

RESOLUTION NO. 32 , 2019

A RESOLUTION AUTHORIZING AN ASSIGNMENT AGREEMENT BETWEEN THE CITY OF MONTGOMERY, OHIO, THE MONTGOMERY COMMUNITY IMPROVEMENT CORPORATION, AND CERTAIN DEVELOPMENT PARTNERS WITHIN THE ENTITY NOW KNOWN AS GATEWAY DEVELOPMENT PARTNERS, LLC

WHEREAS, the City owns certain property at the southern gateway of the City at Montgomery Road at the terminus of the Ronald Reagan Highway which is being developed by the City and the Montgomery Community Improvement Corporation (“CIC”); and

WHEREAS, the CIC did previously designate Gateway Partners, LLC, now known as Gateway Development Partners, LLC, as the Preferred Developer for what is now known as The Montgomery Quarter site to plan and develop the site in cooperation with the City and the CIC; and

WHEREAS, Gateway Development Partners, LLC, a wholly owned subsidiary of Traditions Development Company, LLC, did form a preliminary development team consisting of Traditions Development Group, LLC, Brandicorp Development Company, LLC, North American Properties, Inc., and Greiwe Development Group, LLC (“Development Team”); and

WHEREAS, the Development Team has decided to realign itself and an Agreement has been reached by and among the City, the CIC, Traditions Development Group, LLC, Brandicorp Development Company, LLC, North American Properties, Inc., Greiwe Development Group, LLC, and Gateway Montgomery Partners, LLC, to allow Gateway Partners, LLC to lead the development of The Montgomery Quarter, which Assignment Agreement is attached hereto as Exhibit A; and

WHEREAS, Council in cooperation with the CIC supports the realignment of the Development Team to continue the long term success of The Montgomery Quarter project.

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

SECTION 1. The attached Assignment Agreement is hereby approved and accepted by the City. The City Manager is authorized to execute the Assignment Agreement and to implement the terms and conditions of the Assignment Agreement as outlined therein, including the payment of the sum of Two Hundred Thousand Dollars (\$200,000) to Traditions Development Group, LLC to obtain various engineering studies to facilitate development of the project.

SECTION 2. The City supports the CIC designating Gateway Partners Montgomery, LLC as the new Development Team for the development of The Montgomery Quarter site.

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

PASSED: September 18, 2019

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

Lynda Roesch
Lynda Roesch, Vice Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director

ASSIGNMENT AGREEMENT

This Assignment Agreement (“**Agreement**”) is entered into by, between and among the City of Montgomery, Ohio, an Ohio municipal corporation (“**Montgomery**”), The City of Montgomery Community Improvement Corporation, an Ohio not-for-profit corporation designated by statute as an economic development corporation for the City of Montgomery, Ohio (“**CIC**”), Traditions Development Group, LLC, an Ohio limited liability company (“**Traditions**”), Brandicorp Development Co., LLC, an Ohio limited liability company (“**Brandicorp**”), North American Properties, Inc., an Ohio corporation (“**NAP**”), Greiwe Development Group, LLC, an Ohio limited liability company (“**Greiwe**”), Gateway Development Partners, LLC, *fka* Gateway Partners, LLC, an Ohio limited liability company, and Gateway Partners Montgomery, LLC, an Ohio limited liability company (“**GPM**”). This Agreement shall be effective as of the last date of execution among the parties.

RECITALS

WHEREAS, Montgomery is the owner of a combined 21+ acres within which Montgomery seeks to construct certain public improvements and to develop a mixed use community, which combined project was the Gateway Redevelopment Area and is now known as The Montgomery Quarter (“**Project**”); and

WHEREAS, in 2015, Montgomery did solicit qualifications from various development groups to work in cooperation with Montgomery and the CIC to develop the Project; and

WHEREAS, Traditions, Brandicorp, NAP and Greiwe (“**Development Team**”) did jointly submit a proposal to Montgomery and the CIC to be designated as Preferred Developer for the Project under a partnership they intended to designate as *Gateway Partners, LLC, nka Gateway Development Partners, LLC*; and

WHEREAS, during the course of planning for the Project, the Development Team through Traditions did acquire property at 9346 Main Street, Cincinnati, Ohio 45242, being Auditor’s parcel number 603-0004-0057 (the “**Driver Property**”); and

WHEREAS, CIC did contract with the Development Team through Traditions that if the Development Team could not finalize a Development Agreement for the Project, that the CIC would purchase the Driver Property from Traditions, which contract to acquire the Driver Property is hereinafter referred to as “**Driver Purchase Agreement**”; and

WHEREAS, the Development Team did, under the name Gateway Partners, LLC, nka Gateway Development Partners, LLC, enter into a Reimbursement Agreement with the City to commit the City to advance to and reimburse the Development Team certain engineering and design expenses to advance criteria drawings and engineering plans for Project public improvements, which Reimbursement Agreement has been carried through to its satisfactory

conclusion. Such plans, drawings and specifications are hereinafter referred to as “**Reimbursables**”; and

WHEREAS, in the course of planning for the development of the Project, the Development Team through Traditions has incurred certain additional costs for the planning, engineering and designing both public and private improvements, legal fees in reviewing and negotiating contracts, and carrying costs for the Driver Property, which Traditions seeks to recover and which were not encompassed by the Reimbursement Agreement referred to above; and

WHEREAS, in developing the financial model for the Project, the Development Team has decided among themselves to reorganize and to allow Gateway Partners Montgomery, LLC to substitute for the designated *Gateway Partners, LLC, nka Gateway Development Partners, LLC* as the Preferred Developer for the Project; and

WHEREAS, to reorganize the Development Team, the parties do desire to enter into this Agreement to allow the design, engineering and planning for the Project and all rights associated with being designated as the Preferred Developer to be assigned to GPM and, Traditions and the Development Team to be released from any further liability or responsibility for work performed or to be performed on the Gateway Redevelopment Area ; and

WHEREAS, as a part of such assignment, the Development Team has requested Montgomery and/or the CIC to advance monies to reimburse the Development Team in part for engineering and site planning completed to date as detailed on the attached **Schedule A**, which plans, reports and designs are hereinafter referred to as **Deliverables**; and

WHEREAS, GPM and Montgomery do desire to acquire ownership to the Deliverables to be able to complete development of the Project; and

WHEREAS, GPM and Montgomery do desire to reimburse Traditions in part for the engineering and site planning completed to date as outlined in the Deliverables; and

WHEREAS, GPM does desire to acquire ownership to the Driver Property from Traditions and the Development Team to allow the Driver Property to be merged within the Project site for future development, and in completing such transaction CIC, Traditions and the Development Team do intend to revoke and rescind the Driver Purchase Agreement; and

WHEREAS, Montgomery, the CIC and GPM do desire to reimburse Traditions for professional efforts in assisting the planning for the Project to date; and

WHEREAS, with this assignment and exchange of consideration as further outlined herein, all of the parties to this Agreement do desire for the benefit of each other to mutually release each other from any and all rights, obligations or claims arising from the previous designation of their Development Team as the Preferred Developer for the Project, and any and all rights, obligations or claims arising from expenses incurred or development services proffered to date for the Project.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Release Payment.

A. Montgomery and/or the CIC shall pay the total sum of Two Hundred Thousand Dollars (\$200,000) ("**Release Payment**") to Traditions representing reimbursement to Traditions on behalf of the Development Team for planning, engineering and legal services expended to date by the Development Team and specifically Traditions as generally outlined on **Schedule A** attached hereto. Such Release Payment shall be separate from the balance to be paid to *Gateway Development Partners, LLC, fka Gateway Partners, LLC*, under a separate Reimbursement Agreement previously authorized among the parties. Such Release Payment shall be appropriated by Montgomery and/or the CIC and authorized for payment at such time as GPM enters into a Development Agreement with Montgomery and the CIC for development of the Project (the "Development Agreement").

B. It is anticipated that the Release Payment will be added to and included as a part of the Construction Fund derived from Special Revenue bonds to be issued as a part of the Tax Increment Financing model for the Project site. Consistent with the separate Reimbursement Agreement, such Release Payment upon payment by Montgomery and/or the CIC shall be reimbursed to Montgomery and/or the CIC as a first draw from such Construction Fund from the Special Revenue bonds to be issued. The Release Payment shall be reimbursed from the portion of the tax increment financing proceeds to the City pursuant to Section 4.4(a) of the Development Agreement.

2. Assignment of Deliverables.

A. Upon receipt of the Release Payment, Traditions, Gateway Development Partners, LLC, fka Gateway Partners, LLC and the Development Team, do irrevocably assign all plans, reports, engineering drawings, concepts and designs contained within the Deliverables to Montgomery and GPM for its use in the planning, design and development of the Project. Such assignment shall include all copyrights to the Deliverables, the right to use such Deliverables or modify such Deliverables, and all derivative work developed from such Deliverables in the professional planning and design of the Project. Traditions represents that to the best of its knowledge, the Development Team controls all rights to hold and assign the rights derived from such Deliverables, and no person or entity has a prior claim or lien claim to the Deliverable work product. To the extent any third party asserts a claim against Montgomery, and/or the CIC for any copyright or similar right associated with such Deliverables, Traditions shall indemnify and defend such claim for and on behalf of Montgomery, and/or the CIC

B. For and in exchange for the Release Payment, Traditions and the Development Team have made available to Montgomery and/or the CIC the Deliverables and specifically the component engineering plans and reports within the Deliverables from Strand Associates, Alt & Witzig, McGill Smith Punshon, MKSK and ATC Group Services, LLC for Montgomery and/or the CIC's free use in designing and engineering public improvements for support of the Project site. Montgomery shall not be obligated to reimburse nor pay Traditions,

nor any other party to this Agreement for the free use and access to these Deliverables. Montgomery and/or the CIC will deliver and/or make available to GPM all such Deliverables.

3. Reimbursement Agreement. The rights and obligations under the Reimbursement Agreement are assigned to Gateway Development Partners, LLC, fka *Gateway Partners, LLC*. As acknowledged within the previously approved Reimbursement Agreement, a copy of which is attached hereto as Schedule B, Traditions, Gateway Development Partners, LLC and the Development Team irrevocably assign all plans, reports, engineering drawings, concepts and designs contained within the Reimbursables to Montgomery for its use in the planning, design and development of the Project. Such assignment shall include all copyrights to the Reimbursables, the right to use such Reimbursables or modify such Reimbursables, and all derivative work developed from such Reimbursables in the professional planning and design of the Project. The identified work in the Reimbursement Agreement has been satisfactorily completed.

4. Additional Payment from Gateway Partners Montgomery, LLC to Traditions. Upon execution of this Agreement and the Development Agreement, and in conjunction with the Release Payment payable under Paragraph 1 above, and concurrently with the closing of the Driver Property as described below, GPM will pay to Traditions an amount equal to One Hundred Thousand Dollars (\$100,000) (the "Additional Payment") representing reimbursement to Traditions for professional efforts in assisting the planning for the Project.

5. Driver Property Purchase. Upon receipt of the Release Payment, the Additional Payment and execution of the Development Agreement, Traditions and the Development Team shall cause the real property approximately shown on Schedule C, attached hereto (the "Driver Property"), to be transferred to GPM, or its designee or assignee, upon or subject to the following terms and conditions:

A. The purchase price for the Driver Property shall be Five Hundred Five Thousand Dollars (\$505,000). Traditions shall also be reimbursed by GPM for certain expenses in the total amount of Fifteen Thousand Eight Hundred Fifty Three and 82/100 Dollars (\$15,853.82). All closing expenses for the sale of the Driver Property to GPM shall be allocated between the Development Team as seller and purchaser, as is customary for closings on commercial real estate in the Greater Cincinnati, Ohio area. The net amount referenced in the preceding sentence shall be distributed at closing in the percentage amount contributed by Traditions, Brandicorp, LLC and North American Properties, which is one-third (1/3) each to Traditions, Brandicorp, LLC, and North American Properties.

B. Fee simple title shall be transferred by limited warranty deed, free, clear and unencumbered, except for real estate taxes and assessments not yet due and payable.

C. Real estate taxes and assessments shall be prorated at closing as is customary for purchases and sales of commercial property in the Greater Cincinnati, Ohio area.

D. Traditions and the Development Team shall execute customary and reasonable closing related documents such as title affidavits, non-foreign affidavits and provide

such reasonable proof of authority for the transfer, all as Gateway's title company may reasonably require.

E. Traditions shall keep the Driver Property in substantially the same condition as it currently exists, and make no alterations or improvements to the Driver Property prior to the transfer described herein.

F. Traditions shall deliver exclusive possession of the Driver Property to Gateway or its designee or assignee at closing and shall not enter into any leases or other agreements that will be binding upon or affect the Driver Property after the closing described in this Paragraph 5.

Except for and subject to the agreements contained in this Paragraph 5 and the limited warranty covenants, Traditions is selling the Driver Property completely "AS-IS" without any warranty as to the condition of or circumstances surrounding the Driver Property.

6. Rescission of Driver Agreement. Upon the payment of the Release Payment, the Additional Payment and payment for the Driver Property, as outlined in Paragraphs 1, 4 and 5 above, the Driver Purchase Agreement is hereby revoked and rescinded and neither the CIC, nor Traditions, nor the Development Team (including any member thereof) shall have any further rights nor obligations thereunder.

7. Assignment of Development Rights. For and in consideration of the payments, assignments and transfers outlined herein upon payment of the Release Payment, the Additional Payment and payment for the Driver Property, the undersigned individual members of the Development Team collectively referencing themselves as *Gateway Partners, LLC* do hereby assign all Preferred Developer designation rights designated by Montgomery and the CIC to Gateway Partners Montgomery, LLC. Thereafter, Gateway Partners Montgomery, LLC shall stand as, and be deemed to be, the formal entity for *Gateway Partners, LLC*, the previously designated Preferred Developer for the Project.

8. Mutual Release. With the payment of the Release Payment, Additional Payment and payment for the Driver Property, and this Assignment, the City of Montgomery, Ohio, The City of Montgomery Community Improvement Corporation, Traditions Development Group, LLC, Brandicorp Development Co., LLC, North American Properties, Inc., Greiwe Development Group, LLC, and Gateway Partners Montgomery, LLC do mutually among each other and for the benefit of each other release all rights to be the Preferred Developer for the Project or to develop all or any part of the Project except as may be agreed herein or within any future agreement among the parties. Further, the parties do mutually release each other from any and all claims resulting from their participation in the Gateway Redevelopment Area, including but not limited to any claim for breach of express or implied contract, unjust enrichment, promissory estoppel, detrimental reliance, misrepresentation, intentional or otherwise, and any and all other claims at law or in equity, and all damages arising therefrom, all of which arise out of the designation of the Development Team then known as *Gateway Partners, LLC* as Preferred Developer for the Project, and all costs incurred or services arising from the planning and engineering of the Project or in any way related to or arising out of the Project. This release does not apply to or affect the rights and

obligations between Montgomery, the CIC and GPM under the Development Agreement or the agreements and instruments to be entered into by them pursuant to the Development Agreement.

9. Non-Disparagement. For the mutual success of all parties in their separate business ventures, and for the continuing success of the Project, the parties agree for the benefit of each other not to make any negative or disparaging comments about any party who is now or has been working to develop this Project, or about this Project, the City, the CIC, or any employee or elected official associated with the Project, whether or not such party believes such statement to be true. This shall not restrict any party from providing a truthful disclosure in any legal proceedings.

10. Closing. The execution of the Development Agreement, payment of the Release Payment, the Additional Payment, payment for the Driver Property, and transfer of title to the Driver Property to GPM shall occur on or before October 8, 2019.

11. Miscellaneous.

A. This Agreement, for the convenience of the parties, may be executed in component parts, which component parts when signed shall represent the entire executed Agreement binding upon all parties.

B. The undersigned represent and warrant that they are authorized to execute this Agreement for and on behalf of their principal, and each party to this Agreement is entitled to rely upon such representation in the enforcement of the Agreement.

C. This Agreement shall be enforceable and interpreted as appropriate under Ohio law. Any action to enforce this Agreement or any cause of action for breach of this Agreement may only be brought in a state or federal court sited in Hamilton County, Ohio. By executing this Agreement, all parties consent to jurisdiction and venue within such court or courts in Hamilton County, Ohio.

D. The parties agree to execute such additional documents as may be reasonably required to properly assign ownership of the intellectual property identified herein.

[SIGNATURE PAGES TO FOLLOW]

CITY OF MONTGOMERY, OHIO

Witness as to City of Montgomery, Ohio

By: _____
Brian K. Riblet
Its: City Manager

Date: _____

**THE CITY OF MONTGOMERY
COMMUNITY IMPROVEMENT
CORPORATION**

Witness as to the City of Montgomery
Community Improvement Corporation

By: _____
Brian K. Riblet
Its: Executive Director

Date: _____

**TRADITIONS DEVELOPMENT GROUP,
LLC**

Witness as to Traditions Development
Group, LLC

By: _____
Thomas H. Humes
Its: CEO – Managing Member

Date: _____

**GATEWAY DEVELOPMENT PARTNERS,
LLC, fka GATEWAY PARTNERS, LLC**

Witness as to Gateway Development
Partners, LLC, fka Gateway Partners, LLC

By: _____
Thomas H. Humes
Its: Managing Member

Date: _____

Witness as to Brandicorp Development
Co., LLC

BRANDICORP DEVELOPMENT CO., LLC

By: _____

Its: _____

Date: _____

Witness as to North American
Properties, Inc.

NORTH AMERICAN PROPERTIES, INC.

By: _____

Its: _____

Date: _____

Witness as to Greiwe Development
Group, LLC

GREIWE DEVELOPMENT GROUP, LLC

By: _____

Its: _____

Date: _____

Witness as to Gateway Partners
Montgomery, LLC

**GATEWAY PARTNERS MONTGOMERY,
LLC**

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:



Terrence M. Donnellon
Law Director

SCHEDULE A

November 06, 2018

Montgomery Gateway Redevelopment Area (GRA)

List of vendors and work completed for project planning and design advancement

1. **Strand Associates** (Traffic Engineers)
 - A. Traffic Analysis report to ODOT dated July 2016 for Ronald Regan Highway (SR 126 and Montgomery Road (US22/SR3).
2. **Alt & Witzig** (Geotechnical Engineers)
 - A. Subsurface Investigation & Geotechnical Recommendations for Montgomery Gateway Redevelopment.
3. **McGill Smith Punshon** (Civil Site Engineers)
 - A. Utility due diligence capacity requests (Authorized)
 - B. GCWW Water Main Plans Montgomery Road (Completed)
 - C. Criteria Plans Phase One (Authorized)
 - D. Engineering Phase 1 (Authorized to 80% completion)
 - E. Criteria Plans Phase Two (Not Authorized)
 - F. Engineering Phase Two (Not Authorized)
4. **MKSK** (Land Planning)
 - A. Program Verification and Updated Schematic Design (Authorized)
 - B. Design Development & Criteria Plans (Authorized)
 - C. 100% ConstructioOn Documentation (Not Authorized)
 - D. Bid Period Administration (Not Authorized)
5. **KZF Design** (Architectural)
 - A. Part 1 – Block 1 Schematic Design Phase Services (Authorized)
 - B. Part 2 – Partial SD Pricing Design and Document Phase Services (Authorized)
 - C. Part 3 – MEP/FP Design Criteria Phase Services (Not Authorized)
6. **THP** (Structural Engineers)
 - A. Parking Garage analysis and Preliminary Costs
7. **ATC Group Services LLC** (Environmental Engineers)
 - A. Phase I Environmental Site Assessment (9346 Main Street - Driver Property)
8. **Barron Peck Bennie & Schlemmer** (Legal Counsel)
 - A. Gateway Development Partners LLC
 - B. Traditions Development Group LLC

SCHEDULE B

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (this "Agreement") is entered into this _____ day of _____, 2018 by and between GATEWAY PARTNERS, LLC ("Gateway") and the CITY OF MONTGOMERY, OHIO, an Ohio municipal corporation ("Montgomery").

WHEREAS, Gateway and Montgomery have been negotiating a Development Agreement for the development of certain real property located in the City of Montgomery, Ohio, and in order to complete the terms of the Development Agreement certain design/engineering drawings ("Criteria Drawings") need to be completed; and

WHEREAS, Gateway has engaged various engineering and design firms which are preparing Criteria Drawings which integrate both public and private improvements; and

WHEREAS, Montgomery desires to purchase such Criteria Drawings as may be prepared for Gateway to the extent such drawings provide preliminary engineering for public improvements.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Proceed with Design. Gateway shall proceed with obtaining the necessary Criteria Drawings to firm up the cost of construction and development of the Gateway Project for both public and private improvements.

2. Purchase of Drawings. Montgomery agrees to purchase such Criteria Drawings as developed by Gateway and its engineers, which drawings will provide preliminary detail for the design and specifications of the anticipated public improvements. Montgomery shall purchase such drawings in convenient installments in an amount not to exceed in total \$375,000.

3. Ownership. Such Criteria Drawings as prepared, delivered and purchased by Montgomery shall remain the sole and exclusive property of the City of Montgomery. Gateway and its engineer/designers hereby assign to Montgomery all intellectual property rights in such delivered drawings.

4. Entire Agreement. This Agreement represents the entire agreement of the parties and there are no separate understandings or agreements, written or verbal, which are not incorporated herein.

GATEWAY PARTNERS, LLC,
an Ohio limited liability company

By: _____
Thomas H. Humes
Its: Managing Member

CITY OF MONTGOMERY, OHIO
An Ohio municipal corporation

By: _____
Brian Riblet
Its: City Manager

APPROVED AS TO FORM:

Terrence M. Donnellon
Law Director