

RESOLUTION NO. 22 , 2022

**A RESOLUTION AMENDING RESOLUTION NOS. 9, 2020, 39, 2020
AND 43, 2021 TO APPROVE A FINAL MODIFICATION TO THE
CONSTRUCTION AGREEMENT WITH BRANDICORP, LLC FOR STAGE I
MONTGOMERY QUARTER PROJECT IMPROVEMENTS**

WHEREAS, Council previously adopted Resolution Nos. 9, 2020, 39, 2020 and 43, 2021 to approve a Construction Agreement and evolving modifications to the Construction Agreement for the Montgomery Quarter Public Improvements in Stage I of the development; and

WHEREAS, such modifications did increase the allocated Budget for Stage I of the Public Improvements to Fifteen Million Two Hundred Fifty Thousand Dollars (\$15,250,000); and

WHEREAS, Sequences I and II of the Montgomery Quarter Public Improvements have reached Substantial Completion, and Sequence III is nearing completion to enable parts of Stage I of the Project to open to the public this calendar year; and

WHEREAS, in the course of construction, the City has authorized the Contractor to complete the Ayers Place connection to Montgomery Road, which project entrance was deferred in the defined Scope and Budget for Stage I to be able to allow the area to serve as a Maintenance Of Traffic area for the Montgomery Road/Ronald Reagan Cross County Highway Roundabout; and

WHEREAS, with the Roundabout now complete, rather than deferring this section of Stage II of the Project, it is more efficient and practical to modify the Scope and Budget of the Project Public Improvements in Stage I to complete this connector to

Montgomery Road, and with current escalating construction costs it is appropriate to complete this work as a part of Stage I of the Project without new engineering nor new bidding; and

WHEREAS, the Administration has requested that the Construction Agreement be modified to increase the Scope and Budget for Stage I to clearly define the Improvements to be completed on Ayers Place and increasing the Budget by Four Hundred Seventy Two Thousand Eight Hundred Seventy Five Dollars (\$472,875) to capture these additional Ayers Place costs within final Change Orders; and

WHEREAS, the parties previously negotiated Shared Savings in Section 2 of the Construction Agreement to incentivize the efficient completion of the Project Improvements, which Shared Savings, including initial Contingencies and Allowances, have been exhausted by the City in appropriate Change Orders throughout Stage I of the Project; and

WHEREAS, the Administration has requested Council to modify Section 2 of the Construction Agreement to reallocate Shared Savings anticipating that any portion of the Developer Shared Savings will be devoted to the projected losses the Developer will incur to complete the Port Authority garages; and

WHEREAS, modifications to the Construction Agreement are appropriate at this time to finalize completion of Stage I of the Project, including the extension of Ayers Place, and to assist the Contractor in mitigating losses the Contractor foresees in the construction of Port of Greater Cincinnati Development Authority parking garages, which garages benefit the City, the general public, and the private parties.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The not to exceed budget of Fifteen Million Two Hundred Fifty Thousand Dollars (\$15,250,000) for the Public Improvements in Stage I of the Montgomery Quarter Project is hereby increased to Fifteen Million Seven Hundred Twenty Two Thousand Eight Hundred Seventy Five Dollars (\$15,722,875), which amount as modified includes the necessary extension of the Public Improvements on Ayers Place to connect Stage I of the Project to Montgomery Road. The City Manager is hereby authorized to execute an Amendment to the Construction Agreement, in the form as attached hereto as Exhibit A, and appropriate Change Orders recognizing this additional Budget amount is an immediate and necessary additional expense to properly complete Ayers Place and Stage I of the Project Public Improvements. Further, the City Manager is authorized to amend the Construction Agreement and to modify the Scope of Work to correctly identify the extension of Ayers Place to Montgomery Road.

SECTION 2. Section 2 of the Construction Agreement is hereby modified to reallocate Shared Savings, which Shared Savings include any unused Final Contingency funds and Allowances as defined within the Construction Agreement to be as follows:

If at final completion of the Project there exists any unused Final Contingency funds, including buy-out savings, the City and Contractor shall share the unused Final Contingency funds as follows: The first Five Hundred Sixty Five Thousand Dollars (\$565,000) in Final Contingency/Shared Savings shall be allocated to the Contractor. The remaining Final Contingency and Shared Savings in excess of this amount shall be allocated twenty-five percent (25%) to the Contractor and seventy-five percent (75%) to the City. To properly manage Budgets and risk, the City Manager, in the City's sole discretion, is authorized to release all or a portion of the anticipated Final Contingency Funds when the Project Work is substantially completed reserving any portion as necessary to manage the project

to Substantial Completion. It is anticipated that the Project Work will be substantially completed by the close of the Third Quarter 2022.

SECTION 3. All other terms and conditions of the Construction Manager-at-Risk Agreement, as approved by Resolution No. 9, 2020 and modified by Resolution Nos. 39, 2020 and 43, 2021, are hereby reaffirmed.

SECTION 4. The City Manager is authorized to execute such additional documentation as may be necessary to complete the Construction Agreement to assure both efficient and quality construction for the Public Improvements within Stage I in order to attain the high standard expected for this mixed-use public/private development.

SECTION 5. This Resolution shall be in full force and effect from and after its passage.

PASSED: July 6, 2022

ATTEST: Connie M. Gaylor
Connie M. Gaylor, Clerk of Council

Craig D. Margolis
Craig D. Margolis, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director