

# Resolution

Number 24-1034

Adopted Date August 06, 2024

AUTHORIZING A COOPERATIVE AGREEMENT WITH THE WARREN COUNTY PORT AUTHORITY PURSUANT TO THE MEMORANDUM OF UNDERSTANDING DATED OCTOBER 10, 2023, FOR PURPOSES OF DEVELOPING THE CINCINNATI OPEN TENNIS TOURNAMENT

WHEREAS, pursuant to Resolution #23-1321, adopted October 10, 2023, this Board entered into a Memorandum of Understanding ("MOU") with Beemok Sports, LLC, the City of Mason, Mason Port Authority, and the Warren County Port Authority; and

WHEREAS, the MOU outlined the provision of funds in an amount not to exceed \$50,000,000 towards the retention and development of the Cincinnati Open Tennis Tournament in Warren County; and

WHEREAS, the MOU further outlined the intent to fund these commitments through an agreement with the Warren County Port Authority; and

WHEREAS, the Warren County Port Authority intends to enter into agreements with the necessary partners to provide County funds to the development of the project.

NOW THEREFORE BE IT RESOLVED, to authorize the President of the Board to enter into a cooperative agreement with the Warren County Port Authority for the provision of funds for purposes of developing the Cincinnati Open Tennis Tournament.

Mrs. Jones moved for adoption of the foregoing resolution being seconded by Mr. Grossmann. Upon call of the roll, the following vote resulted:

Mr. Young – yea  
Mr. Grossmann – yea  
Mrs. Jones – yea

Resolution adopted this 6<sup>th</sup> day of August 2024.

BOARD OF COUNTY COMMISSIONERS

  
\_\_\_\_\_  
Krystal Powell, Clerk

cc: c/a—Warren County Port Authority  
Economic Development (file)  
Commissioners' file

EXHIBIT A

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COOPERATIVE AGREEMENT

by and between

BOARD OF COUNTY COMMISSIONERS OF WARREN COUNTY, OHIO

and

WARREN COUNTY PORT AUTHORITY

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Regarding the Mason Tennis Center Project

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Dated

as of

\_\_\_\_\_, 2024

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## COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (the “Agreement”) is entered into as of [\_\_\_], 2024 (“Effective Date”) by and between the WARREN COUNTY PORT AUTHORITY (the “Port Authority”), a port authority and Ohio politic subdivision with an address of 406 Justice Drive, Lebanon, Ohio 45036 (the “Port Authority”), and WARREN COUNTY, OHIO through its Board of County Commissioners, a county and Ohio political subdivision with an address of 406 Justice Drive, Lebanon, Ohio 45036 (the “County,” and collectively with the Port Authority, the “Cooperative Parties” and each a “Party”).

### RECITALS

A. The Port Authority is situated within the geographic area of Warren County, Ohio and was created and exists as a body both politic and corporate, performing essential public functions, and is authorized and empowered by Ohio Revised Code Section 4582.21 et seq. (the “Act”) to, among other things, undertake activities that enhance, foster, aid, provide, or promote transportation, economic development, recreation, education, or culture within the jurisdiction of the Port Authority, including to acquire, sell, or exchange real property related to, useful for, or in furtherance of, one or more of the authorized purposes defined in the Act.

B. The Cooperative Parties share a mutual interest in economic development that creates and preserves jobs and employment opportunities throughout the County, thereby improving the economic welfare of the residents of the County, the Port Authority, and the State of Ohio (“State”) as a whole; and

C. The Cooperative Parties have previously entered into a Memorandum of Understanding dated as of September 27, 2023 with Beemok Sports, LLC (“Beemok Sports”) and the City of Mason, Ohio (the “City”), which Memorandum of Understanding was approved by the County by Resolution No. 23-1321 adopted on October 10, 2023; and

D. The Cooperative Parties desire to continue to work cooperatively with the City, the Mason Port Authority (“Mason Port Authority”), and Beemok Sports to preserve and further develop the Cincinnati Open Tennis Tournament (formerly known as The Western & Southern Open and herein, the “Tournament”), currently held annually at the Lindner Family Tennis Center located within the City and County (the “Tennis Facility”), and aspire to redevelop, enhance and promote the Tennis Facility and grow their relationships in order to preserve championship-level professional tennis in, and to bring additional professional, non-professional and/or community tennis to, the City, County and surrounding region for the foreseeable future (the “Tennis Project”); and

E. The Cooperative Parties desire to memorialize the respective commitments and obligations of the Port Authority and the County in regard to the Tennis Project, including, specifically, the provision by the County of the County Funding (defined herein) to the Port Authority and the use of the County Funding by the Port Authority for the purposes described herein.

F. The obligations of the County herein have been approved, authorized, and directed by the Board of County Commissioners of the County pursuant to Resolution No. [\_\_\_\_], dated [\_\_\_\_], 2024.

G. The obligations of the Port Authority herein have been approved, authorized, and directed by the Port Authority pursuant to Resolution No. 2024-19, dated July 29, 2024.

H. The Cooperative Parties intend to enter into this Agreement to more fully identify the agreed-upon obligations of the Cooperative Parties as described below.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the sufficiency of which are acknowledged by the parties hereto, the Cooperative Parties hereby agree as follows:

1. Tennis Project Transaction Documents. In order to facilitate the undertaking and completion of the Tennis Project, the Port Authority covenants and agrees to execute, deliver and perform its obligations under and pursuant to the terms of the following agreements (collectively, the "Transaction Documents"):

1.1 Master Cooperative Agreement among the Port Authority, the City, the Mason Port Authority, Beemok Sports, and Cincinnati Tennis, LLC ("Master Cooperative Agreement");

1.2 Construction Manager at Risk Agreement between the Port Authority and Cincinnati Tennis, LLC ("CMAR Agreement"), pursuant to which the Port Authority will engage Cincinnati Tennis, LLC or its affiliate to undertake construction of the Tennis Project;

1.3 Ground Lease Agreement between the Port Authority and the City ("Ground Lease"), pursuant to which the City will lease the property associated with the Tennis Project to the Port Authority;

1.4 Project Lease between the Port Authority and Cincinnati Tennis, LLC ("Project Lease") pursuant to which the Port Authority will grant certain leasehold rights in the Tennis Project to Cincinnati Tennis, LLC;

1.5 Tennis Facilities Management and Maintenance Agreement between the Port Authority and Cincinnati Tennis, LLC ("Management Agreement"), pursuant to which the Port Authority will engage Cincinnati Tennis, LLC to manage the Tennis Project;

1.6 Public Improvement Purchase Option Agreement between the Port Authority, the City and Cincinnati Tennis, LLC ("PIPA"), pursuant to which Cincinnati Tennis, LLC will have a purchase option with respect to the Tennis Project and property associated therewith;

1.7 Disbursement Agreement among the Port Authority, the City, Beemok Sports, Cincinnati Tennis, LLC, and the disbursing agent ("Disbursing Agent") appointed therein (the "Disbursement Agreement"); and

1.8 Any and all other agreements pertaining to the development, operation and use of the Tennis Project.

In addition, the Port Authority agrees to grant to Cincinnati Tennis or its affiliate, authority to use and apply the Port Authority's exemption from Ohio's Sales and Use Tax.

2. County Financial Contribution. The Port Authority has created the Mason Tennis Project Fund ("Port Authority Project Fund") as a segregated account of the Port Authority. In addition, pursuant to the Disbursement Agreement, the Disbursing Agent has established a Warren County Port Authority Project Fund Subaccount ("Subaccount") as a segregated subaccount of the project fund established pursuant to the Disbursement Agreement. The County agrees to appropriate and make a cash grant to the Port Authority in the aggregate amount of up to \$50,000,000 ("County Contribution"), and the Port Authority agrees to (a) deposit the County Contribution initially into the Port Authority Project Fund, (b) promptly appropriate and deposit the County Contribution in the Subaccount, and (c) authorize from time to time the use of the County Contribution to pay costs associated with the Tennis Project consistent with the terms and conditions of the Master Cooperative Agreement, the Disbursement Agreement, and the following terms and conditions:

2.1 Initial Disbursement of County Contribution. Prior to the Effective Date, the County appropriated \$15,000,000 as the initial disbursement of the County Contribution ("Initial Disbursement"). Within \_\_\_ days following the Effective Date, the County will remit the Initial Disbursement to the Port Authority.

2.2 Remaining Disbursement of County Contribution. The County agrees to cause the remaining up to \$35,000,000 of the County Contribution (the "Final Disbursement") to be appropriated by not later than later than December 31, 2025 ("Appropriation Date"). In the event the County has not appropriated the Final Disbursement to the Port Authority by the Appropriation Date, the Port Authority agrees to present a request for the Final Disbursement in the form of an appropriation resolution to the County within thirty (30) days following the Appropriation Date. Upon appropriation of the Final Disbursement, the County agrees to disburse the Final Disbursement to the Port Authority in installments made not less frequently than quarterly during the 2025 calendar year and in no event later than the date that such funds are anticipated to be required pursuant to the then-current Phase Funding Schedule set forth in the Master Cooperative Agreement.

2.3 County Contribution Subject to Reduction. Notwithstanding anything herein to the contrary, the County and the Port Authority acknowledge and agree that the amount of the County Contribution is subject to reduction pursuant to the terms of the Master Cooperative Agreement. In the event the County Contribution is so reduced, references to the amount of County Contribution herein shall refer to the final amount of the County Contribution required to be contributed by the Port Authority pursuant to the Master Cooperative Agreement.

3. Reporting Requirements. The Port Authority agrees to provide the County with any reports or updates it reasonably requests in writing in connection with the performance of this Agreement. The Port Authority shall also provide updates to the County no less frequently than quarterly, regarding the progress of the Tennis Project.

4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State. All claims, counterclaims, disputes, and other matters in question between the Port Authority, its agents and employees, and the County, its agents and employees, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Warren County, Ohio.
5. Authority. Each party to this Agreement hereby represents and warrants that it is executing this Agreement with the full and proper authority and that the parties whose names appear hereon are duly authorized and empowered to make and execute this Agreement and that this Agreement is supported by consideration.
6. Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement.
7. Entire Agreement. This Agreement embodies the entire agreement and understanding between the Cooperative Parties, and except with respect to Transaction Documents expressly referenced herein, there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
8. Amendment; Modification. Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in a written instrument signed by an authorized representative of both Cooperative Parties.
9. Severability. In the event that any portions, sections or subsections of this Agreement are rendered invalid by the decision of any court or by the enactment of any law, ordinance or regulation, such provision of this Agreement will be deemed to have never been included therein and the balance of the Agreement shall continue in full force and effect.
10. Default. In the event of either Party's default of any term, provision, covenant or condition of this Agreement, the other Party's remedy hereunder shall be limited to specific performance of the obligations hereunder.
11. Waiver. Failure by either Party to require strict compliance with any provision of this Agreement shall not be construed as a waiver of that provision in the future, and either Party may subsequently require strict compliance at any time, notwithstanding any prior failure to do so. No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition, or duty of the other party shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty to be observed by the other party.
12. Relationship. This Agreement shall not be interpreted as creating any partnership, joint venture or similar relationship between the Cooperative Parties in any respect whatsoever.
13. Further Actions. The Cooperative Parties agree to execute such additional documents, and take such further actions, as may reasonably be required to carry out the provisions and intent of this Agreement.

14. Assignment. Neither Party shall assign this Agreement, in whole or in part, without the other Party's express written consent to such assignment. Any unauthorized assignment of the Agreement by either Party shall be deemed null and void.

15. Extent of Covenants; No Personal Liability. All covenants, obligations, and agreements of the Parties contained in this 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, director, officer, agent, or employee of any Party in other than his or her official capacity.

16. Limitation of Obligations. NONE OF THE OBLIGATIONS OF THE COOPERATIVE PARTIES UNDER THIS AGREEMENT SHALL CONSTITUTE A GENERAL OBLIGATION, DEBT, OR BONDED INDEBTEDNESS OF ANY PARTY, THE STATE, OR ANY POLITICAL SUBDIVISION OF THE STATE, AND NOTHING CONTAINED IN THIS AGREEMENT IS, OR SHALL BE INTERPRETED AS BEING, BACKED BY THE FULL FAITH AND CREDIT OF ANY OF THE COOPERATIVE PARTIES, THE STATE, OR ANY POLITICAL SUBDIVISION OF THE STATE. ALL OF THE OBLIGATIONS OF THE COOPERATIVE PARTIES SHALL BE PAYABLE SOLELY FROM THE COUNTY FUNDING IN THE PORT AUTHORITY PROJECT FUND OR ANY OTHER SOURCES SPECIFICALLY IDENTIFIED IN THIS AGREEMENT.

[Signature Page Follows]



IN WITNESS WHEREOF, the County and the Port Authority have caused this Agreement to be executed as of the Effective Date set forth above.

WARREN COUNTY PORT AUTHORITY

By: Matthew Schnipke  
Matthew Schnipke, Executive Director

WARREN COUNTY BOARD OF COMMISSIONERS

By: [Signature]  
Title: President

Approved as to form:

By: Bruce A. McGary  
Bruce A. McGary, Asst. Prosecutor  
Date: 8/6/24

COUNTY FISCAL OFFICER'S CERTIFICATE

The undersigned, Finance Director of the County of Warren, Ohio (the "County") under the foregoing Agreement, certifies hereby that the monies required to meet the obligations of the County during the year 2024 under the foregoing Agreement (\$15,000,000.00) have been appropriated lawfully for that purpose, and are in the Treasury of the County 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 Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
Treasurer  
County of Warren, Ohio

## TOPIC PAPER

**Topic:** Tennis Cooperative Agreement (Between BOCC & Warren County Port Authority)

**Date:** 8/6/2024

**Office:** Economic Development/Port Authority

**Contact:** Matt Schnipke

**Purpose:**

Agreement would codify the Commissioners sending funds to the Port for purposes of enhancing the tennis tournament facilities. \$3M ARPA + \$12M in tourism fund = \$15M to be transferred in 2024. Remainder in 2025.

**Action Necessary:**

Approve a resolution and execute the attached cooperative agreement which is approved to form already by Prosecutor

**History of Project:**

The County has agreed to fund certain improvements for the tennis tournament and have elected to have the Port act on its behalf to transfer those funds out.

**Costs:**

\$45 million overall (\$3M ARPA + \$12M in tourism fund in 2024) (Remaining \$30M in quarterly installments in 2025)

**Requisition/ PO Number:**

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**Effective Dates:**

Not defined, but my guess would be until money is fully transferred

**Expected Outcome:**

Receive the money from the BOCC and disburse out for tennis improvements

