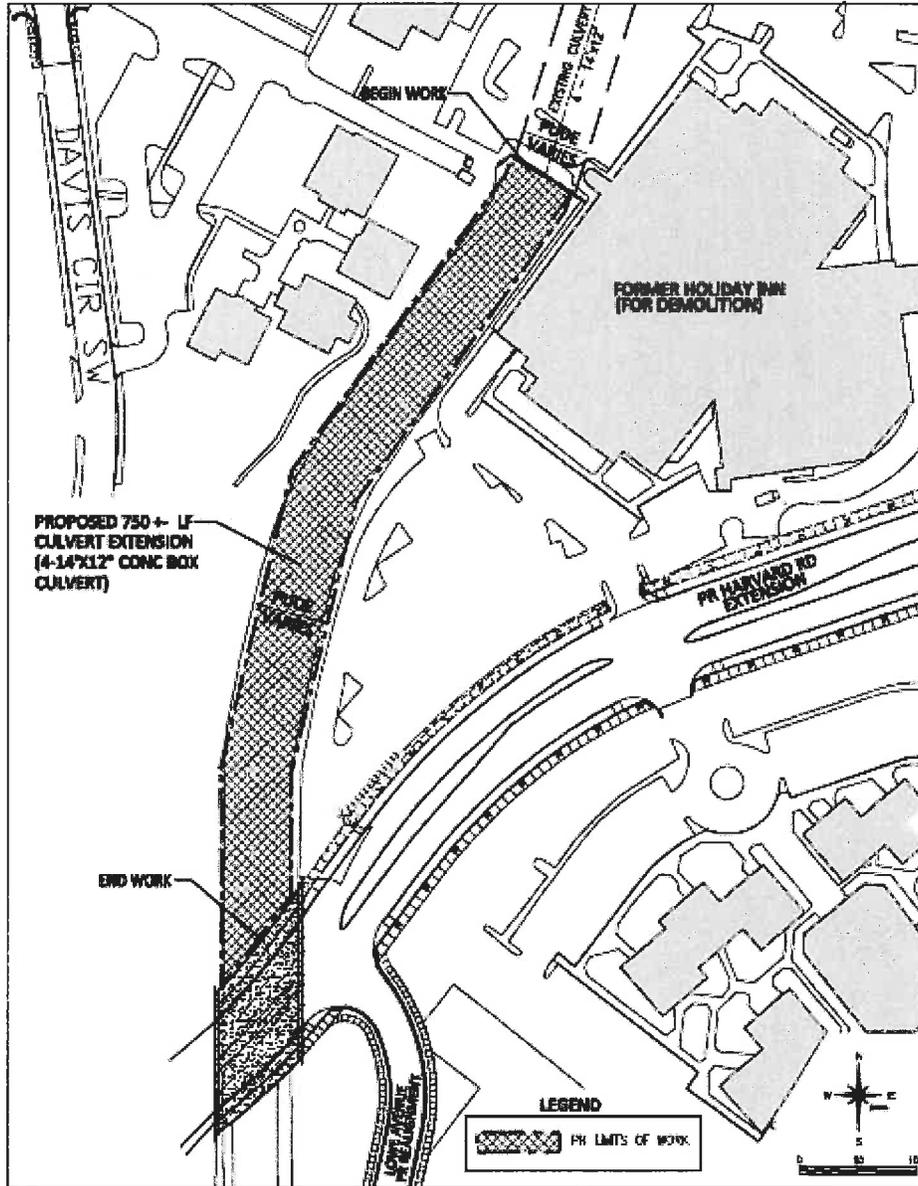
Completion Date: March 6, 2017

Culvert Work (by City)

Commencement Date: The day following the Effective Date (i.e., the expiration of the Inspection Period)

Completion Date: June 1, 2016

EXHIBIT D
CULVERT AREA



ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 8/13/2015

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: Development Agreement with CityCentre I

Document Name: Development Agreement between the City and CityCentre I

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

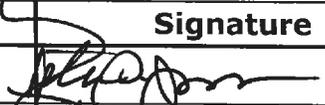
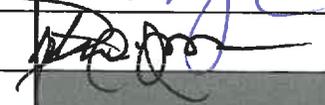
Account Number:

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name: <input type="text"/>
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Department	Signature	Date
1) Originating		8-11-15
2) Legal		8-11-15
3) Finance		8/11
4) Originating		8-11-15
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		