

REQUESTED BY:
WHITE

LAW DEPARTMENT
DRAFT NO. 0332

TITLE

AN ORDINANCE FOR THE PURPOSE OF AUTHORIZING THE MAYOR AND THE DIRECTOR OF PUBLIC SERVICE AND SAFETY TO ENTER INTO A COOPERATIVE AGREEMENT WITH THE WESTERN RESERVE PORT AUTHORITY FOR THE PURPOSE OF ECONOMIC DEVELOPMENT AND PROJECT ASSISTANCE AND DECLARING AN EMERGENCY.

ORDINANCE NO. 13194/2023

WHEREAS, the City of Warren, Ohio is the owner of real properties located in the City of Warren, Trumbull County, Ohio; and

WHEREAS, said properties are no longer needed for Municipal purposes; and

WHEREAS, the Western Reserve Port Authority is willing to assist the City of Warren in the development of said properties and is willing to acquire the properties from the City for the purpose of creating economic development opportunities, preserving jobs, and improving the economic vitality of the City of Warren, Ohio; and

WHEREAS, the State of Ohio under Sections 721.01 and 4582.121 of the Ohio Revised Code allows for the transfer of properties from the City of Warren, Ohio to the Western Reserve Port Authority without the need for public bid or auction; and

WHEREAS, the State of Ohio under Sections 4582.01 through 4582.59 of the Ohio Revised Code allows the Western Reserve Port Authority to acquire interests in real property and make and enter into the necessary Cooperative Agreement with the City of Warren, Ohio; NOW THEREFORE

BE IT ORDAINED by the Council of the City of Warren, State of Ohio:

Section 1: That the Mayor and Director of Public Service and Safety, pursuant to the Ohio Revised Code, are hereby authorized to enter into a cooperative agreement with the Western Reserve Port Authority the same as or substantially similar to the agreement attached to this ordinance as 'Exhibit A' allowing for the transfer of municipally owned parcels to the Port Authority for the purpose of economic development

Section 2: That the Western Reserve Port Authority shall secure a Title Examination and Title Guarantee to complete any transfers and cause a deed to be executed by the proper officials to complete the Contract of Sale.

Section 3: That this Ordinance must be approved by a two-thirds vote of all members elected to Council and approved by the Mayor.

Section 4: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, welfare, and safety; and for the further reason that it is necessary to proceed with the transfer of properties no longer needed for any Municipal purpose at the earliest possible time and without undue delay. WHEREFORE, this Ordinance shall take effect and be in force from and after the date of its passage by a vote of two-thirds of all members elected to Council and approval by the Mayor.

SIGNED: 
PRESIDENT OF COUNCIL

ATTEST: 
CLERK

FILED WITH THE MAYOR: 1-25-2023

DATE APPROVED: 1-25-2023


MAYOR, CITY OF WARREN, OHIO

COOPERATIVE AGREEMENT

by and among

WESTERN RESERVE PORT AUTHORITY

and

CITY OF WARREN, OHIO

REGARDING

VARIOUS CITY OF WARREN PROJECTS

Dated as of

_____, 2023

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COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (hereinafter referred to as "Cooperative Agreement") made and entered into as of January 1, 2023, between the WESTERN RESERVE PORT AUTHORITY, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the "Port Authority") and the City of Warren, Ohio, a municipal corporation duly organized and validly existing under the laws of the State of Ohio (the "City") under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as defined in Article I hereof):

A. The City is engaged in various economic development projects furthering the purposes of Ohio Construction Article VIII, Section 13 and Section 16;

B. The City believes that each of those projects will create jobs and employment opportunities in the City and thereby improve the economic development and the governmental operations of the people of the City and the Port Authority;

C. Pursuant to the Act, the City has requested the assistance of the Port Authority in the development of such projects and the Port Authority has determined to assist the City;

D. Pursuant to the Act, including Ohio Revised Code Section 4582.431, the City and the Port Authority desire to share their respective powers to accomplish the Project Purposes and to implement the agreements set forth herein.

E. The City has passed Ordinance No. _____ authorizing the execution of this Agreement; and the Port Authority has passed Resolution No. ____ authorizing the execution of this Agreement; and

F. The City and the Port Authority each has full right and lawful authority to enter into this Agreement and to perform and observe the provisions hereof on its respective part to be performed and observed.

NOW THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, Port Authority and the City agree as follows; provided that any obligation of either party created by or arising out of this Agreement shall never constitute a general debt of either party or give rise to any pecuniary liability of either party but shall be payable solely out of the revenues available to the applicable party and any obligation of either party to make payments to another person shall never constitute a general debt of either party or give rise to any pecuniary liability of either party:

ARTICLE I Definitions

Section 1.1 Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or another document, the words and terms set forth in Section 1.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates

another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

Section 1.2 Definitions. As used herein:

“Act” means Sections 4582.21 through 4582.59, Ohio Revised Code, as enacted and amended.

“Agreement” means this Cooperative Agreement as amended or supplemented from time to time.

“Authorized Official” means with respect to the Port Authority, the Chairperson, Executive Director or Secretary of the Authority, or any person designated in written certificate furnished by the President, Chair or Vice Chair to act in that capacity, and with respect to the City, the Director of Public Service and Safety, or any person designated in written certificate furnished by the Mayor. Such certificates may designate an alternate or alternates who shall have the same authority, duties and powers as the Authorized Official.

“City” means the City of Warren, Ohio, a municipal corporation organized and existing under the Constitution of the State.

“Cooperative Agreement” means this Agreement, as it may be duly amended, modified or supplemented from time to time in accordance with its terms.

“Cooperative Parties” means the City and the Port Authority.

“Fiscal Officer” means with respect to the Port Authority, the Secretary or an Assistant Secretary of the Port Authority, or if any of them is unavailable, absent or incapacitated, any member of the Board of Directors of the Port Authority, and with respect to the City, the Auditor of the City.

“Legislative Authority” means, (i) when used with reference to the Port Authority, the Board of Directors of the Port Authority, and (ii) when used with reference to the City, the City Council of the City.

“Notice Address” means:

As to the Port Authority: Western Reserve Port Authority
240 North Champion Street
Youngstown, OH 44503
Attn: Executive Director

As to the City: City of Warren, Ohio
391 Mahoning Avenue N.W.
Warren, OH 44483
Attn: Safety Service Director

"Person" or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

"Projects" means the projects described in Section 3.1.

"Project Purposes" means acquiring and/or developing real property in the City which qualify as Projects, and as "port authority facilities" under the Act.

Section 1.3 Interpretation. Any reference herein to the Port Authority, to a Legislative Authority or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions. Any reference to a Section or provision of the Constitution of the State of Ohio or the Act, or to a section, provision or chapter of any legislation or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Port Authority or the City under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Agreement; and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.4 Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

(End of Article I)

ARTICLE II Representations

Section 2.1 Representations of the Port Authority. The Port Authority represents that:

- (i) It is duly organized and validly existing under the laws of the State.
- (ii) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Port Authority which would impair its ability to carry out its obligations contained in this Agreement.

(iii) It is legally empowered to enter into and carry out the transactions contemplated by this Agreement.

(iv) It has duly authorized the execution, delivery and performance of this Agreement; and this Agreement is a valid, binding and enforceable obligation.

(v) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor public body.

Section 2.2 Representations and Covenants of the City. The City represents and covenants that:

(i) It is a City duly organized and validly existing under the laws of the State.

(ii) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the City which would impair its ability to carry out its obligations contained in this Agreement.

(iii) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. This Agreement is its valid, binding and enforceable obligation; and the execution, delivery and performance of this Agreement does not and will not violate or conflict with any provision of law applicable to the City, and does not, and will not, conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound.

(iv) It has duly authorized the execution, delivery and performance of this Agreement, and the Project Purposes and the transactions contemplated herein will enhance, aid and promote authorized purposes of the Port Authority under the Act, including transportation, economic development and governmental operations purposes.

(v) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement, by any successor public body.

(vi) The Ordinance authorizing this Agreement (the "Authorizing Ordinance"), has been duly adopted and is in full force and effect.

(End of Article II)

ARTICLE III
Cooperative Arrangements

Section 3.1 Cooperative Arrangements. The City has heretofore requested the assistance of the Port Authority to accomplish the Project Purposes, which shall include the acquisition and/or development of the Projects. For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement and the intended cooperative arrangements among the Cooperative Parties, the City and Port Authority have determined to cooperate with each other in the undertaking of the acquisition and or the development of various parcels of real property as determined necessary by the City and the Port Authority (the "Projects"). This Agreement is intended to and shall be an agreement among the Cooperative Parties, to cooperate in the acquisition, transfer, construction, equipping, installing, improvement, development, ground leasing, leasing and operation of the Projects, which shall constitute port authority facilities pursuant to the Act, including the agreement of the City and the Port Authority to cooperate pursuant to the Act, and the agreements contained herein are intended to and shall be construed as agreements to further effective cooperative action and safeguard the respective interests of the parties thereto.

To the extent, if any, necessary, desirable or appropriate to implement the intent of this Agreement and in accordance with the Act, the Port Authority undertakes to, and is authorized by the City to, exercise any power, perform any function and render any service, on behalf of the City, together with all powers necessary or incidental thereto, to the fullest extent that the City is authorized under applicable laws of the State and its resolutions to exercise, perform or render such power, function or service. Furthermore, the City undertakes to, and is authorized by the Port Authority to, exercise any power, perform any service, on behalf of the Port Authority, together with all powers necessary or incidental thereto, to the fullest extent that the Port Authority is authorized under applicable laws of the State and its resolutions to exercise, perform or render such power, function or service. Each power exercised, function performed or service rendered by the Port Authority or the City hereunder, to the extent if any necessary to the implementation of this Agreement and the development or operation of the Projects, are undertaken by the Port Authority on behalf of the City, and by the City on behalf of the Port Authority, respectively, pursuant to ORC Sections 4582.31, 4582.38 and 4582.431. Neither Cooperative Party shall acquire by virtue of this Agreement any power to levy or exempt taxes, or any power to exercise eminent domain within any subdivision.

ARTICLE IV
Further Agreements

Section 4.1 Further Agreements. In order to accomplish the Project Purposes, the City may transfer the Projects, collectively or singularly, as the Cooperative Parties deem appropriate and necessary and in accordance with the Act, pursuant to one or more Quit-Claim Deeds for a purchase price to be determined at the time of the transfer of the Project. The Port Authority may, upon consultation with the City, engage in the transfer, sale, construction, equipping, installing, improvement, development, ground leasing, leasing and operation of any Project. Any further fee arrangements associated therewith shall be evidenced by fee letter executed by the Cooperative Parties.

ARTICLE V
Miscellaneous

Section 5.1 Term of Agreement. This Agreement shall be and remain in full force and effect for one year from the date hereof; after which time it shall be automatically renewed for two (2) one-year terms, unless either Cooperative Party decides to terminate for any reason.

Section 5.2 Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. If, because of the suspension of delivery of certified or registered mail or for any other reason, notice, certificates or requests or other communications are unable to be given by the required class of mail, any notice required to be mailed by the provisions of this Agreement shall be given in such other manner as in the judgment of the party delivering the notice shall most effectively approximate mailing thereof, and the giving of that notice in that manner for all purposes of this Agreement shall be deemed to be in compliance with the requirement for the mailing thereof. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

Section 5.3 Extent of Covenants, No Personal Liability. All covenants, obligations and agreements of the Port Authority and the City 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, officer, agent or employee of the Port Authority, the City or the Legislative Authorities in other than his official capacity, and the members of the Legislative Authorities shall not be liable personally on any obligation or be subject to any personal liability or accountability by reason thereof or by reason of the covenants, obligations or agreements of the Port Authority or the City contained in this Agreement.

Section 5.4 Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Port Authority and, the City and their respective permitted successors and assigns; provided that this Agreement may not be assigned by the City and the respective interests of the Port Authority under this Agreement may not be assigned by the Port Authority.

Section 5.5 Amendments and Supplements. Except as otherwise expressly provided in this Agreement, this Agreement may only be amended by a written agreement among the parties; and Exhibit A may be amended from time to time to add or subtract additional Projects.

Section 5.6 Execution Counterparts. This Agreement may be executed in counterpart and in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 5.7 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 5.8 Limitation of Rights. With the exception of rights conferred expressly in this Agreement, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any Person other than the parties hereto, any legal or equitable right, remedy, power or claim under or with respect to this Agreement or any covenants, agreements, conditions and provisions contained herein. This Agreement and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto.

Section 5.9 Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State of Ohio.

(END OF ARTICLE IX)

IN WITNESS WHEREOF, the City and the Port Authority have caused this Agreement to be duly executed in their respective names, all as of the date first above written.

Approved as to form:

THE CITY OF WARREN, OHIO

Enzo C. Cantalamessa, Law Director

By: _____
William D. Franklin, Mayor

By: _____
Eddie Colbert, Safety Service Director

WESTERN RESERVE PORT AUTHORITY

By: _____
Chairperson

By: _____
Secretary

PORT AUTHORITY'S FISCAL OFFICER'S CERTIFICATE

The undersigned, fiscal officer of the Port Authority, hereby certifies that the moneys required to meet the obligations of the Port Authority during the Agreement have been lawfully appropriated by the Legislative Authority of the Port Authority for such purposes and are in the treasury of the Port Authority 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 ORC Sections 5705.41 and 5705.44.

[Secretary of the Board of Directors]
Western Reserve Port Authority

Dated: _____, 2023

CITY'S FISCAL OFFICER'S CERTIFICATE

The undersigned, fiscal officer of the City, hereby certifies that the moneys required to meet the obligations of the City during the Agreement have been lawfully appropriated by the Legislative Authority of the City for such purposes and are in the treasury of the City 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 ORC Sections 5705.41 and 5705.44.

Vince Flask, Auditor
City of Warren, Ohio

Dated: _____, 2023

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