

RECORD OF RESOLUTIONS

Resolution No. 19-2024

Passed: June 11, 2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE CONSTRUCTION MANAGER AT RISK AGREEMENT WITH WOODARD DEVELOPMENT LLC FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS AS PART OF THE RIVER DISTRICT DEVELOPMENT PROJECT.

Whereas, the City of West Carrollton, Ohio (the "City") is engaged in a redevelopment effort of the I75-Exit 47/Dixie Drive Corridor as a part of a larger project know as River District Development Project; and

Whereas, under the terms of the Construction Manager at Risk Agreement (the "Agreement") made between the City and Woodard Development LLC (the "Construction Manager"), the Construction Manager is managing the River District Phase 1 design, engineering and construction effort for infrastructure enhancements necessary to support Phase 1 of the River District Development Project ("Phase 1 Infrastructure"), as well as design and engineering for infrastructure enhancements related to Phase 2 of the River District Development Project ("Phase 2 Infrastructure"); and

Whereas, under the terms of the Agreement the Construction Manager will provide the construction management services for a fee of 5.00% of the construction labor and material costs and the overhead costs of the Construction Manager; and

Whereas, the City has previously issued bond anticipation notes in an amount sufficient to provide \$2,500,000 in funding for costs of the Phase 1 Infrastructure and the design and engineering for the Phase 2 Infrastructure; and

Whereas, under the current Agreement, the City's maximum financial commitment for the costs of Phase 1 Infrastructure design, engineering, construction and construction management fees, and the Phase 2 Infrastructure design and engineering will be the lesser of \$2,500,000 or the total cost of the Phase 1 Infrastructure and Phase 2 Infrastructure design and engineering as set forth in the approved project budget; and

Whereas, the City desires to amend the Agreement to include design and engineering of a "spine road" related to Phase 1 of the River District Development Project ("Phase 1A Infrastructure"); and

Whereas, the design and engineering for the Phase 1A Infrastructure will increase the City's maximum financial contribution by \$158,000, and as such, the City's maximum financial commitment would be the lesser of \$2,658,000 or the total cost of the Phase 1 Infrastructure and the design and engineering of the Phase 1A Infrastructure and the Phase 2 Infrastructure; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WEST CARROLLTON, OHIO, THAT:

Section 1: The City Manager is hereby authorized to execute an amendment to the Agreement with the Construction Manager, in substantially the form attached to and made part of this

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resolution, with changes or amendments thereto not inconsistent with this resolution and not substantially adverse to the City as determined by the Law Director of the City and which are approved by the City Manager.

Section 2: The City Manager is further authorized to do all things necessary to comply with the terms and conditions of said Agreement.

Section 3: It is found and determined that all formal actions of the City Council relating to the adoption of this resolution were in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121 of the Ohio Revised Code.

Section 4: This resolution shall be in full force and effect from and after its date of passage.

Passed: June 11, 2024



Mayor

Attest: Grady Moore
Clerk of Council

Effective Date: June 11, 2024

THIRD AMENDMENT TO CONSTRUCTION MANAGER AT RISK AGREEMENT

This THIRD AMENDMENT TO CONSTRUCTION MANAGER AT RISK AGREEMENT (this "Third Amendment") is made as of _____, 2024 (the "Effective Date"), by and among the CITY OF WEST CARROLLTON, OHIO, a municipal corporation duly organized and validly existing under the Constitution and Laws of the State of Ohio (the "City"), and WOODARD DEVELOPMENT LLC, an Ohio limited liability company ("Construction Manager"), under the following circumstances (words having an initial capital letter and not defined within the body of this Third Amendment have the meaning set forth in the Agreement as defined herein):

- A. On or about June 28, 2023, the Parties entered into that certain Construction Manager at Risk Agreement (the "Original Agreement"); and
- B. On or about September 11, 2023, the Parties entered into that certain First Amendment to Construction Manager at Risk Agreement (the "First Amendment"); and
- C. On or about June 4, 2024, the Parties entered into that certain Second Amendment to Construction Manager at Risk Agreement (the "Second Amendment" and together with the Original Agreement and First Amendment, the "Agreement"); and
- D. The Parties now desire to amend the Agreement as set forth in this Third Amendment to expand the scope of the Agreement as to certain public improvements not contemplated in the Original Agreement; and
- E. The City Council of the City has adopted Resolution No. 19-2024, which authorizes the City Manager of the City to execute this Third Amendment.

NOW, THEREFORE, in consideration of the mutual benefits and obligations contained in this Third Amendment, the Parties hereby amend the Agreement as follows:

1. Definitions.

The definition of "Costs" in Section 1(c) of the Agreement is hereby replaced with the following:

"(c) "Costs" shall mean all costs incurred by Construction Manager in the obtainment of design and engineering services related to the Public Improvements for Phase I and Phase II of the Development (including but not limited to the Final Plans, the Phase IA Plans and the Phase II Plans) and the performance of the Work as set forth in the Approved Budget (as defined in Section 4(b) hereof), and shall include the entire cost of the Work, including but not limited to costs of labor, materials, professional services, supplies, tools, equipment, field office and project site maintenance and operation, insurance, permits, licenses, legal fees (including but not limited to legal fees associated with the negotiation of this Agreement and any related contracts) and all sales, consumer use, or similar taxes, payroll taxes, unemployment taxes and similar contributions, all other taxes and

contributions required to be paid by all Legal Requirements relating to or affecting the Work, and any and all costs relating to compliance with all Legal Requirements relating to the Work. Costs may include construction management fees not to exceed five percent (5%) of total construction labor and material costs and the overhead costs of Construction Manager directly attributable to the performance by its employees of the obligations of Construction Manager under this Agreement not to exceed two percent (2%) of total construction labor and material costs. Costs shall also include any third-party engineering, testing or inspection services as required by the City and shall include any legal fees and costs associated with enforcement of this Agreement as to any Contractor for failure of the Contractor to comply with the terms of this Agreement.”

The following definition is hereby included in Section 1 as a new Section 1(r):

“(r) “Phase IA Plans” means the plans and specifications for the public road improvements depicted and described as the “Spine Road” on Exhibit A-1 attached hereto.”

2. Exhibit A-1. There is hereby added to the Agreement a new “Exhibit A-1”, attached hereto as Exhibit A.

3. Maximum City Commitment. Section 3 of the Agreement is hereby replaced with the following:

“Section 3. Maximum City Commitment. The City’s maximum financial commitment for the Work will be the lesser of (a) \$2,658,000, exclusive of capitalized interest and costs of issuance of the City Debt, or (b) the total Costs as set forth in the Approved Budget (the “Maximum City Commitment”). The balance of the Costs, if any, is to be borne by Construction Manager and Construction Manager will hold the City harmless for any shortfall.

4. Miscellaneous. Except as set forth in this Third Amendment, the Agreement remains in full force and effect and is hereby ratified in its entirety. In the event of a conflict between the terms of this Third Amendment and the terms of the Agreement, the applicable terms of this Third Amendment will govern and supersede. This Third Amendment will be construed under the laws of the State of Ohio. This Third Amendment may be executed in any number of counterparts, each of which will be deemed an original and together will constitute a single instrument. Delivery of an executed counterpart of a signature page to this Third Amendment by facsimile, email or other electronic means is effective as delivery of a manually executed counterpart of this Third Amendment. The headings of the clauses contained herein are solely for the convenience of the parties and do not constitute a part hereof.

[Signatures follow]

IN WITNESS WHEREOF, the Parties have set their hands effective as of the Effective Date.

CITY OF WEST CARROLLTON, OHIO, an
Ohio municipal corporation

By: _____

Its: _____

Approved as to Form:

Lori Denlinger, Law Director

WOODARD DEVELOPMENT LLC, an Ohio
limited liability company

By: _____

Its: _____

**CITY FISCAL OFFICER'S
CERTIFICATE**

The undersigned, fiscal officer of the City of West Carrollton, Ohio, hereby certifies that the moneys required to meet the obligations, if any, of the City during the year 2024 under the foregoing Second Amendment have been lawfully appropriated by the Council of the City of West Carrollton, Ohio for such purpose and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Finance Director
City of West Carrollton, Ohio

Dated: _____, 2024

EXHIBIT A

