

RESOLUTION NO. RS2019-1685

A resolution authorizing The Industrial Development Board of The Metropolitan Government of Nashville and Davidson County to negotiate and accept payments in lieu of ad valorem taxes with respect to OliverMcMillan Spectrum Emery, LLC.

WHEREAS, The Metropolitan Government of Nashville and Davidson County (the “Metropolitan Government”) is vitally interested in the economic welfare of its citizens and wishes to provide the necessary leadership to enhance this area’s capabilities for growth and development; and,

WHEREAS, the provision of jobs to area citizens by local business is both necessary and vital to the economic well-being of the Metropolitan Government; and,

WHEREAS, pursuant to the Industrial Development Corporations Act, currently codified at Tenn. Code Ann. §§ 7-53-101 through 315 (such act, as heretofore or hereafter amended, referred to as the “Act”), the General Assembly of the State of Tennessee (the “General Assembly”) has authorized the incorporation of public corporations known as “industrial development boards” in municipalities in the State of Tennessee (the “State”); and,

WHEREAS, the Industrial Development Board of The Metropolitan Government of Nashville and Davidson County (the “Board”) has been duly organized and incorporated in compliance with the Act; and,

WHEREAS, the General Assembly has found and declared that the Board is performing a public function on behalf of the Metropolitan Government and that the Board is a public instrumentality of the Metropolitan Government; and,

WHEREAS, the Supreme Court of Tennessee (the “Supreme Court”) has found that the Board is an agency or instrumentality of the Metropolitan Government; and,

WHEREAS, the Act expressly incorporates by reference the statement of public policy set forth in Section 3 of Chapter 209 of the Public Acts of 1955; and,

WHEREAS, Chapter 209 of the Public Acts of 1955 states that the declared purpose of the Act is to do that which the State welfare demands and that which the State public policy requires to alleviate the problems of unemployment, to raise family income, to provide a means by which the citizens of the community may promote and develop industry in their area so as to obtain a balanced economic development highly essential to the welfare of the State, and to promote the development of commercial, industrial, agricultural, and manufacturing enterprises by the several municipalities so as to be given local benefits peculiar to each and general benefits to the entire State; and,

WHEREAS, the General Assembly also has declared that the purposes of the Act include maintaining and increasing employment opportunities by promoting industry, trade, and

commerce by inducing manufacturing, industrial, financial, service, and commercial enterprises to locate or remain in the State; and,

WHEREAS, the Supreme Court has held that the purposes of the Act include the promotion of industry and the development of trade to provide against low wages and unemployment and that such purposes are public in nature; and,

WHEREAS, the Board is empowered pursuant to the Act to acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish, “projects” (as defined in the Act), and to lease such projects to others; and,

WHEREAS, OliverMcMillan Spectrum Emery, LLC will construct a development located at the corner of Broadway and Fifth Avenue North, Nashville, Tennessee, to be known as Fifth + Broadway within which an approximate 54,783 square foot portion of the development is intended for use as a museum celebrating African American music (the “Project”); and,

WHEREAS, significant investment in the development and construction of the Project is anticipated and completion of the Project is expected in 2019; and,

WHEREAS, the museum will be operated and managed by the African American History Foundation of Nashville pursuant to the terms of that certain Amended and Restated Agreement with Respect to the Development and Operation of the Museum of African American Music, Art and Culture dated December 1, 2008, as amended; and,

WHEREAS, it is anticipated that the museum will be an art, culture and tourism destination in the downtown area; and,

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305, all properties owned by the Board are exempt from ad valorem taxation in the State of Tennessee; and,

WHEREAS, pursuant to Tenn. Code Ann. § 7-53-305(b), the Metropolitan County Council (the “Council”) has the power to delegate to the Board the authority to negotiate and accept from its lessees payments in lieu of ad valorem taxes, provided that such payments are in furtherance of the Board's public purposes; and,

WHEREAS, the benefits to the Metropolitan Government of the location of the Project within the boundaries of the Metropolitan Government, and in the exercise of its powers above, will provide an opportunity for the Board to acquire, by purchase, exchange, gift or lease, property that will be used with respect to the Project, to lease that property to OliverMcMillan Spectrum Emery, LLC, and to enter into one or more agreements with OliverMcMillan Spectrum Emery, LLC to accept payments in lieu of ad valorem taxes with respect to the property; and,

WHEREAS, the Board may only negotiate and accept payments in lieu of ad valorem taxes with authorization from the Council; and,

WHEREAS, it is in the interest and welfare of the citizens of the Metropolitan Government to delegate authority to the Board to negotiate and execute a payment-in-lieu-of-tax agreement with OliverMcMillan Spectrum Emery, LLC.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the Council of the Metropolitan Government finds that the Board's acceptance of payments in lieu of ad valorem taxes with respect to the Project is in furtherance of the Board's public purpose of maintaining and increasing employment opportunities, as set forth in Tenn. Code Ann. § 7-53-102, and the other public purposes described above.

Section 2. That the Metropolitan Government hereby delegates to the Board the authority to negotiate and execute an agreement for payments in lieu of real property taxes with respect to the Project for a period of up to twenty years, beginning on the effective date of a lease between the Board and OliverMcMillan Spectrum Emery, LLC with respect to the Project. The amount of the payments in lieu of real property taxes that shall be required with respect to that period shall be zero percent (0%) of the Standard Tax owed in connection with the Project.

Section 3. That the term "Standard Tax" shall mean the amount of ad valorem real property tax that OliverMcMillan Spectrum Emery, LLC would be required to pay with respect to a given tax year with respect to the real property that is then subject to the payment in lieu of tax arrangement authorized hereby if OliverMcMillan Spectrum Emery, LLC owned the Property. OliverMcMillan Spectrum Emery, LLC shall be permitted to challenge the assessment of any real property that is then subject to the payment in lieu of tax arrangement authorized hereby in the same manner as if OliverMcMillan Spectrum Emery, LLC owned the Property.

Section 4. (a) That the payment in lieu of tax arrangement authorized by this Resolution shall apply to all real property comprising a portion of, or used at or in connection with, the Project.

(b) That the payment in lieu of tax arrangement authorized by this Resolution shall apply to all land, easements or other property rights, buildings, improvements, fixtures, and construction in progress comprising a portion of, or used in connection with, facilities located on the property described above. Such arrangement shall apply to such facilities and such properties in their current scope and configuration and to all replacements, enhancements, additions, expansions, and improvements to such properties and facilities.

Section 5. That the final version of the payment in lieu of tax agreement, the form of which is attached hereto as Exhibit A, authorized by this Resolution must be approved as to legality by the Department of Law of the Metropolitan Government prior to being executed by the Board.

Section 6. That all ordinances or resolutions, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

Section 7. That this Resolution shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO AVAILABILITY OF FUNDS:

INTRODUCED BY:

Director of Finance

APPROVED AS TO FORM AND LEGALITY:

Member(s) of Council

Director of Law