

RESOLUTION NO. 22-PT-21
PRESENTED TO THE BOARD AUGUST 11, 2022

TO: PORT AUTHORITY COMMISSION
NEAL RICHARDSON, EXECUTIVE DIRECTOR

FROM: SUSAN TAYLOR, PORT DIRECTOR

RE: RESOLUTION STATING THE INTENT OF THE PORT AUTHORITY TO COOPERATE WITH GOOD DEVELOPMENTS GROUP TO DEVELOP A MIXED-USE DEVELOPMENT ON CERTAIN PROPERTY NEAR THE MISSISSIPPI RIVER, AUTHORIZING THE EXECUTION OF A PRELIMINARY FUNDING AGREEMENT AND DIRECTING PORT AUTHORITY STAFF AND ATTORNEYS TO NEGOTIATE A DEVELOPMENT AGREEMENT IN CONNECTION THEREWITH

EXECUTIVE SUMMARY:

Good Developments Group (the “Developer”) owns or controls approximately 50 acres out of a potential development site of approximately 80 acres generally located south of Interstate 64 (Poplar Street Bridge) and west of the Mississippi River (the “Redevelopment Area”). The Developer proposes to develop or cause the development of residential, retail, entertainment, office and industrial uses in the Redevelopment Area, as well as substantial public infrastructure and public space improvements (collectively, the “Gateway South Project”). This resolution (1) states the intent of the Port Authority to cooperate with the Developer to develop the Gateway South Project, (2) authorizes a Preliminary Funding Agreement with the Developer, whereby the Developer will pay the Port Authority’s, the City of St. Louis’ and St. Louis Development Corporation’s costs of negotiating a development agreement relating to the development of and incentives for the Gateway South Project, and (3) authorizes Port Authority staff and attorneys to negotiate the development agreement and present it for the Board of Commissioner’s future consideration.

BACKGROUND:

The Gateway South Project is expected to be developed over several years at an estimated cost of approximately \$1.2 billion. Potential public funding and incentives for the project include, but are not limited to, federal port infrastructure grants, New Markets Tax Credits, Opportunity Zone, Brownfield Tax Credits, AIM Zone, Port Improvement District, Community Improvement District, Transportation Development District, MSD Rainscaping Grants and various tax abatement programs.

It is the Developer’s intent to create a nonprofit corporation to operate and maintain various public spaces within the Redevelopment Area.

REQUESTED ACTION:

Approval of this Resolution by the Port Authority Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE PORT AUTHORITY BOARD OF COMMISSIONERS AS FOLLOWS:

RESOLUTION NO. 22-PT-21
PRESENTED TO THE BOARD – 8/11/2022

1. **Statement of Intent.** The Port Authority hereby states its intent to cooperate with the Developer in connection with the development of the property described on Exhibit A to the Preliminary Funding Agreement approved pursuant to Section 2 below. The Port Authority's cooperation will be subject to (a) the execution of the Preliminary Funding Agreement, (b) the negotiation and approval of a mutually-acceptable development agreement, as described in Section 3, and (c) any legislative approvals necessary for the transactions contemplated by the development agreement. If the Preliminary Funding Agreement is not executed by October 1, 2022 or is later terminated prior to the execution of a development agreement, the Port Authority shall have no further obligation to cooperate with the Developer.
2. **Authorization of Preliminary Funding Agreement.** The Port Authority is hereby authorized to enter into the Preliminary Funding Agreement with the Developer or designee of the Developer in substantially the form presented to and reviewed by the Port Authority at this meeting (a copy of which shall be filed in the official records of the Port Authority), with such changes therein as shall be approved by the officials of the Port Authority executing the Preliminary Funding Agreement, such officials' signatures thereon being conclusive evidence of their approval thereof. The Executive Director is hereby authorized and directed to execute the Preliminary Funding Agreement, for and on behalf of and as the act and deed of the Port Authority in the manner provided therein.
3. **Negotiation of Development Agreement.** The Port Authority's staff and attorneys are hereby authorized to negotiate a development agreement between the Port Authority and the Developer (or its designee) regarding the development and financing of the Gateway South Project, and to present such development agreement to the Port Authority's Board of Commissioners for consideration and approval.
4. **Appointment of Special Counsel.** Gilmore & Bell, P.C. is hereby appointed as special counsel to represent the Port Authority with respect to the negotiation, preparation, implementation and administration of the development agreement.
5. **Further Authority.** The Executive Director, officers, agents, attorneys and employees of the Port Authority are hereby authorized to take actions, consistent with this Resolution, necessary and appropriate to implement the intent of this Resolution.
6. **Effective Date.** This Resolution shall take effect and be in full force immediately after its passage and approval by the governing body of the Port Authority.

ADOPTED this 11th day of August, 2022.

CITY OF ST. LOUIS PORT AUTHORITY

By: _____

Title: _____

(SEAL)
ATTEST:

Assistant Secretary

PRELIMINARY FUNDING AGREEMENT

THIS PRELIMINARY FUNDING AGREEMENT (the “Agreement”) is made and entered into as of the 11th day of August, 2022, by and between the **CITY OF ST. LOUIS PORT AUTHORITY** (the “Port Authority”) and **GOOD DEVELOPMENTS GROUP** (the “Developer”).

RECITALS

1. The Developer proposes to redevelop or cause the development of certain property depicted on **Exhibit A** attached hereto (the “Area”).

2. The Port Authority is willing to explore the feasibility of financing a portion of the costs of developing the Area through the use of economic development incentives, if the Developer advances funds to pay the Port Authority’s costs of exploring such incentives.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Advance of Funds.

(a) The Port Authority hereby acknowledges receipt from the Developer of \$25,000 (the “Preliminary Funds”). The Port Authority may, subject to the terms hereof, use the Preliminary Funds to pay or reimburse the Port Authority, the City of St. Louis, the St. Louis Development Corporation and the Land Clearance for Redevelopment Authority of the City of St. Louis (collectively, the “City Parties”) for payment of actual costs incurred by the City Parties for services provided by such consultants and advisors (including, but not limited to, attorneys, planners and financial consultants) as the City Parties deem advisable regarding the City Parties’ review of plans and related documents and negotiation of a development agreement, and for expenses incurred by the City Parties (such as mailing, publication and similar costs) in connection with the foregoing. The parties acknowledge that such amount is a substantial sum and agree to use their best efforts to work together to reduce the total costs to be paid out of the Preliminary Funds.

(b) If the Port Authority and the Developer enter into a development agreement, the development agreement shall provide for the disbursement of any remaining Preliminary Funds in the manner specified in the development agreement.

2. Disbursement. The Port Authority may disburse Preliminary Funds for fees and expenses incurred or to reimburse the City Parties for fees and expenses previously paid by the City Parties upon receipt of (a) invoices for work performed by consultants and advisors, (b) invoices and/or receipts for out-of-pocket expenses incurred by such parties or the City Parties for the planning, legal and financial work described above, and (c) such other supporting documentation as may be requested by the Port Authority. The Port Authority shall use reasonable care in ascertaining that the fees and expenses paid from the Preliminary Funds are fair and reasonable. The Port Authority will work with the Developer to establish a budget and provide its intended uses for Preliminary Funds and any additional funds requested.

3. Copies of Disbursement Requests. The Port Authority shall provide to the Developer copies of all disbursement records (as maintained pursuant to **Section 2** above) detailing costs paid from the Preliminary Funds.

4. Consideration of Incentives. Nothing herein shall obligate the Port Authority to approve any financial incentives for the Developer's proposed project.

5. Developer's Right of Termination. The Developer may terminate this Agreement at any time in its sole discretion upon giving the Port Authority 10 days' written notice; whereupon 10 days following the Developer's delivery of said notice, this Agreement shall be deemed terminated. Upon receipt of such notice, the Port Authority will cease incurring expenditures under this Agreement as soon as reasonably possible. The Port Authority shall pay to the Developer, within 60 days after the Developer delivers notice of its termination under this Section, all Preliminary Funds remaining after the Port Authority's payment of any Disbursement Requests submitted pursuant to this Agreement for work performed through the date of termination.

6. Port Authority's Right of Termination. The Port Authority may terminate this Agreement upon giving the Developer 30 days' written notice if (a) a development agreement is not executed by December 31, 2022 (or such later date as set forth in the Port Authority's resolution approving the development agreement or as may be agreed to by the Executive Director of the Port Authority) or (b) the balance from the initial Preliminary Funds or subsequent funds advanced hereunder falls below \$5,000 and within 15 days after written notice from the Port Authority (including an updated budget of the intended use of the Preliminary Funds) to the Developer, the Developer does not provide additional Preliminary Funds to the Port Authority. Upon giving such notice of termination under this Section, the Port Authority shall cease incurring expenditures under this Agreement. The Port Authority shall pay to the Developer, within 30 days after the Port Authority delivers notice of its termination of this Agreement under this Section, all Preliminary Funds remaining after the Port Authority's payment of any fees and expenses submitted pursuant to this Agreement for work performed by the Port Authority or its consultants, as specified in Section 1 hereof, through the date of termination.

7. Excess Preliminary Funds. If the Port Authority does not expend all the Preliminary Funds as provided herein and no development agreement is reached, then the Port Authority shall immediately return the remainder to the Developer.

8. No Third-Party Beneficiaries. This Agreement constitutes a contract solely between the Port Authority and the Developer. No third party has any beneficial interest in or derived from this Agreement.

9. Notices. All notices and correspondence hereunder shall be in writing and shall be delivered by hand delivery, e-mail, or first-class mail, postage prepaid, to the parties as set forth below:

If to the Port Authority:

Susan M. Taylor, R.A.
Director, City of St. Louis Port Authority
1520 Market Street, Suite 2000
St. Louis, Missouri 63103
taylor@stlouis-mo.gov

with a copy to:

James Morrow
Assistant City Counselor
1520 Market Street, Suite 2000
St. Louis, Missouri 63103
morrowj@stlouis-mo.gov

If to the Developer:

Good Developments Group
Attn: _____

with a copy to:

Steadfast City
Attn: Doug Rasmussen
3407 Jefferson Avenue
St. Louis, Missouri 63118

10. Miscellaneous.

a. Severability. The provisions of this Agreement shall be deemed severable. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions of this Agreement shall remain valid unless the court finds that (a) the valid provisions are so essentially and inseparably connected with and so dependent upon the invalid provision that it cannot be presumed that the Port Authority and the Developer would have agreed to the valid provisions without the invalid one or (b) the valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the intent of the Port Authority and the Developer.

b. No Waiver. Failure of any party hereto to enforce its rights hereunder at any time shall not be deemed a waiver of any such rights.

c. Representations and Warranties. The Developer and the Port Authority each represent and warrant that:

(i) this Agreement has been duly executed by them or on their behalf, as the case may be, pursuant to due authorization, and is not in violation of any such party's governing documents, charter or ordinances, as the case may be,

(ii) no consents are necessary for the execution, delivery, and performance of this Agreement by such party, and

(iii) this Agreement is valid, binding and enforceable against such party in accordance with its terms.

d. Assignment. This Agreement may not be assigned by either party without the written consent of the other. The Developer may assign this agreement to any of its wholly owned entities or affiliates.

e. **Survival.** Notwithstanding the expiration or termination or breach of this Agreement by either party, the Port Authority's obligation with respect to repayment of unexpended Preliminary Funds and copies of Disbursement Requests shall survive expiration, termination or breach of this Agreement by either party.

f. **Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

11. **Limitation of Liability.** Notwithstanding any provision hereof to the contrary, the Port Authority and its officials, agents, employees and representatives shall not be liable to the Developer for damages or otherwise if this Agreement, any prospective adoption of a development agreement, tax abatement or other incentive program is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the Port Authority is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges contemplated hereunder.

12. **Anti-Discrimination Against Israel Act.** Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Developer certifies it is not currently engaged in and shall not, for the duration of this Indenture, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or (c) persons or entities doing business in the State of Israel.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Preliminary Funding Agreement to be duly executed as of the date first above written.

CITY OF ST. LOUIS PORT AUTHORITY

By: _____
Executive Director

GOOD DEVELOPMENTS GROUP

By: _____
Authorized Signatory

EXHIBIT A

