



EMERGENCY

City of Cincinnati

KMG *AWB*

An Ordinance No. 249

- 2020

**AUTHORIZING** the City Manager to execute a *Fourth Amendment to Funding, Acquisition and Development Agreement* with Madisonville Phase I LLC, Madisonville Phase II LLC, Madisonville Phase III LLC, and Ackermann Enterprises, Inc., in order to facilitate the companies' multi-phased mixed-use redevelopment of the property; **ESTABLISHING** new capital improvement program project account no. 980x164x211631, "Madison & Whetsel Phase IIB Public Improvements," for the purpose of providing resources to facilitate the construction of various public improvements associated with a portion of the development; **AUTHORIZING** the transfer and appropriation of \$950,000 from the unappropriated surplus of Madisonville District Equivalent Fund 498 (Madisonville TIF District) to the newly established capital improvement program project account 980x164x211631, "Madison & Whetsel Phase IIB Public Improvements"; and **DECLARING** expenditures from such project account to be for a public purpose.

WHEREAS, Ackermann Enterprises, Inc. ("Developer") and the City are parties to a *Funding, Acquisition and Development Agreement* dated October 6, 2016, as authorized by Ordinance No. 241-2016, passed by Council on June 29, 2016, as amended by (i) a *First Amendment to Funding, Acquisition and Development Agreement* dated September 25, 2018, as authorized by Ordinance No. 161-2018, passed by Council on June 20, 2018; (ii) a *Second Amendment to Funding, Acquisition and Development Agreement* dated September 30, 2019, as authorized by Ordinance No. 341-2019, passed by Council on September 11, 2019; and (iii) a *Third Amendment to Funding, Acquisition and Development Agreement* dated July 28, 2020 (as amended, the "Agreement"), pursuant to which, among other things, the City and Developer agreed to a plan for the redevelopment of the area surrounding the intersection of Madison Road and Whetsel Avenue (as defined in the Agreement, the "Project Site"), and Developer assigned its rights and obligations related to the redevelopment of a portion of the Project Site (the "Project") to Madisonville Phase I LLC and Madisonville Phase II LLC; and

WHEREAS, the Agreement currently provides for a three-phase development, the first phase of which is the Project, the second phase of which is the "Phase IIA Project", and the third phase of which is the "Phase IIB Project"; and

WHEREAS, the parties now desire to enter into a *Fourth Amendment to Funding, Acquisition and Development Agreement*, in accordance with the material terms and conditions in the form attached as Attachment A to this ordinance (the "Fourth Amendment"; the Agreement, as proposed to be amended by the Fourth Amendment, is hereinafter referred to as the "Proposed Agreement"), which, among other things, divides the Phase IIB Project into two sub-phases:

- (i) the first sub-phase consists of the redevelopment of the Phase IIB Property (as defined below) by Developer, which will be assigned to Madisonville Phase III

LLC (“Phase IIB Developer”) in accordance with the Proposed Agreement, including Developer’s design and construction of (a) at an aggregate project cost of approximately \$24,030,095, (1) approximately 92 market rate apartments (containing in aggregate approximately 73,900 square feet of residential rental space), (2) approximately 18,900 square feet of ground floor commercial space, (3) approximately 94 surface parking spaces and (4) approximately 15 public parking spaces on Prentice Street; and (b) public infrastructure improvements benefitting the Phase IIB Property, including a public plaza (collectively, the “Phase IIB Project”); and

- (ii) the remaining sub-phase consists of the potential redevelopment of certain properties north of Sierra Street, as depicted on Exhibit A-3 to the Fourth Amendment and labeled “North Sierra Properties” thereon (the “North Sierra Properties”), or some portion thereof, by Developer (or an affiliate of Developer), the description and total aggregate project cost of which will be determined at the time of Developer’s (or Developer’s affiliate’s) submission of a proposal for the North Sierra Properties; and

WHEREAS, in accordance with the Proposed Agreement, Developer now desires to assign all of its rights and obligations related to the development of the Phase IIB Project, and Phase IIB Developer desires to (i) assume all of Developer’s rights and obligations related to the development of the Phase IIB Project, and (ii) proceed with the Phase IIB Project, which will be situated on certain real property located within the SE Block (as defined in the Agreement), as depicted on Exhibit A-3 to the Fourth Amendment and labeled “Phase IIB Property” thereon (the “Phase IIB Property”); and

WHEREAS, the City has granted to Developer a purchase option on the Phase IIB Property and the North Sierra Properties, and pursuant to the terms of the Proposed Agreement, the City and Developer desire to bifurcate that purchase option so that Developer may exercise the purchase option with respect to the City-owned portion of the Phase IIB Property and retain a purchase option on the North Sierra Properties, as more particularly described in the Proposed Agreement (the “North Sierra Purchase Option”); and

WHEREAS, pursuant to Ordinance No. 495-2019, passed by this Council on December 11, 2019, a thirty-year real property tax exemption pursuant to Ohio Revised Code Section 5709.41 was established on the Phase IIB Property (the “Phase IIB Project TIF Ordinance”); and

WHEREAS, in furtherance of the revitalization of the Madisonville neighborhood and the City’s urban redevelopment goals, in addition to the assistance the City previously provided to Developer pursuant to the Agreement, the City anticipates providing the following assistance to the Phase IIB Project, as more particularly described in, and subject to the terms and conditions of the Proposed Agreement:

- (i) contributing a grant not to exceed \$950,000 to the Phase IIB Project from Incentive District No. 19, commonly known as the Madisonville TIF District, from Fund 498 to reimburse Developer, or upon the assignment contemplated in

the Fourth Amendment, its assignee Phase IIB Developer, for the cost of constructing certain public infrastructure improvements in the vicinity of the Phase IIB Property and the related public plaza;

- (ii) conveying certain real property owned by the City located within the Phase IIB Property (as described in the Proposed Agreement, the “City Phase IIB Property”);
- (iii) extending the period through which Developer can exercise the North Sierra Purchase Option through March 31, 2021;
- (iv) providing the payments in lieu of taxes collected pursuant to the Phase IIB Project TIF Ordinance in accordance with the Fourth Amendment and any related documents; and

WHEREAS, at closing, the City will convey the City Phase IIB Property to Phase IIB Developer; and

WHEREAS, the City and Phase IIB Developer intend to execute a *Service Agreement* pursuant to which Phase IIB Developer will make service payments in lieu of property taxes; and

WHEREAS, the Proposed Agreement provides that the service payments in lieu of taxes will be used: (i) to make payments to the Board of Education of the City School District of the City of Cincinnati (the “School Board”) under the City’s *Agreement* with the School Board dated July 2, 1999, as amended; (ii) as assigned to the Port of Greater Cincinnati Development Authority (the “Port Authority”) to enable the Port Authority to obtain bond financing for the Phase IIB Project; and (iii) to reimburse for maintenance and programming costs related to the public plaza, in each case in the manner and in the respective amounts set forth in the Proposed Agreement; and

WHEREAS, the majority of the Project Site is located within District 19 – Madisonville Incentive District established pursuant to Ordinance No. 414-2005, passed by City Council on November 2, 2005; and

WHEREAS, as contemplated in the Agreement, (i) the City Phase IIB Property is not needed for a municipal purpose, and (ii) eliminating competitive bidding in connection with the City’s conveyance of the City Phase IIB Property is appropriate because the City believes that the use of the Phase IIB Property for the Phase IIB Project is the highest and best use for the site and will contribute to the revitalization of the City’s Madisonville neighborhood; and

WHEREAS, as of September 5, 2019, the City’s Real Estate Services Division has determined that the fair market value of the City Phase IIB Property is \$735,000; however, the City is willing to sell the City Phase IIB Property for less than fair market value, namely, for \$0.00, pursuant to the terms and conditions of the Proposed Agreement, because the City will receive economic and non-economic benefits equal to or exceeding the fair market value thereof,

including the creation of jobs and the redevelopment of the Phase IIB Property and the Madisonville neighborhood more generally; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to lend aid or credit for industry, commerce distribution and research; and

WHEREAS, Section 16 of Article VIII of the Ohio Constitution provides that it is in the public interest and a proper public purpose for the City to enhance the availability of adequate housing and to improve the economic and general well-being of the people of the City by providing or assisting in providing housing; and

WHEREAS, the City believes that the Phase IIB Project is in the vital and best interests of the City and the health, safety, and welfare of its residents and is in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements; and

WHEREAS, this ordinance is in accordance with the “Live” strategy to “Become more walkable” as described on pages 156-159 of Plan Cincinnati (2012), as well as the “Compete” strategy to “Target investment in geographic areas where there is already economic activity” as described on pages 115-117 of Plan Cincinnati (2012); and

WHEREAS, the City Planning Commission, having the authority to approve the change in use of City-owned property, approved the conveyances described in the Proposed Agreement at its meeting on June 3, 2016; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Fourth Amendment to Funding, Acquisition and Development Agreement* with Ackermann Enterprises, Inc. (“Developer”), Madisonville Phase I LLC, Madisonville Phase II LLC, and Madisonville Phase III LLC (“Phase IIB Developer”), in accordance with the material terms and conditions in the form attached as Attachment A to this ordinance (the “Fourth Amendment”), which amends the *Funding, Acquisition and Development Agreement* between the City and Developer dated October 6, 2016, as amended by the *First Amendment to Funding, Acquisition and Development Agreement* dated September 25, 2018, the *Second Amendment to Funding, Acquisition and Development Agreement* dated September 30, 2019, and the *Third Amendment to Funding,*

*Acquisition and Development Agreement* dated July 28, 2020 (as amended, the “Agreement”; the Agreement, as proposed to be amended by the Fourth Amendment, is hereinafter referred to as the “Proposed Agreement”), and pertains to Developer’s development and construction of a mixed-use residential and commercial project located in the southeast quadrant of the intersection of Madison Road and Whetsel Avenue, as more particularly depicted on Exhibit A-3 of the Fourth Amendment and labeled Phase IIB Property (the “Phase IIB Property”), including (i) at an aggregate project cost of approximately \$24,030,095 (a) approximately 92 market rate apartments, (b) approximately 18,900 square feet of commercial space, (c) approximately 94 surface parking spaces, and (d) approximately 15 public parking spaces on Prentice Street; and (ii) public infrastructure improvements benefitting the Phase IIB Property, including a public plaza (the “Phase IIB Project”), which rights and obligations will be assigned to Phase IIB Developer in accordance with the terms and conditions of the Proposed Agreement.

Section 2. That the City Manager is hereby authorized to execute (i) the *Service Agreement* in accordance with the material terms and conditions in the form attached to the Proposed Agreement as an exhibit; (ii) a future *Cooperative Agreement* between the City, Phase IIB Developer, the Port of Greater Cincinnati Development Authority and any other necessary parties thereto; and (iii) any other applicable agreement (together with the Service Agreement and the Cooperative Agreement, the “Supplemental Agreements”) to be entered into with respect to the Phase IIB Project to memorialize the financing arrangement contemplated in the Proposed Agreement.

Section 3. That the property interests to be conveyed by the City pursuant to the Proposed Agreement are not needed for a municipal purpose.

Section 4. That it is in the best interest of the City to eliminate competitive bidding in connection with the conveyance of the portion of the Phase IIB Property currently owned by the City to Phase IIB Developer pursuant to the Proposed Agreement (the “City Phase IIB Property”) because the City believes that the development of the Phase IIB Property as part of the Phase IIB Project is the highest and best use for the Phase IIB Property and will create jobs and will contribute to the revitalization of Madisonville.

Section 5. That the fair market value of the City Phase IIB Property, as determined by the City’s Real Estate Services Division, is approximately \$735,000; however, the City is agreeable to selling the City Phase IIB Property to Phase IIB Developer for less than fair market value, namely, for \$0.00, because the City will receive economic and non-economic benefits exceeding the fair market value thereof in connection with the Phase IIB Project, including the creation of jobs and the redevelopment of the Phase IIB Property and the Madisonville neighborhood generally.

Section 6. That, pursuant to the Proposed Agreement, Council authorizes the City to convey the City Phase IIB Property to Phase IIB Developer for \$0.00.

Section 7. That the Director of Finance is authorized to establish new capital improvement program project account no. 980x164x211631, “Madison & Whetsel Phase IIB Public Improvements,” for the purpose of providing resources to facilitate the construction of various public improvements that will support the Phase IIB Project, as allowable by Ohio law.

Section 8. That the transfer and appropriation of \$950,000 from the unappropriated surplus of Madisonville District Equivalent Fund 498 to capital improvement program project account no. 980x164x211631, “Madison & Whetsel Phase IIB Public Improvements,” is hereby

authorized for the purpose of providing resources to facilitate the construction of various public improvements that will support the Phase IIB Project, as allowable by Ohio law.

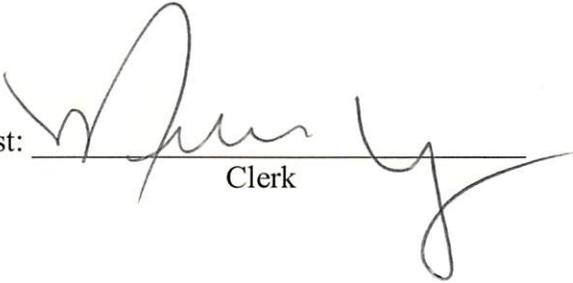
Section 9. That the public improvements, including the public plaza, associated with the Phase IIB Project are hereby declared to serve a public purpose and constitute “Public Infrastructure Improvements,” as defined in Ohio Revised Code Section 5709.40(A)(8) and pursuant to this ordinance.

Section 10. That Council authorizes the appropriate City officials to take all necessary and proper actions to fulfill the terms of this ordinance, the Proposed Agreement, the Supplemental Agreements, and any and all ancillary agreements (including those referenced in the Proposed Agreement, attached thereto as exhibits, or referenced in such exhibits), amendments, deeds (including any reservations of easements contemplated therein), plats, and other documents, including without limitation executing amendments to such agreements and executing documents to create new encumbrances and release existing encumbrances on the title to the Phase IIB Property, as deemed necessary or appropriate by the City Manager.

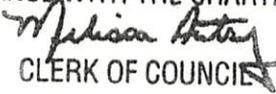
Section 11. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to enable Developer, and upon the assignment contemplated in the Proposed Agreement, Phase IIB Developer, to commence the Phase IIB Project as soon as possible,

therefore resulting in the revitalization of the Madisonville neighborhood and the economic growth of the City at the earliest possible date.

Passed: August 5, 2020

Attest:   
Clerk

  
John Cranley, Mayor

I HEREBY CERTIFY THAT ORDINANCE NO 249-2020  
WAS PUBLISHED IN THE CITY BULLETIN  
IN ACCORDANCE WITH THE CHARTER ON 8-18-2020  
  
CLERK OF COUNCIL