

RESOLUTION NO. 2010-07

A RESOLUTION RATIFYING THE SUBMISSION OF AN APPLICATION TO OHIO DEPARTMENT OF DEVELOPMENT SEEKING AWARD OF OHIO LOGISTICS AND DISTRIBUTION STIMULUS PROGRAM FUNDS IN SUPPORT OF A RAIL-TO-RIVER IMPROVEMENT PROJECT PROPOSED BY CINCINNATI BULK TERMINALS, LLC, AND ITS AFFILIATES AND APPROVING ENTERING INTO A LOAN AGREEMENT AND OTHER AGREEMENTS WITH OHIO DEPARTMENT OF TRANSPORTATION AND OTHERS TO IMPLEMENT THE PROJECT.

WHEREAS, the Port of Greater Cincinnati Development Authority (the "Port Authority") has been invited by the Ohio Department of Development ("ODOD") to submit an application (the "Application") for Ohio Logistics and Distribution Stimulus Program Funds (the "Funding") to fund certain rail improvements and site reconfiguration to create rail-to-river access and improve rail configuration near the river front (the "Project"); and

WHEREAS, the subject property to be improved by the Project consists of approximately forty-five (45) acres generally located along Mehring Way in the City of Cincinnati, which property is owned in part by Cincinnati Bulk Terminals, LLC and Port of Cincinnati, LLC (collectively, the "Developers") and leased in part from the City of Cincinnati ("City") to the Developers (collectively the "Project Site"); and

WHEREAS, if funded, the Project will provide an opportunity to further develop the existing port facilities at the Project Site and expand rail access and functionality to and from the river for the benefit of the region; and

WHEREAS, pursuant to the laws of the State of Ohio ("State"), particularly Ohio Revised Code Chapter 4582, sections 4582.21 *et. seq.*, and the Ohio Constitution, Article VIII, Section 13 (collectively the "Act"), the Port Authority desires to collaborate with the Developers in submission of the Application and pursuit of the Project;

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

Section 1. The submission of the Application by the Port Authority to ODOD, in form on file with the Secretary of the Board, is hereby ratified and approved.

Section 2. This Board hereby finds and determines that, based upon the representations of the Developer: (i) the Project will constitute "port authority facilities" within the meaning of the Act, and is in furtherance of the authorized purposes of the Port Authority, including transportation, governmental operations and economic development purposes as those terms are used or defined in Revised Code Section 4582.21, (ii) the Project is consistent with the purposes of Section 13 of Article VIII, Ohio Constitution, and will create or preserve jobs and employment opportunities and improve the economic welfare of the people of the State.

Section 3. Subject to (i) the approval of the Project by the City of Cincinnati (Council or Mayor), including aspects thereof related to use and ownership of the City-owned portions of the Project Site as are necessary to accomplish the Project as described in the Application, (ii) payment of the costs and expenses incurred by the Port Authority in connection with the Project by the Developer or otherwise, and (iii) confirmation by the City as to its commitment to assign the existing property leases with CBT and its affiliate, Port of Cincinnati, LLC, inclusive of the lease revenue, thereunder, and that such assignment will not reduce or offset the City's existing annual commitment to support of Port Authority operations, the Port Authority is authorized to take such further action and execute such agreements as are deemed by the Chairman of the Board (or his Board designee) and the President of the Port Authority, to be necessary or appropriate and in the best interest of the Port Authority to implement the Project, including, but not necessarily limited to, the loan agreement and associated documentation required by ODOD in connection with the award of the Funding and such agreements with the Developer and/or the City as may be necessary to implement the Project as contemplated in the Application. Upon satisfaction of the foregoing conditions, the Chairman (or his Board designee) and the President, alone or together with the Secretary or Assistant Secretary of this Board, are hereby authorized and directed to execute and deliver any such agreements as satisfy the foregoing conditions and as are not adverse to the Port Authority and as are approved by the officer executing the same as being necessary or desirable and in the best interest of the Port Authority, such execution being conclusive evidence of approval of any such agreement as being necessary or desirable and in the best interest of the Port Authority, and that are not adverse to the Port Authority and that are in satisfactory form.

Section 4. This Board finds and determines that all formal actions of this Board and any of its committees concerning and relating to the adoption of this Resolution were taken, and that all deliberations of this Board and of any of its committees that resulted in such formal action were held, in meetings open to the public, in compliance with the law.

Section 5. This Resolution shall be in full force and effect upon its adoption.

Adopted: June 22, 2010

Yeas: 7

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Chairman

Nays: 0

Attest: \_\_\_\_\_  
Secretary