

RESOLUTION NO. 5 , 2020

A RESOLUTION APPROVING A COOPERATIVE AGREEMENT BETWEEN THE CITY OF MONTGOMERY, OHIO, THE PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY, AND GATEWAY PARTNERS MONTGOMERY, LLC

WHEREAS, consistent with the long-term strategic plan for the successful economic growth of the City, the City has implemented the Montgomery Quarter Project; and

WHEREAS, by prior legislation, the City designated Gateway Partners Montgomery, LLC as the preferred Developer for such project; and

WHEREAS, in continued negotiations to finalize a Development Agreement with Gateway Partners Montgomery, LLC, it has been determined that the success of the Quarter project can best be achieved by involving the Port of Cincinnati Development Authority (“Port Authority”) to manage construction, ownership and the operation of the Stage 1 Public Parking Facilities; and

WHEREAS, the Port Authority and the Developer have presented to the City a Cooperative Agreement by and among the parties, which includes a Public Improvement Management and Maintenance Agreement (“Qualified Management Agreement”), which together will outline the terms and conditions under which the Public Parking Facilities will be funded, constructed, operated and maintained, which the Administration has recommended that Council approve.

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

SECTION 1. The City Manager is hereby authorized to enter into a Cooperative Agreement by and among the City of Montgomery, Ohio, the Port of Greater

Cincinnati Development Authority, and Gateway Partners Montgomery, LLC, substantially in the form and under the terms and conditions of the Cooperative Agreement attached hereto, to fund, to construct, to own, and to manage the Public Parking Facilities designed for Stage 1 of the Montgomery Quarter Project. As a part of the Cooperative Agreement, the City Manager is authorized to finalize a Qualified Management Agreement with the Port Authority and the Developer, the proposed format of which is attached to the Cooperative Agreement as an Exhibit. Such Qualified Management Agreement in its final form shall be adjusted as required by the Internal Revenue Code and Regulations when Special Revenue Bonds are issued to fund the project to be sure the Qualified Management Agreement meets such Code and Regulations.

SECTION 2. The City Manager is authorized to execute such additional documentation as may be necessary with the Cooperative Agreement and Qualified Management Agreement to implement Council's intent to incentivize economic development within the Montgomery Quarter and to assure the long-term success of the design, development and maintenance of the public parking garage facilities.

SECTION 3. This Resolution shall be in full force and effect from and after its passage.

PASSED: January 8 2020

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

Christopher P. Dobrozsi
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:
Terrence M. Donnellon
Terrence M. Donnellon, Law Director

COOPERATIVE AGREEMENT

Among

CITY OF MONTGOMERY, OHIO

And

PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY

And

GATEWAY PARTNERS MONTGOMERY, LLC

Dated as of January ____, 2020

THIS COOPERATIVE AGREEMENT (this "Cooperative Agreement") is made and entered into as of the ____ day of January, 2020, among the **City of Montgomery, Ohio**, an Ohio municipal corporation, with an address of 10101 Montgomery Road, Montgomery, Ohio 45242 (the "City"), the **Port of Greater Cincinnati Development Authority**, an Ohio port authority and political subdivision, with an address of 3 E. 4th Street, Cincinnati, Ohio 45202 (the "Port Authority"), and **Gateway Partners Montgomery, LLC**, an Ohio limited liability company, with an address of 45 Fairfield Avenue, Suite 200, Bellevue, Kentucky, 41073 (the "Developer" and together with the City and the Port Authority, the "Parties"), witnesseth:

RECITALS:

1. The City and the Developer have entered into that certain Development Agreement dated as of January ____, 2020 (the "Development Agreement") pursuant to which the City and the Developer have agreed as to certain terms concerning the comprehensive redevelopment of an area within 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"), as depicted upon Exhibit A attached hereto and incorporated herein by reference (such real property being hereinafter the "Property").

2. The City has determined, and with the Port Authority, hereby further determine that the construction of the Project is (i) in the best interests of their respective constituencies, (ii) will enhance, foster, aid, and promote economic development, tourism, and public recreational opportunities within their respective jurisdictions, and (iii) will result in the creation of new jobs and employment opportunities in furtherance of commerce within the City.

3. The Project is a two-stage redevelopment, as more fully set forth in the Development Agreement, and includes significant private improvements (including but not limited to an anticipated office structure, hotel, multi-family residential, and retail improvements, and hereinafter the "Private Improvements") as outlined in Exhibit E of the Development Agreement.

4. In order to support the Private Improvements, as well as to provide amenities to the public, the Project also entails the undertaking of certain public infrastructure improvements, including (i) construction of public parking facilities on portions of the Property (as more fully described herein and in the Development Agreement, the "Public Parking Facilities"), and (ii) site preparation, grading, sanitary and storm sewers, utility construction, street, interchange and round about improvements, streetscape, a public park to be located within the Project, and traffic control devices (as more fully described in the Development Agreement, the "Project Site Public Improvements").

5. The Public Parking Facilities are anticipated to be constructed in two phases, as more fully described in the Development Agreement, namely the "Stage 1 Public Parking Facilities" and the "Stage 2 Public Parking Facilities". The exact location and design of the Public Parking Facilities will be determined in accordance with the terms of the Development Agreement and Sections 2 and 6 hereof. The real property upon which the Stage 1 Public Parking Facilities will be located is hereinafter referred to as the "Stage 1 Public Parking Property" and the real property upon which the Stage 2 Public Parking Facilities will be located is hereinafter referred to as the "Stage 2 Public Parking Property" (and collectively with the Stage 1 Public Parking Property, the "Public Parking Property").

6. The City has created tax increment financing areas over the Property pursuant to Ohio Revised Code ("ORC") Section 5709.40(B) and (C) exempting the improvements (as such term is defined in ORC Section 5709.40(A)(4)) to the Property from real property taxation for a period of thirty (30) years (the "TIF Exemption") and requiring the owners from time to time of the Property (the "Owners") to make payments in lieu of taxes in an amount equal to what taxes would have been on the property but for the TIF Exemption (the "Statutory Service Payments").

7. In addition to the Statutory Service Payments, the City will also require the Developer to enter into a Service Agreement (as more fully described in the Development Agreement, the "Service Agreement") pursuant to which the Developer will agree to encumber the portion of the Property owned by Developer and successive owners (hereinafter, the "Developer Parcels") with certain minimum service payment obligations (as more fully described in the Service Agreement, the "Minimum Service Payments", and together with the Statutory Service Payments, the "Service Payments").

8. The City intends to support the Project by (a) providing for the issuance of certain obligations (as more fully described in the Development Agreement and referred to therein and herein as the "TIF Bonds") the proceeds of which will be used, together with other available monies described herein, to pay a portion of the costs of the Public Parking Facilities and the cost of such other public improvements in support of the Project, and (b) contributing portions of the Property required for the construction of the Public Parking Facilities to the Port Authority (with respect to the "Public Parking Property"). The Bonds will be revenue bonds of the City which will be secured by a pledge of the Service Payments, and it is anticipated that they will be issued in two tranches, the "Stage 1 TIF Bonds" which will be issued pursuant to the Development Agreement to pay for, among other things, costs associated with the construction of the Stage 1 Public Parking Facility, and "Stage 2 TIF Bonds" which will be issued pursuant to the Development Agreement to pay for, among other things, costs associated with the construction of the Stage 2 Public Parking Facility. Issuance of the Stage 1 TIF Bonds is contingent upon satisfaction of the "Stage 1 Contingencies" (as described in Section 2 hereof), and issuance of the Stage 2 TIF Bonds is contingent upon satisfaction of the "Stage 2 Contingencies" (as described in Section 2 hereof).

9. The Port Authority intends to support the Project by acquiring, constructing, equipping, and maintaining the Public Parking Facilities (together, the "Port Authority Project").

10. The Developer intends to facilitate the Port Authority Project by (a) entering into a Construction Manager-at-Risk Agreement with the Port Authority (as more fully set forth herein, the "CMAR Agreement") pursuant to which the Developer shall cause the construction of the Public Parking Facilities on behalf of the Port Authority, and (b) entering into a Public Improvement Management and Maintenance Agreement (as more fully set forth herein, and the form of which is attached hereto as Exhibit B, the "Management Agreement") pursuant to which the Developer will manage the Public Parking Facilities on behalf of the Port Authority. Initially, the CMAR Agreement and the Management Agreement will address the Stage 1 Public Parking Facilities, with the understanding that such documents may be amended to include the Stage 2 Public Parking Facilities at such time as the Stage 2 Contingencies are satisfied in accordance with Section 2 hereof.

11. The Parties intend for the Port Authority Project to constitute a “port authority facility” for purposes of ORC Section 4582.21(E), and this Cooperative Agreement is being entered into pursuant to the cooperative provisions provided under ORC Section 4582.21, et. seq. (the “Act”).

12. In recognition of the foregoing recitals and the facts and circumstances preceding the execution of this Cooperative Agreement, the Parties intend to cooperate in good faith with one another pursuant to the terms of this Cooperative Agreement to effect the acquisition and necessary conveyances of the Public Parking Property and the construction, equipping, and maintenance of the Public Parking Facilities.

NOW, THEREFORE, in consideration of the foregoing, the promises contained herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. COOPERATIVE AGREEMENT

For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference, the City, the Port Authority, and the Developer have determined to cooperate with each other in order to effect the acquisition and required conveyances of the Property and the construction, equipping, and maintenance of the Port Authority Project. This Cooperative Agreement, including the Exhibits hereto, all of which are incorporated herein by reference, is intended to and shall be an agreement by the Parties hereto to cooperate in the placing into effect of the foregoing, and the agreements contained herein are intended to and shall be construed as agreements to further effect cooperative action and safeguard the respective interests of the Parties.

SECTION 2. CONTINGENCIES

A. **Stage 1 Contingencies.** The obligations of the Parties hereunder are contingent upon the satisfaction of the following contingencies (as referenced in the Recitals, the “Stage 1 Contingencies”):

- (i) Satisfaction of the contingencies set forth in Section 7.1 of the Development Agreement and acquisition by the Developer of Stage 1 City Property, as such term is defined in the Development Agreement.
- (ii) Platting of the Property in such a way as to allow for the transfer of a distinct parcel of real property consisting of the Stage 1 Public Parking Property to the Port Authority, reserving to the City all air rights above the completed Public Parking Facilities in configurations reasonably satisfactory to the Parties.
- (iii) Reserving to the City all air rights above the completed Public Parking Facilities.
- (iv) Satisfactory review of the title to the Stage 1 Public Parking Property by the Port Authority, using its reasonable discretion.

B. Stage 2 Contingencies. The obligations of the Parties hereunder with respect to the portion of the Port Authority Project consisting of the Stage 2 Public Parking Facilities is contingent upon the satisfaction of the following contingencies (as referenced in the Recitals, the "Stage 2 Contingencies"):

- (i) Satisfaction of the contingencies set forth in Section 7.2 of the Development Agreement and acquisition by the Developer of Stage 2 City Property, as such term is defined in the Development Agreement.
- (ii) Platting of the Property in such a way as to allow for the transfer of a distinct parcel of real property consisting of the Stage 2 Public Parking Property to the Port Authority, reserving to the City all air rights above the completed Public Parking Facilities, in configurations reasonably satisfactory to the Parties.
- (iii) Satisfactory review of the title to the Stage 2 Public Parking Property by the Port Authority, using its reasonable discretion.
- (iv) Without conflicting with any other provision of the Development Agreement or this Cooperative Agreement, the City, by Notice to the Developer and Port Authority, electing to use the Port Authority to assist in the same manner as outlined herein for the development, construction and ownership of the Stage 2 Public Parking Facilities.

C. General Contingency Regarding Construction. Notwithstanding anything herein or elsewhere to the contrary, no Party shall be obligated to construct the Stage 1 Public Parking Project unless and until the Stage 1 TIF Bonds are issued in accordance with the terms of the Development Agreement; nor shall any Party be obligated to construct the Stage 2 Public Parking Project unless and until the Stage 2 TIF Bonds are issued in accordance with the terms of the Development Agreement.

SECTION 3. DEVELOPER ACTION

A. Development Agreement Actions. The Developer will comply with the terms of the Development Agreement and pursue the development Project as set forth therein, subject in all events to the terms thereof.

B. Construction of the Port Authority Project. Prior to or on the date of Stage 1 TIF Bond Closing, the Developer shall enter into the CMAR Agreement with the Port Authority, in form and substance reasonably satisfactory to the Port Authority and the Developer, pursuant to which the Developer will construct the Port Authority Project, in all events in accordance with the zoning and building code requirements of the City. The City will not be a party to the CMAR Agreement, but will have the right to review and consent to the terms of the CMAR Agreement as a step in the process for the City to fund the construction through the TIF Bonds. The CMAR Agreement will initially address the construction of the Stage 1 Public Parking Facilities, but may contain provisions allowing for the amendment thereof to

accommodate the construction of the Stage 2 Public Parking Facilities in the event that the Stage 2 Contingencies are satisfied.

C. **Responsibility for Costs of Port Authority Project.** The Developer will be responsible for any costs of the construction of the Port Authority Project to be constructed under the CMAR Agreement to the extent such costs are not paid or otherwise provided for from the proceeds of the TIF Bonds allocated to construction of the Public Parking Facilities pursuant to the Development Agreement.

D. **Maintenance and Management of the Port Authority Project.** Prior to or on the date of Stage 1 TIF Bond Closing, the Developer shall enter into the Management Agreement with the Port Authority in substantially the form attached hereto as Exhibit B pursuant to which the Developer will agree to maintain and manage the Port Authority Project in accordance with the terms thereof.

E. **Developer Indemnification.** Except as otherwise specifically provided herein, the Developer releases the Port Authority from, agrees that the Port Authority shall not be liable for, and shall indemnify the Port Authority against, all liabilities, claims, costs and expenses imposed upon, incurred or asserted against the Port Authority on account of:

(i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, construction, improvement, development, maintenance, operation and use of the Public Parking Property, the Port Authority Project or the Project;

(ii) any breach or default on the part of the Developer in the performance of any covenant, obligation or agreement of the Developer under this Cooperative Agreement, the CMAR Agreement, or the Management Agreement, or arising from any act or failure to act by the Developer, or any of its agents, contractors, servants, employees or licensees;

(iii) the Developer's failure to comply with any requirement of the Developer under this Cooperative Agreement;

(iv) any action taken or omitted to be taken by the Port Authority pursuant to the terms of under this Cooperative Agreement, the CMAR Agreement, or the Management Agreement, or any other related instrument or document, if such action is taken or omitted to be taken by the Port Authority at the request of the Developer; and

(v) any claim, action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), or (iv) above.

For purposes of the following provisions, the term "Environmental Laws" means federal, state and local laws and regulations, judgments, orders and permits governing safety and health and the protection of the environment, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., as amended (CERCLA), the Resource Conservation and Recovery Act, as amended 42 U.S.C. 6901 et seq., the Clean Water Act, 33 U.S.C. 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Toxic Substance Control Act, 15 U.S.C. 2601 et seq., and the Safe Drinking Water Act, 42 U.S.C. 300f through 300j; and the term "Release" means any release, spill, emission, leaking, pumping,

pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching, or migration of Hazardous Materials into the indoor or outdoor environment (including, without limitation, the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Materials), or into or out of any portion of the Site or the improvements thereon, including the movement of any Hazardous Material through the air, soil, surface water, groundwater or property; and the term "Hazardous Materials" means any substance that is toxic, ignitable, reactive, or corrosive or which is regulated by Environmental Laws and includes, but is not limited to, any and all materials or substances that are defined as "hazardous waste", "extremely hazardous waste" or a "hazardous substance" pursuant to state, federal or local governmental law. "Hazardous Materials" also includes asbestos, polychlorinated biphenyls ("PCB's"), and petroleum products.

In addition to the foregoing indemnity, the Developer agrees to indemnify and hold the Port Authority harmless from and against all liabilities, and all reasonable costs and expenses, including attorneys' fees, arising out of any Environmental Laws incurred by the Port Authority as a result of the existence on, or any Release from, the Public Parking Property of Hazardous Materials. The Developer further covenants and agrees with the Port Authority that neither the Developer nor any of its agents, employees, independent contractors, invitees, licensees, successors, assigns or tenants will store, release or dispose of, or permit the storage, release or disposal of any Hazardous Materials at or on the Public Parking Property at any time from and after the effective date of this Cooperative Agreement other than in accordance with all applicable Environmental Laws. In the event that any Party receives a notification or cleanup requirement under 42 U.S.C. § 9601 et seq. or comparable state or local statute, ordinance or regulation, that Party shall promptly notify all other Parties of such receipt, together with a written statement setting forth the details thereof and any action with respect thereto taken or proposed to be taken, to the extent of the Party's knowledge. The Developer agrees to indemnify and hold the Port Authority harmless from and against any and all liabilities and all reasonable costs and expenses, including reasonable attorneys' fees, arising out of any Environmental Laws, incurred by the Port Authority as a result of any such notification or cleanup requirement, as a result of actions taken or not taken pursuant to this paragraph with respect thereto and as a result of any Hazardous Discharge or the presence of Hazardous Materials at or on the Public Parking Property.

In case any claim or demand is at any time made, or action or proceeding is brought, against the Port Authority in respect of which indemnity may be sought hereunder, the Port Authority promptly shall give notice of that action or proceeding to the Developer, and the Developer upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of the Port Authority to give that notice shall not relieve the Developer from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Developer. At its own expense, an indemnified party may employ separate counsel and participate in the defense. The Port Authority agrees to fully cooperate with the Developer and lend the Developer such assistance as the Developer shall reasonably request in defense of any claim, demand, action or proceeding. The Developer shall not be liable for any settlement made without its consent.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers and employees of the Port Authority, as applicable, and their successors and assigns. That indemnification is intended to and shall be enforceable thereby to the full extent permitted by law and shall survive the termination of this Cooperative Agreement.

F. **Economic Inclusion Policy.** The Developer acknowledges that it is familiar with the policy of the Port Authority pertaining to the inclusion of minority-owned, women-owned and small business enterprises ("Inclusion Policy"), a copy of which is attached hereto as Exhibit C, and that it is familiar with the goals and procedures implemented by the Port Authority to promote the Inclusion Policy and of the commitment of the Port Authority to the Inclusion Policy, and agrees that it will each provide a copy of the Inclusion Policy to each contractor and subcontractor with which they contract (in any capacity) with respect to the Port Authority Project, and that it will consult and cooperate with the Port Authority and otherwise exercise reasonable best efforts, and require each contractor and subcontractor with respect to the Port Authority Project to consult and cooperate with the Port Authority and otherwise use their reasonable best efforts, to comply with the Port Authority's procedures and promote the policy goals of the Inclusion Policy in connection with the Port Authority Project. Upon execution and delivery of this Cooperative Agreement, monthly during construction of the Port Authority Project, upon completion of the Port Authority Project, and at such other times as the Port Authority reasonably requests, the Developer shall provide the Port Authority with evidence, reasonably satisfactory to the Port Authority, with respect to its efforts and the efforts of its contractors and subcontractors pursuant to this Section 3.F.

SECTION 4. CITY ACTION

A. **Issuance of Bonds.** The City agrees to pursue the issuance of the TIF Bonds in accordance with the provisions of the Development Agreement. In connection with the issuance of the TIF Bonds, the City will enter into a Trust Agreement or Escrow Agreement (or similar document referenced herein as "Trust Agreement") in form reasonably satisfactory to the Developer and the Port Authority which will contain, among other things, provisions for the acceptance of any revenues from the Public Parking Facilities (the "Parking Revenues") and from which operating expenses of the Public Parking Facilities may be paid (as more fully set forth in the Management Agreement, the "Parking Revenue Account"), a capital reserve account to reserve against future capital expenditure needs of the Public Parking Facilities from Parking Revenues (the "Capital Reserve Account"), and a construction account into which proceeds from the Bonds will be deposited to pay for construction costs of the Public Parking Facilities (the "Construction Account"). As more fully set forth in the Development Agreement and the Recitals hereto, it is anticipated that the Project will entail two issuances of TIF Bonds, namely the Stage 1 TIF Bonds and the Stage 2 TIF Bonds. The Stage 1 TIF Bonds will produce an amount of net proceeds available to pay construction costs associated with the Stage 1 Public Parking Facilities at least equal to \$15,500,000 (the "Stage 1 Net Proceeds"). The net proceeds available from the Stage 2 TIF Bonds available to pay construction costs associated with the Stage 2 Public Parking Facilities will be determined at a future date, as set forth in the Development Agreement (the "Stage 2 Net Proceeds"). For the avoidance of doubt, and as more fully set forth in the Development Agreement, the City intends to reimburse itself for certain costs related to the Project from proceeds of the TIF Bonds, which reimbursement will be from proceeds of the TIF Bonds in excess of the Net Proceeds attributable to each Stage of the Project (e.g. from the Stage 1 TIF Bonds, the City intends to reimburse itself for \$1,000,000 or expenses associated with the Project).

B. Use of Bond Proceeds. Upon closing of any series of TIF Bonds (each a “Bond Closing”), the City will deposit into the Construction Account an amount consistent with the terms of the Development Agreement, which funds will then be available for use by the Port Authority for the construction of the Public Parking Facilities, subject to the disbursement provisions of Section 6 hereof.

C. Contribution to the Port Authority. At or prior to the Bond Closing of the Stage 1 TIF Bonds, the City will contribute the Stage 1 Public Parking Property to the Port Authority at no cost to the Port Authority. At or prior to the Bond Closing of the Stage 2 TIF Bonds, the City will contribute the Stage 2 Public Parking Property to the Port Authority at no cost to the Port Authority.

D. Zoning. The City will, to the extent permitted by law and consistent with the City’s Codified Ordinances, cooperate with the Developer and the Port Authority to ensure that the Property is properly zoned for the Project (including but not limited to zoning allowing for retail space within the Project).

E. No Other Sources. The Parties acknowledge and agree that the City shall have no obligation to use any monies other than the proceeds of the TIF Bonds to provide for the payment of the costs of the Public Parking Facilities (inclusive of capitalized interest, administrative expenses, debt service reserve funds, and costs of issuance related to the issuance of the TIF Bonds). The Parties further acknowledge that the issuance of the TIF Bonds will be the subject of separate legislation of the City which, as of the date of this Cooperative Agreement, has not yet been passed.

SECTION 5. PORT AUTHORITY ACTIONS.

A. Acceptance of Public Parking Property. At such time as the City shall be prepared to convey the Stage 1 Public Parking Property and/or the Stage 2 Public Parking Property in accordance with Section 3.C hereof, the Port Authority shall accept title to such property.

B. Construction of Port Authority Project. Consistent with Section 3(B) herein, prior to or on the date of Stage 1 TIF Bond Closing, the Port Authority shall enter into the CMAR Agreement with the Developer, in form and substance reasonably satisfactory to the Port Authority, the City, and the Developer, pursuant to which the Developer will construct the Port Authority Project, in all events in accordance with the zoning and building code requirements of the City. The CMAR Agreement will initially address the construction of the Stage 1 Public Parking Facilities, but will contain provisions allowing for the amendment thereof to accommodate the construction of the Stage 2 Public Parking Facilities in the event that the Stage 2 Contingencies are satisfied.

C. Maintenance and Management of the Port Authority Project. Prior to or on the date of Stage 1 TIF Bond Closing, the Port Authority shall enter into the Management Agreement with the Developer in substantially the form attached hereto as Exhibit B pursuant to which the Developer will agree to maintain and manage the Port Authority Project in accordance with the terms thereof. The Parties agree that the form attached hereto shall be adjusted as required by the IRS Code and its regulations when it is determined whether such TIF Bonds shall be taxable or tax exempt.

D. **Costs Only Payable from Bond Proceeds.** The Port Authority shall have no obligation to construct the Port Authority Project using any funds other than the proceeds of the TIF Bonds. Consistent with the Development Agreement, the Developer shall be liable for all design, engineering and construction costs for the Stage 1 Public Parking Facilities in excess of the TIF Bond proceeds allocated to the Construction Fund for construction of the Stage 1 Public Parking Facilities.

SECTION 6. SPECIAL PROVISIONS RELATING TO CONSTRUCTION AND OWNERSHIP OF PORT AUTHORITY PROJECT

A. **Disbursement of Proceeds from the Construction Account.** Disbursement of funds from the Construction Account will be addressed in the Trust Agreement. The Trust Agreement will provide for a mutual consent to the disbursement of such proceeds by the City and the Port Authority upon application for payment of costs of the applicable Stage of Public Parking Facilities for which such application is made.

B. **Approved Budget for Public Parking Facilities.** The budget for each respective Stage of the Public Parking Facilities will be approved in accordance with the terms of the Development Agreement. Upon approval by the City and the Developer under the Development Agreement (such approved budget being the "Development Agreement Budget"), the Development Agreement Budget shall be presented to the Port Authority for approval in its reasonable discretion. Upon such approval, such Development Agreement Budget shall become the approved budget for the Stage of the Public Parking Facilities to which it applies (the "Approved Budget").

C. **Port Authority Fees.** The Port Authority shall be entitled to collect an annual fee, beginning on the date that it takes title to the Stage 1 Public Parking Property (the "Initial Title Date"), of \$_____ per year, payable in advance on the Initial Title Date and on each anniversary thereafter for so long as the Port Authority is the owner of any portion of the Public Parking Property (such fees being hereinafter the "Port Authority Fees"). The Developer shall be responsible for paying the Port Authority Fees; provided, however, that it may seek reimbursement under the Management Agreement for such fees as part of the Annual Budget (defined *infra*), the Parties agreeing that Port Authority Fees constitute valid expenses of the Public Parking Facilities for purposes thereof.

D. **Developer's Right to Purchase Public Parking Property.** Each Stage of the Public Parking Facilities to be constructed hereunder consist of nonresidential real property for purposes of Sections 167 and 168 of the IRC, and upon being placed in service (as such term is used in the IRC) will have a "useful life" for the purpose of such statutes of 39 years (such 39 year period after such Public Parking Facilities are placed in service being the "Useful Life"). On or prior to the Bond Closing for each Stage of the Project, the Developer and Port Authority intend to enter into an agreement (each a "Public Infrastructure Purchase Agreement") providing that, upon the expiration of the Useful Life of the Stage of Public Parking Facilities in question, the Developer or its designee may purchase such Public Parking Facilities and the related Public Parking Property for the sum of \$100; provided that all of the TIF Bonds associated with such Public Parking Facilities shall have been paid in full or otherwise retired and discharged for federal income tax purposes and the Developer shall not then be in

default under the Development Agreement or this Cooperative Agreement. Each Public Infrastructure Purchase Agreement or other instrument may further provide that Developer or its designee may, at any time after the TIF Bonds associated with the Public Parking Facilities in question have been paid in full and retired or otherwise fully discharged for federal income tax purposes, have the option to purchase all right, title and interest of the Port Authority in and to such Public Parking Facilities and the related Public Parking Property for the fair market value thereof, as determined in an appraisal delivered by an appraiser or appraisers qualified to appraise property in Hamilton County, Ohio and performed and delivered within six (6) months prior to the date of transfer of the Port Authority's interest.

SECTION 7. SPECIAL PROVISIONS RELATING TO MANAGEMENT OF PROJECT

A. Disbursement of Proceeds from the Parking Revenue Account. Disbursement of funds from the Parking Revenue Account will be addressed in the Trust Agreement. The Trust Agreement will provide, at a minimum, for the payment on no less frequently than a monthly basis of operating expenses as set forth in the annually approved budget for operating expenses of the Public Parking Facilities referenced in Section 7(a) of the Management Agreement (the "Annual Budget").

B. Disbursement of Proceeds from the Capital Reserve Account. Disbursement of funds from the Capital Reserve Account will be addressed in the Trust Agreement. The Trust Agreement will provide, at a minimum, for the payment of capital repair expenses as approved from time to time by the City and the Port Authority pursuant to Section 7(b) of the Management Agreement.

C. City Approval Rights. Notwithstanding anything herein or in the Management Agreement to the contrary, the City shall retain the following rights related to the management and maintenance of the Public Parking Facilities until such time as the Developer, or its successor or designee under the Public Infrastructure Purchase Agreement, shall have exercised its rights to acquire all or a portion of the Public Parking Facilities pursuant to the Public Infrastructure Purchase Agreement, at which time the City's approval rights under this Section 7.C shall cease with respect to the portion of the Public Parking Facilities so acquired:

- (i) The right to review parking rates applicable to the Public Parking Facilities. Initially, the Parties approve a monthly parking rate of \$10 per month per parking space.
- (ii) The right to require that the Public Parking Facilities be open to the public free of charge on weeknights after 6 PM.
- (iii) The right to require that the Public Parking Facilities be open to the public free of charge on weekends, designated Federal holidays and such special event days designated by agreement of the Parties.

SECTION 8. REPRESENTATIONS AND WARRANTIES

A. **Representations and Warranties of Developer.** Developer hereby represents and warrants that:

- (i) It is a limited liability company duly organized and in full force and effect under the laws of the State of Ohio, with full power to execute and deliver this Cooperative Agreement and perform its obligations hereunder;
- (ii) It has duly authorized, executed and delivered this Cooperative Agreement and no approval or other action by any governmental authority is required in connection therewith;
- (iii) This Cooperative Agreement constitutes its valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforcement thereof may be limited by bankruptcy laws and other laws affecting creditors' rights and the exercise of judicial discretion;
- (iv) Neither the making nor the performance of this Cooperative Agreement will conflict with or violate its organizational documents or any indenture, agreement or other instrument to which it is a party or by which it may be bound; and,
- (v) There are no actions, suits, proceedings, inquiries or investigations pending, or to its knowledge threatened, against or affecting it in any court or before any governmental authority or arbitration board or tribunal that challenges the validity or enforceability of, or seeks to enjoin performance of, this Cooperative Agreement, or if successful would materially impair its ability to perform its obligations under this Cooperative Agreement.

B. **Representation and Warranties of the City.** The City hereby represents and warrants that:

- (i) It has duly authorized, executed and delivered this Cooperative Agreement and no further approval or other action by any governmental authority is required in connection therewith;
- (ii) This Cooperative Agreement constitutes its valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforcement thereof may be limited by bankruptcy laws and other laws affecting creditors' rights and the exercise of judicial discretion; and,
- (iii) Neither the making nor the performance of this Cooperative Agreement will conflict with or violate its organizational documents or any indenture, agreement or other instrument to which it is a party or by which it may be bound.

- (iv) There are no actions, suits, proceedings, inquiries or investigations pending, or to its knowledge threatened, against or affecting it in any court or before any governmental authority or arbitration board or tribunal that challenges the validity or enforceability of, or seeks to enjoin performance of, this Cooperative Agreement, or if successful would materially impair its ability to perform its obligations under this Cooperative Agreement.

C. Representation and Warranties of the Port Authority. The Port Authority hereby represents and warrants that:

- (i) It has duly authorized, executed and delivered this Cooperative Agreement and no further approval or other action by any governmental authority is required in connection therewith;
- (ii) This Cooperative Agreement constitutes its valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforcement thereof may be limited by bankruptcy laws and other laws affecting creditors' rights and the exercise of judicial discretion;
- (iii) Neither the making nor the performance of this Cooperative Agreement will conflict with or violate its organizational documents or any indenture, agreement or other instrument to which it is a party or by which it may be bound; and
- (iv) There are no suits or proceedings pending, or threatened in writing, affecting it in any court or before any governmental authority or arbitration board or tribunal that challenges the validity or enforceability of, or seeks to enjoin performance of, this Cooperative Agreement, or if successful would materially impair its ability to perform its obligations under this Cooperative Agreement.

SECTION 9. EVENTS OF DEFAULT AND REMEDIES

Except as otherwise provided in this Cooperative Agreement, in the event of any default in or breach of this Cooperative Agreement, or any of its terms or conditions, by any Party hereto, such defaulting Party shall, upon written notice from any non-defaulting Party, proceed immediately to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the defaulting Party shall upon written notice from any non-defaulting Party commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.

SECTION 10. ASSIGNMENT

The Parties may not assign their rights or obligations hereunder without first receiving the prior written consent of all non-assigning Parties to this Cooperative Agreement.

SECTION 11. NOTICES

A notice or communication under this Cooperative Agreement by any Party to another shall be sufficiently given by hand delivery, by reputable overnight courier, or by certified mail, postage prepaid, return receipt requested, to the addresses set forth in the preambles hereto, or if such notice is addressed in such other way in respect to any Party as that Party may from time to time designate in writing by notice to the other Parties. Any such notice or communication shall be effective upon receipt or, if given by overnight courier or certified mail, upon failure or refusal of delivery.

SECTION 12. MISCELLANEOUS

A. **Amendments.** This Cooperative Agreement shall not be amended except by written agreement executed by all Parties.

B. **Governing Law.** This Cooperative Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to its principles of conflicts of laws. All claims, counterclaims, disputes and other matters in question between the Parties, or their respective agents and employees, arising out of or relating to this Cooperative Agreement or its breach will be decided in a court of competent jurisdiction within Hamilton County, Ohio.

C. **Severability.** If any provision of this Cooperative Agreement is held to be illegal, invalid or unenforceable, said provision will be fully severable. This Cooperative Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Cooperative Agreement and the remaining provisions of this Cooperative Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Cooperative Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Cooperative Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible that is and will be legal, valid and enforceable.

D. **No Personal Liability.** All covenants, obligations and agreements of the Parties contained in this Cooperative Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the City, the Port Authority, or the Developer other than in his or her official capacity, and neither the members of the legislative bodies of the City, or the Port Authority nor any member of the Developer, nor any official of the City, the Port Authority, or the Developer executing this Cooperative Agreement shall be liable personally under this Cooperative Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the City, the Port Authority, and the Developer contained in this Cooperative Agreement

E. **Counterparts.** This Cooperative Agreement may be executed in counterpart, and in any number of counterparts, each of which shall be treated as an original and all of which, together, shall constitute one and the same instrument.

SECTION 13. EXHIBITS

The following exhibits are hereby incorporated into and made a part of this Cooperative Agreement.

Exhibit A	Description of the Property
Exhibit B	Form of Management Agreement
Exhibit C	Port Authority Inclusion Policy

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS HEREOF, the City, the Port Authority, and the Developer have caused this Cooperative Agreement to be executed in their names by their duly authorized officers, all as of the day and the year first written above.

CITY OF MONTGOMERY, OHIO

By: _____
Name: Brian K. Riblet
Title: City Manager

GATEWAY PARTNERS MONTGOMERY, LLC

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: Terrence M. Donnellon
Title: Law Director

**PORT OF GREATER CINCINNATI
DEVELOPMENT AUTHORITY**

By: _____
Name: _____
Title: _____

CITY FISCAL OFFICER'S CERTIFICATE

The undersigned, fiscal officer of the City of Montgomery, Ohio, hereby certifies that the moneys required to meet the obligations, if any and excluding the proceeds of the TIF Bonds which will be appropriated at the time those TIF Bonds are authorized, of the City during the year 2020 under the foregoing Cooperative Agreement have been lawfully appropriated by the Council of the City of Montgomery, 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.

Treasurer
City of Montgomery, Ohio

Dated: _____, 2020

PORT AUTHORITY FISCAL OFFICER'S CERTIFICATE

The undersigned, fiscal officer of the Port of Greater Cincinnati Development Authority, hereby certifies that the moneys required to meet the obligations of the Port of Greater Cincinnati Development Authority during the year 2020 under the foregoing Cooperative Agreement have been lawfully appropriated by the Board of Directors of the Port of Greater Cincinnati Development Authority for such purpose and are in the treasury of the Port Authority 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.

Fiscal Officer
Port of Greater Cincinnati Development Authority

Dated: _____, 2020

EXHIBIT A

DESCRIPTION OF THE PROPERTY

EXHIBIT B
Form of Management Agreement

EXHIBIT C

Port Authority Inclusion Policy