

RESOLUTION NO. 08

A RESOLUTION AUTHORIZING THE ACQUISITION, CONSTRUCTION, AND DEVELOPMENT OR REDEVELOPMENT OF AND ACTIONS PERTAINING TO THE FINANCING OF REAL AND PERSONAL PROPERTY COMPRISING PORT AUTHORITY FACILITIES WITHIN THE CITY OF MONTGOMERY, OHIO; AUTHORIZING ACCEPTANCE OF TITLE TO AND THE IMPROVEMENT AND DEVELOPMENT OF THE PUBLIC PARKING PROPERTY, INCLUDING CONSTRUCTION AND EQUIPPING OF A PARKING GARAGE AND RELATED INFRASTRUCTURE; AUTHORIZING THE EXECUTION AND DELIVERY OF A COOPERATIVE AGREEMENT AND CONSTRUCTION MANAGER-AT-RISK AGREEMENT, ALL PERTAINING TO THE PROJECT; AUTHORIZING THE SIGNING OF RELATED DOCUMENTS AND AUTHORIZING AND APPROVING RELATED MATTERS

WHEREAS, the Port of Greater Cincinnati Development Authority (the “Port Authority”) has been asked to assist in the cooperative redevelopment of an area within the City of Montgomery, Ohio (the “City”) known as “The Montgomery Quarter” encompassing approximately twenty-one (21) acres of real estate at the south gateway of the City (the “Project Site” consisting of the Property, as defined in the Cooperative Agreement, as defined hereinafter), which redevelopment is expected to proceed pursuant to a Cooperative Agreement (the “Cooperative Agreement”), among the Port Authority, the City, the Montgomery Community Improvement Corporation (the “MCIC”), and Gateway Partners Montgomery, LLC (the “Developer”) in substantially the form on file with the Secretary of this Board; and

WHEREAS, the plan for redevelopment of the Project Site (the “Redevelopment Plan”) includes construction of public parking facilities (the “Public Parking Facilities”, as defined and described in the Cooperative Agreement) in multiple phases on portions of the Project Site referred to defined in the Cooperative Agreement as the “Public Parking Property”;

WHEREAS, the Public Parking Property is or will be owned by the City; and

WHEREAS, the Redevelopment Plan includes without limitation the following:

(i) acquisition of title to the Public Parking Property by the Port Authority pursuant to a general warranty or other deed acceptable to the Port Authority (the “Deed”) from the City;

(ii) passage by Council of the City of ordinances sufficient to authorize the City’s participation in implementation of the Development Plan (“City Legislation”), including (A) an ordinance authorizing the Cooperative Agreement, and (B) an ordinance (the “TIF Ordinance”) declaring the improvement (as defined in the Revised Code Section 5709.40) to the Project Site, or portions thereof, to be a public purpose exempt from real property taxation pursuant to Revised Code Sections 5709.40 through 5709.43 (together with related statutory provisions, the “TIF Act”), requiring the private owners of those exempted parcels within the Project Site to make service payments to the City (“Service Payments”), including payments in lieu of the exempted taxes; and

(iii) the phased acquisition of the Public Parking Property by the Port Authority and the acquisition, construction, equipping and phased development of the Public Parking Facilities and related public infrastructure (collectively the “Public Improvements”) by or on behalf of the Authority; and

(iv) the construction, improvement, equipping, furnishing, installation and other development on Project Site of residential units, commercial office space, restaurant space, and an approximately 50-room hotel (the “Private Improvements” and together with the Public Improvements, the “Project Improvements”) by or on behalf of the Developer or other private entities; and

(v) in order to finance costs (as defined in Revised Code Section 4582.21) of the Public Improvements and of related costs including costs of issuance (collectively “TIF Costs”), issuance by the City of bonds (“TIF Bonds”), secured by the Service Payments collected by the City, and such other security as determined by the City to be financially advantageous; and

(vi) engagement by the Port Authority of the Developer, or an affiliate of the Developer approved by the Port Authority, for construction of the Public Improvements pursuant to a Construction Manager-At-Risk Agreement the form of which is on file with the Secretary of this Board (the “CMAR Agreement”); and

(vii) engagement by the Port Authority of the Developer, or an affiliate of the Developer or other entity approved by the Port Authority, for ongoing management, operation and maintenance of the Public Improvements pursuant to a Public Improvements Management Agreement the form of which is on file with the Secretary of this Board (including any agreement of similar effect, the “Management Agreement”); and

WHEREAS, under the circumstances described herein, and pursuant to the laws of the State of Ohio (the “State”), particularly Ohio Revised Code Sections 4582.21 through 4582.59 and the authorities therein mentioned, including Article VIII, Section 13, of the Ohio Constitution (collectively, “Port Act”), this Board has full authority to and desires to authorize or take those actions necessary to undertake construction of the Public Improvements on and within the Public Parking Property in accordance with the Development Plan, including the acquisition and construction of the real and personal property comprising the Public Improvements, and further including: (i) entering into the Cooperative agreement, the CMAR Agreement, and the Management Agreement, each as provided herein (collectively, “Port Agreements”), (ii) accepting the conveyance by the City or other entity, pursuant to the Deed, of fee title to the Public Parking Property, subject to the execution of the Management Agreement, and (iii) accepting a completion guaranty, payment and performance bond, or other instrument ensuring completion of construction of the Public Improvements; and

WHEREAS, the Port Authority, pursuant to the Port Act, wishes to authorize or take actions in connection with the acquisition of the Public Parking Property and the financing, acquisition, construction, equipping of the Public Improvements;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Port of Greater Cincinnati Development Authority:

Section 1. This Board hereby finds and determines, based upon information provided by the Developer, and to the extent applicable, the City, that: (i) the Port Authority has full power and authority to participate in the redevelopment of the Project Site pursuant to the Cooperative Agreement, in accordance with the Development Plan and in the manner contemplated by this Resolution, (ii) the Public Parking Property and the Public Improvements (together, the “Project”) constitute “port authority facilities” in furtherance of “authorized purposes” of the Port Authority, including the promotion of “transportation” and “economic development” as those terms are used in the Port Act, (iii) the redevelopment of the Project Site, including the acquisition, construction and equipping of the Public Improvements on and within the Public Parking Property, and the financing of the costs of the Public Improvements in the manner contemplated hereby, in furtherance of the Development Plan is consistent with and will promote the purposes of Article VIII, Section 13 of the Ohio Constitution, and will create or preserve jobs and employment opportunities and improve the economic welfare of the people of the City, County and State, (iv) it is in the best interests of the Port Authority to, and the Port Authority shall: (a) enter into the Cooperative Agreement as soon as practicable consistent with the terms thereof and hereof, (b) accept fee title to the Project Site and enter into the CMAR Agreement in order to undertake construction of the Public Improvements on and within the Public Garage Property as contemplated hereby, (c) enter into the Management Agreement to ensure ongoing maintenance, management and operation of the Public Improvements, and (d) take such other actions as are consistent with and contemplated by this resolution and the agreements and instruments authorized hereby (those actions contemplated by this subparagraph (iv) are referred to herein collectively as “Port Actions”). This Board hereby determines that the arrangements as to Port Authority fees described in the Cooperative Agreement are satisfactory to and in the best interests of the Port Authority, taking into account the determination to undertake actions and obligations with respect to the Project.

Section 2. This Board is hereby authorized and approves the Cooperative Agreement in substantially the form on file with the Secretary of this Board. Any one or more of the Chairperson, the Vice Chairperson, and the President and Chief Executive Officer (each an “Authorized Officer”), alone or together with the Secretary or any Assistant Secretary of this Board (each a “Fiscal Officer”), are hereby authorized and directed to execute the Cooperative Agreement, substantially in that form, but with such changes as are necessary or desirable to reflect the intended terms of the transactions contemplated by this resolution and finalized by the parties to the Cooperative Agreement, such execution being conclusive evidence of approval of any such changes and that they are necessary or desirable, in accordance herewith, and are not adverse to the Port Authority.

Section 3. Based on information furnished to the Port Authority by the Developer, and the findings and determinations made by this Board in Section 1 above, this Board hereby determines that the manner in which the contracts for the acquisition, construction and equipping of the Public Improvements should be made is to enter into the CMAR Agreement and, in accordance therewith, and subject to the terms of the Cooperative Agreement, authorize the Developer, or an affiliate thereof acceptable to the Port Authority, to act as its agent for and manager of the construction of the Public Improvements on and within the Public Garage

Property. The Developer, or an affiliate of the Developer approved by the Port Authority, under the CMAR Agreement (the "Construction Manager") shall be authorized to negotiate the terms of the construction contract or contracts, including any subcontract or subcontracts and all contracts for the supply of materials (collectively, "Construction Contracts") and all agreements with respect to the design, landscape design, engineering, architecture or similar services with respect to the development of the Public Garage Property (the "Professional Contracts") necessary or desirable in connection therewith, all subject to applicable provisions of the Cooperative Agreement and the CMAR Agreement.

This Board hereby specifically finds and determines that such manner of negotiation and contracting with respect to the Construction Contracts and the Professional Contracts (collectively, "Contracts") will best carry out the public purposes of the Project, including the public purposes of Article VIII, Section 13 of the Ohio Constitution and, accordingly, the Contracts shall not be subject to any requirement of competitive bidding or selection unless and except to the extent specified in the Cooperative Agreement. This Board hereby authorizes and approves the appointment of the Developer, or an affiliate of the Developer approved by the Port Authority, as construction Manager under the CMAR Agreement for the purpose of undertaking, managing and completing, on behalf of the Port Authority, the redevelopment of the Public Garage Property, including the construction of the Project Improvements.

Notwithstanding anything to the contrary in the Cooperative Agreement or the CMAR Agreement, the obligations of the Port Authority under or pursuant to the CMAR Agreement and the Contracts shall not be a general obligation, bonded indebtedness or a pledge of the general credit of the Port Authority but shall be payable solely from the proceeds of the TIF Bonds and any other money that may be made available to the Port Authority for that purpose, including any moneys provided by the Developer or the City, and the CMAR Agreement and each Contract shall so state, by addendum or otherwise. Further, all monetary or pecuniary obligations of the Port Authority under or with respect to the CMAR Agreement or the Contracts shall be conditioned on the issuance of the TIF Bonds (except to the extent if any otherwise funded by the Developer or the City), and the CMAR Agreement and each Contract shall so state, by addendum or otherwise. Subject to the foregoing, this Board hereby authorized and approves the CMAR Agreement in substantially the form on file with the Secretary of this Board. Any one or more of the Authorized Officers, alone or together with any Fiscal Officer, are hereby authorized and directed to execute and deliver the CMAR Agreement, in substantially that form, but with those changes as are not substantially adverse to the Port Authority and as are approved by the officer or officers executing the CMAR Agreement as being necessary or desirable and in the best interest of the Port Authority, that execution being conclusive evidence of approval of any such changes as being necessary or desirable and in the best interest of the Port Authority and that they are not substantially adverse to the Port Authority.

Section 4. This Board hereby determines that manner in which the Public Improvements shall be maintained, managed and operated is to enter into the Management Agreement and, in accordance therewith, and subject to the terms of the Cooperative Agreement, authorize the Developer, or an affiliate thereof acceptable to the Port Authority, to act as its agent for and manager of the Public Improvements. This Board hereby authorizes and approves the

appointment of the Developer, or an affiliate of the Developer approved by the Port Authority, as manager under the Management Agreement (the "Garage Manager") for the purpose of maintaining, managing and operating, on behalf of the Port Authority, the Public Garage Property and the Project Improvements.

Notwithstanding anything to the contrary in the Cooperative Agreement or the Management Agreement, the obligations of the Port Authority to maintain, manage or operate the Public Garage Property and the Public Improvements shall not be a general obligation, bonded indebtedness or a pledge of the general credit of the Port Authority but shall be payable solely from Service Payments and any other money that may be made available to the Port Authority for that purpose, including any moneys provided by the Developer or the City, and the Management Agreement shall so state. Subject to the foregoing, this Board hereby authorized and approves the Management Agreement in substantially the form on file with the Secretary of this Board. Any one or more of the Authorized Officers, alone or together with any Fiscal Officer, are hereby authorized and directed to execute and deliver the Management Agreement, in substantially that form, but with those changes as are not substantially adverse to the Port Authority and as are approved by the officer or officers executing the Management Agreement as being necessary or desirable and in the best interest of the Port Authority, that execution being conclusive evidence of approval of any such changes as being necessary or desirable and in the best interest of the Port Authority and that they are not substantially adverse to the Port Authority.

Section 5. This Board hereby authorizes and approves the execution and delivery by the Port Authority of any other instruments or agreements included as exhibits to any of the Port Agreements, each in substantially the form on file with the Secretary of this Board. Any one or more of the Authorized Officers, alone or together with any Fiscal Officer, are hereby authorized and directed to execute and deliver any such instrument or agreement in substantially those forms, but with those changes as are not substantially adverse to the Port Authority and as are approved by the officer or officers executing that agreement or instrument as being necessary or desirable and in the best interest of the Port Authority, that execution being conclusive evidence of approval of any such changes as being necessary or desirable and in the best interest of the Port Authority and that they are not substantially adverse to the Port Authority.

Section 6. This Board hereby authorizes and approves the acceptance of title to the Public Garage Property pursuant to the Deed, and approves the execution of the public improvements purchase agreement, or other agreement referenced otherwise but of similar affect (the "Public Improvements Purchase Agreement"), providing for the sale of the Project in accordance with the terms of the Public Improvements Purchase Agreement, in substantially the form on file with the Secretary of this Board. Any one or more of the Authorized Officers, alone or together with any Fiscal Officer, are hereby authorized and directed to execute and deliver the Public Improvements Purchase Agreement in substantially that form, but with those changes as are not substantially adverse to the Port Authority and as are approved by the officer or officers executing that agreement as being necessary or desirable and in the best interest of the Port Authority, that execution being conclusive evidence of approval of any such changes as being

necessary or desirable and in the best interest of the Port Authority and that they are not substantially adverse to the Port Authority.

Section 7. This Board hereby authorizes and approves any actions by the Port Authority, and the execution and delivery by the Port of any other instruments or agreements reasonably required to ensure that interest on the TIF Bonds, or any portion thereof, will be excludible from the gross income of the holders thereof for federal tax purposes. Any Authorized Officer or the Fiscal Officer is authorized and directed to provide appropriate certification on behalf of the Port Authority, on the date of delivery of the TIF Bonds, setting forth any reasonably required facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148 of the Code and regulations thereunder to the extent applicable.

Section 8. The Port Authority retains the law firm of Frost Brown Todd LLC (“FBT”) as counsel to provide legal services in connection with the transactions contemplated by this resolution and the participation of the Port Authority in the redevelopment of the Project Site, including the preparation, negotiation, execution and delivery of the Port Agreements, the Public Improvements Purchase Agreement and the other instruments and agreements authorized hereby.

Section 9. This Board finds and determines that all formal actions of this Board concerning and relating to the adoption of this resolution were taken in an open meeting of this Board and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 10. This resolution shall take effect and be in force immediately upon its adoption.

A roll call being had upon the question of the passage of the foregoing resolution, the vote thereon resulted as follows:

Ayes: 8

Nays: 0



CHAIRPERSON

Attest: 

SECRETARY

CERTIFICATE

The undersigned, President of the Port of Greater Cincinnati Development Authority, hereby certifies that the foregoing is a true and complete copy of Resolution No. 2020-~~08~~ passed on the 12 day of February, 2020, and has not been amended or rescinded as of this date.


**Port of Greater Cincinnati Development
Authority**

February 12, 2020



FISCAL OFFICER CERTIFICATE

The undersigned, fiscal officer of the Issuer, hereby certifies that the moneys required to meet the obligations of the Issuer during the year 2020 under the foregoing resolution have been lawfully appropriated by the Issuer for such purposes and are in the treasury of the Issuer 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.



Dated: February 12 2020