



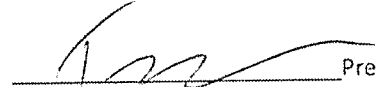
South Bend

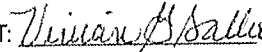
Redevelopment Commission

227 West Jefferson Boulevard, Room 1308, South Bend, Indiana

Redevelopment Commission Agenda Item

DATE: September 26th, 2024
FROM: Patrick Sherman: Project Manager – Public Works
SUBJECT: Stephenson Mills Gintz Dr Amendment

 Pres/V-Pres

ATTEST:  Secretary

Date: 9-26-24

☒ APPROVED ☐ Not Approved
SOUTH BEND REDEVELOPMENT COMMISSION

Funding Source* (circle) River West; River East; South Side; Douglas Road; West Washington; RDC General; Riv. East Res.

* Funds are subject to the City Controller's determination of availability; if funds are unavailable, as solely determined by the City Controller, then the authorization of the expenditure of such funds shall be void and of no effect.

PURPOSE OF REQUEST:

The City is obligated to replace the Stephenson Mills parking lot as part of an agreement in 2017 related to the Seitz Park project. The City also wishes to replace Gintz Dr, which is between the Cascades building and the Stephenson Mills apartments, due to problematic grades and extremely poor condition. Engineering worked closely with our design consultant and representatives from both property owners to develop a plan that works for all stakeholders involved.

This document will amend the previous agreement to reflect the work that will be performed on the Stephenson Mills property as well as cover a portion of their legal fees related to the amendment. The project has been awarded and should be completed this year. Once this is complete, the City will satisfy any contractual obligations to Stephenson Mills for parking.

SPECIFICS: xx



INTER-OFFICE MEMORANDUM

DEPARTMENT OF PUBLIC WORKS DIVISION OF ENGINEERING

TO: Theresa Heffner, Clerk
Board of Public Works

FROM: Patrick Sherman

SUBJECT: Gintz Dr. and Stephenson Mills Parking Lot
Project 124-054

DATE: September 19th, 2024

Greetings,

The City is obligated to replace the Stephenson Mills parking lot as part of an agreement in 2017 related to the Seitz Park project. The City also wishes to replace Gintz Dr, which is between the Cascades building and the Stephenson Mills apartments, due to problematic grades and extremely poor condition. Engineering worked closely with our design consultant and representatives from both property owners to develop a plan that works for all stakeholders involved.

This document will amend the previous agreement to reflect the work that will be performed on Stephenson Mills property as well as cover a portion of their legal fees related to the amendment. The project has been awarded and should be completed this year.

Thank you and please call with any questions.

FIRST AMENDMENT TO PROJECT AGREEMENT

This First Amendment to Project Agreement (this "First Amendment") is entered into as of September 24, 2024 (the "Effective Date"), by and among FREG South Bend, the City and the University (each as defined below). For valuable consideration, the receipt and adequacy of which are expressly acknowledged, FREG South Bend, the City and the University agree as follows:

1. Definitions. In this First Amendment the following terms have the meaning given:
 - (a) FREG South Bend: FREG South Bend Holdings, LLC, a Colorado limited liability company.
 - (b) City: The City of South Bend, Indiana, acting by and through its Board of Public Works, its Board of Park Commissioners, and its Redevelopment Commission.
 - (c) University: The University of Notre Dame du Lac.
 - (d) Agreement: The Project Agreement, dated effective as of June 25, 2019, by and among (i) FREG Stephenson Mill Associates, LLC, predecessor-in-interest to FREG South Bend, (ii) the City and (iii) the University.
 - (e) Property: The real property and improvements, commonly known as Stephenson Mill Apartments, located at 322 E. Colfax, South Bend, Indiana.

Any capitalized term used in this First Amendment that is not defined in this First Amendment has the meaning set forth for such term in the Agreement, and as used herein, the term "Agreement" shall mean the Agreement as modified by this First Amendment. FREG South Bend, the City and the University may be referenced herein individually as a "Party" and collectively as the "Parties," as context may require.

2. Additional Work.

(a) The Parties acknowledge that, as of the Effective Date, the Project, is not complete. Pursuant to an agreement between the University and the City, the City has been paying, and continues to pay, to FREG South Bend \$200 per day as the additional consideration required by Section 3)C.3.d) of the Agreement (the "Daily Fee"). From and after the Effective Date, Section 3)C.3.d) of the Agreement is amended such that the City shall be solely responsible for the Daily Fee. Notwithstanding anything to the contrary contained in the Agreement, the City shall, at its sole cost and expense, be responsible for the following additional work: (i) the removal of the East Drive and the restoration of the area comprising the East Drive and other surrounding areas to its prior condition including, but not limited to, sidewalks and landscaping; and (ii) the modification and improvements to the west side of the Property, in each case of clause (i) and (ii) as more particularly described on Exhibit A-1 and Exhibit A-2 attached hereto (clauses (i) and (ii) above are collectively referred to herein as the "Additional Work"). The Parties further acknowledge and agree that any portion of the Additional Work originally required pursuant to the Agreement to be performed and completed by the University shall now be the sole responsibility of the City.

(b) The plans and working drawings for the Additional Work (collectively, the “Plans”) shall be subject to FREG South Bend’s prior written approval (which approval shall not be unreasonably withheld). No later than 30 days after the Effective Date, the City shall, at its sole cost and expenses, prepare and submit an initial set of the Plans to FREG South Bend for its approval, which approval shall be provided in a written correspondence within five (5) business days. If written approval is not received by the City at the close of the fifth business day, the City may proceed with the Plans as presented. FREG South Bend’s participation in or approval of the Plans shall not constitute any representation or warranty, expressed or implied, that the Plans are in conformity with applicable governmental codes, regulations, rules or laws.

(c) The Additional Work shall commence no later than 15 days after FREG South Bend’s written approval of the Plans, and the Additional Work shall be completed in accordance with the City’s published construction standards, which are available here: <https://southbendin.gov/wp-content/uploads/2020/10/7-20-20-SBN-Standards-1.pdf>. The City shall use good faith and diligent efforts to complete the same as soon as practicable. The City shall notify FREG South Bend in writing upon completion of the Project and completion of the Additional Work (each a “Completion Notice”) and FREG South Bend shall have five (5) business days after receipt of the applicable Completion Notice to review and accept or reject the same with regard to the Additional Work. If FREG South Bend timely delivers any notice of objection to the City, then the City shall work in good faith to correct the same. If FREG South Bend accepts the Additional Work, or fails to respond to timely reject the same, then FREG South Bend shall be deemed to have accepted completion of the Additional Work for purpose of the payment of the Daily Fee. Notwithstanding anything to the contrary contained in the Agreement, the Daily Fee shall continue to be due and owing to FREG South Bend by the City until the last to occur of: (i) the completion of the Project; (ii) completion of the Additional Work and (iii) acceptance or deemed acceptance of completion of the Additional Work.

(d) Within ten (10) days of FREG South Bend’s acceptance of the completed Additional Work, in addition to all bonding requirements under IC 36-1-12-14, the City shall require its contractor for the Additional Work to provide a three (3)-year maintenance bond in an amount of ten percent (10%) of the construction cost of the Additional Work (the “Maintenance Bond”), commencing on the issuance of the bond and expiring on the third anniversary of such issuance (the “Bond Period”), covering all work to be performed in completing the Additional Work. Consistent with all City public work projects, the City affirms that a Maintenance Bond is a requirement from a contractor in order to be awarded a contract from the City for the Additional Work. If FREG South Bend notifies the City of any material defect in materials or workmanship of the Additional Work on or prior to the expiration of the Bond Period, then the City shall, to the extent covered by the Maintenance Bond, require the Contractor to repair, replace, restore, or rebuild all or any portion of the Additional Work, within reason, identified by FREG South Bend in its notice the City. Such repair, replacement, restoration or rebuilding shall be conducted in the same manner, and subject to the same terms and conditions, as set forth in subsection (c) above. Acceptance or deemed acceptance of the Additional Work shall not negate the enforcement of any warranty of work related to the same.

(e) The obligations contained in this Section 2 shall survive any termination of this Agreement.

3. Reimbursement of Fees. Concurrent with the execution and delivery of this First Amendment, the City shall reimburse FREG South Bend for its reasonable third-party attorneys' fees and costs incurred in connection with this First Amendment in an amount not to exceed Twenty-Five Hundred Dollars (\$2500.00).

4. Indemnification. Without limiting the obligations contained in Section 6)L. of the Agreement, the City shall indemnify, hold harmless and, if elected by FREG South Bend, defend the Forum Parties from and against any and all claims, demands, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorney's fees and litigation expenses) arising out of or in connection with bodily injury to or death of a person or damage to tangible personal property owned by a third party to the extent arising or resulting from the negligent acts or omissions (including, but not limited to, willful misconduct) of the City or any of its officers, employees or authorized agents in respect of the Additional Work. The obligations of this Section 4 shall survive shall the any termination of the Agreement.

5. Notices. The notice addresses of the Parties set forth in Section 4 of the Agreement are amended as follows:

The University: Associate Vice President, State and Local Public Affairs
University of Notre Dame
405 Main Building
Notre Dame, IN 46556

With a copy to:

Office of General Counsel
University of Notre Dame
204 Main Building
Notre Dame, IN 46556

The City: Executive Director
Venues Parks and Arts
219 S. St. Louis St.
South Bend, IN 46617

and

Executive Director
Department of Community Investment
227 W. Jefferson Blvd., 1400S
South Bend, Indiana 46601

and

Executive Director
Department of Public Works
227 W. Jefferson Blvd., 1300N

South Bend, IN 46601

With a copy to:
Corporation Counsel
227 W. Jefferson Blvd., 1200S
South Bend, Indiana 46601

FREG South Bend: FREG South Bend Associates, LLC
c/o Forum Investment Group, LLC
240 Saint Paul Street, Suite 400
Denver, Colorado 80206
Attn: COO & General Counsel

With a copy to:

Fisher & Fisher, P.C.
1125 17th Street, Suite 710
Denver, Colorado 80202
Attn: Collin S. Watkins, Esq.

6. Time of Essence. Time is of the essence in the performance of the obligations contained in this First Amendment.

7. Authority. Each of the Parties represent and warrant to the other that the individual(s) executing this First Amendment on its behalf is authorized to do so by requisite action of the Party.

8. Confirmation of Agreement; Binding; No Third Parties. The Parties confirm and ratify in all respects, the terms and conditions of the Agreement, as amended by this First Amendment. In the event of any conflict or inconsistency between the terms and conditions of this First Amendment and the terms and conditions of the Agreement, the terms and conditions of this First Amendment shall control and govern. This First Amendment is binding upon and inures to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns. Nothing in this First Amendment, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this First Amendment or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties herein.

9. Entire Agreement; Modifications. This First Amendment embodies the entire agreement of the Parties with respect to the specific subject matter of this First Amendment. This First Amendment may be modified only by written instrument duly executed by the Parties.

10. Severability. If any term, covenant or condition of this First Amendment or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this First Amendment, or the application of such term, covenant or condition to a person or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each term, covenant or condition of this First Amendment shall be enforced to the fullest extent permitted by law.

11. Electronic and Counterpart Signatures. This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute a single document. The execution of this First Amendment by electronic (e.g., PDF) and/or digital signature (e.g., DocuSign®) shall be valid and binding for all purposes under this First Amendment and applicable law with the same force and effect as if the parties had signed this First Amendment by hand. The exchange of electronic and/or digital images/copies of this First Amendment shall constitute good and sufficient delivery for all purposes under this First Amendment and applicable law.

[SIGNATURE PAGES FOLLOW]

The Parties have executed this First Amendment as of the Effective Date.


FREG SOUTH BEND:

FREG South Bend Holdings, LLC,
a Colorado limited liability company

By: FMREIT Operating Partnership LP,
its General Partner

By: FMREIT GP LLC,
its General Partner

By: Forum Multifamily Real Estate
Investment Trust, Inc.,
its Sole Member

By: 
Name: Edie M. Suhr
Title: Chief Operating Officer, General Counsel
and Corporate Secretary

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

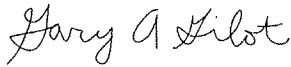
CITY OF SOUTH BEND, INDIANA
BOARD OF PUBLIC WORKS



Elizabeth A. Maradik, President




Joseph R. Molnar, Vice President



Gary A. Gilot, Member

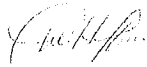


Briana Micou, Member



Murray L. Miller, Member

ATTEST:



Theresa M. Hefner, Clerk


Date: September 24, 2024

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

South Bend Board of Park Commissioners



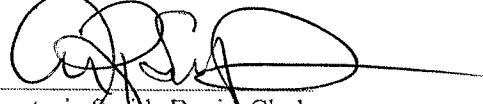
Mark Neal, President



Consuella Hopkins, Vice President

Sam Centellas, Member

Georgianne Walker, Member

Attest: 

Anastasia Smith-Davis, Clerk

[SIGNATURES CONTINUE ON FOLLOWING PAGES]