

17-125

EXHIBIT A

Roetzel Draft 3-28-17

COOPERATIVE AGREEMENT

between

DEVELOPMENT FINANCE AUTHORITY OF SUMMIT COUNTY

and

COUNTY OF SUMMIT, OHIO

Dated as of

_____ 1, 2017

Table of Contents

ARTICLE I DEFINITIONS.....2

 Section 1.1. Use of Defined Terms2

 Section 1.2. Definitions.....2

 Section 1.3. Interpretation3

 Section 1.4. Captions and Headings.....4

ARTICLE II REPRESENTATIONS; COOPERATIVE ARRANGEMENTS.....5

 Section 2.1. Representations of the Authority5

 Section 2.2. Representations of the County5

 Section 2.3. Cooperative Arrangements6

ARTICLE III MISCELLANEOUS8

 Section 3.1. Term of Cooperative Agreement8

 Section 3.2. Notices.....8

 Section 3.3. Extent of Covenants; No Personal Liability8

 Section 3.4. Binding Effect8

 Section 3.5. Amendments and Supplements9

 Section 3.6. Execution Counterparts.....9

 Section 3.7. Severability9

 Section 3.8. Limitation of Rights9

 Section 3.9. Governing Law.....9

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (this “Cooperative Agreement”) is made and entered into as of _____, 2017 between the DEVELOPMENT FINANCE AUTHORITY OF SUMMIT COUNTY (the “Authority”) and COUNTY OF SUMMIT, OHIO (the “County”). Capitalized words and terms not otherwise defined in the recitals shall have the meanings assigned to them in Article I.

RECITALS

A. Pursuant to Article VIII, Sections 13 and 16 of the Ohio Constitution, and Chapter 4582 of the Ohio Revised Code, the Authority established its Jobs and Investment Fund Program (the “Program”) to provide economic development financing within the County benefiting the citizens of the County.

B. The Program is established under and secured by the Indenture.

C. The County Executive, with the acknowledgement and consent of the County Fiscal Officer, as the investing authority of the County pursuant to Section 179.02 of the Codified Ordinances of the County, has determined that it is necessary and in the best interests of the County to deliver the County Deposit to the Trustee for deposit into the County Additional Reserve Subaccount to provide additional reserves for the Program, thereby creating jobs and enhancing economic opportunities benefiting the citizens of the County.

D. The County Deposit will be deposited in the County Additional Reserve Subaccount as a segregated trust account maintained by the Trustee pursuant to the Twenty-Fifth Supplemental Indenture and the County will earn interest on the County Deposit at a variable rate of interest by directing the Trustee to invest the County Deposit in Eligible Investments that qualify for investment under Section 135.35(A) of the Ohio Revised Code, which investments are to be made at the direction of the County Fiscal Officer as the investing authority of the County.

E. The County and the Authority have now determined to execute and deliver this Cooperative Agreement to establish the terms and conditions under which the County will deliver the County Deposit to the Trustee.

ARTICLE I

Definitions

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Cooperative Agreement or by reference to another document, the words and terms used in this Cooperative Agreement are defined in Section 1.2.

Section 1.2. Definitions. The following are defined terms in the Cooperative Agreement:

“Authority” means the Development Finance Authority of Summit County, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State.

“Cooperative Parties” means the Authority and the County.

“County” means the County of Summit, Ohio, a county and political subdivision organized and existing under the laws of the State and its Charter.

“County Additional Reserve Subaccount” means the County Additional Reserve Subaccount established in the Twenty-Fifth Supplemental Indenture.

“County Deposit” means the deposit with the Trustee of an aggregate amount of \$2,000,000 of inactive moneys of the County by the County Fiscal Officer for deposit into the County Additional Reserve Subaccount in accordance with this Cooperative Agreement.

“County Deposit Date” means _____, 2017.

“County Executive” means the County Executive of the County.

“County Fiscal Officer” means the County Fiscal Officer of the County.

“Eligible Investments” means such term as defined in the Indenture.

“Indenture” means the Trust Indenture dated as of July 1, 2004 between the Authority as the Issuer and the Trustee, as amended by the Second Supplemental Trust Indenture dated as of March 1, 2005, the Fifteenth Supplemental Trust Indenture dated as of January 1, 2010, the Sixteenth Supplemental Trust Indenture dated as of September 1, 2010 and the Twenty-Fifth Supplemental Indenture, as may be further amended from time to time.

“Legislative Authority” means (i) with respect to the Authority, the Board of Directors of the Authority and (ii) with respect to the County, the County Council of the County.

“Notice Address” means:

- (a) as to the Authority: Development Finance Authority of Summit County

47 North Main Street, Suite 407
Akron, Ohio 44308
Attention: President

(b) as to the Trustee: U.S. Bank National Association
Corporate Trust Services
CN-OH-RN11
1350 Euclid Avenue
Cleveland, Ohio 44115
Attention: Holly Pattison

(c) as to the County: County of Summit
175 South Main Street, 8th Floor
Akron, Ohio 44308
Attention: County Executive

with a copy to: County of Summit
175 South Main Street, Suite 400
Akron, Ohio 44308
Attention: County Fiscal Officer

or such additional or different address, notice of which is given under Section 3.2 hereof.

“Person” means 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.

“Program” means the Authority’s Jobs and Investment Fund Program established under the Indenture.

“Release Date” means such term as defined in Section 2.3 of this Cooperative Agreement.

“State” means the State of Ohio.

“Trustee” means U.S. Bank National Association, until a successor trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter “Trustee” shall mean the successor trustee.

“Twenty-Fifth Supplemental Indenture” means the Twenty-Fifth Supplemental Trust Indenture dated as of _____ 1, 2017 between the Authority and the Trustee.

Section 1.3. Interpretation. Any reference herein to the Authority or the County, to a Legislative Authority or to any member, official or officer of any of them includes entities or officials succeeding to their respective functions, duties, or responsibilities pursuant to or by operation of law or lawfully performing their functions.

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.

(End of Article I)

ARTICLE II

Representations; Cooperative Arrangements

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

(a) it is a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State;

(b) 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 Authority in a way that would impair its ability to carry out its obligations contained in this Cooperative Agreement;

(c) it is legally empowered to enter into and perform the transactions contemplated by this Cooperative Agreement;

(d) the execution, delivery, and performance of this Cooperative Agreement do not and will not violate or conflict with any provision of law applicable to the Authority, and do not and will not conflict with or result in a default under any agreement or instrument to which the Authority is a party or by which it is bound in a way that would have a material adverse effect on the Authority's ability to perform its obligations under this Cooperative Agreement;

(e) its Legislative Authority has duly authorized the execution, delivery, and performance of this Cooperative Agreement and the other Transaction Documents to which it is a party;

(f) this Cooperative Agreement, when executed and delivered by the Authority, will constitute the legal, valid, and binding obligations of the Authority, enforceable against it in accordance with their respective terms, except as enforceability may be limited by the application of bankruptcy, insolvency, reorganization, moratorium, liquidation, fraudulent conveyance, and other similar laws and equitable principles now or hereafter in effect respecting creditors' rights or remedies generally; and

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

Section 2.2. Representations of the County. The County represents that:

(a) it is a county duly organized and validly existing under the laws of the State and its Charter;

(b) 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 County in a way that would impair its ability to perform its obligations contained in this Cooperative Agreement;

(c) it is legally empowered to execute, deliver, and perform this Cooperative Agreement and to enter into and carry out the transactions contemplated by this Cooperative Agreement;

(d) the execution, delivery, and performance of this Cooperative Agreement does not and will not violate or conflict with any provision of law applicable to the County, including but not limited to, its Charter, and do not and will not conflict with or result in a default under any agreement or instrument to which the County is a party or by which it is bound in a way that would have a material adverse effect on the County's ability to perform its obligations under this Cooperative Agreement;

(e) its Legislative Authority has duly authorized the execution, delivery, and performance of the Cooperative Agreement;

(f) this Cooperative Agreement, when executed and delivered by the County, will constitute the legal, valid, and binding obligations of the County, enforceable against it in accordance with their respective terms, except as enforceability may be limited by the application of bankruptcy, insolvency, reorganization, moratorium, liquidation, fraudulent conveyance, and other similar laws and equitable principles now or hereafter in effect respecting creditors' rights or remedies generally; and

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

Section 2.3. Cooperative Arrangements. The County Fiscal Officer, as the investing authority of the County, shall deliver the County Deposit to the Trustee for deposit in the County Additional Reserve Subaccount on or before the County Deposit Date and pursuant to the terms and conditions of this Cooperative Agreement. Upon receipt of the County Deposit, the Authority shall cause the Trustee to deposit the County Deposit in and to the credit of the County Additional Reserve Subaccount in accordance with the terms and conditions of the Twenty-Fifth Supplemental Indenture. The County acknowledges and agrees that the County Additional Reserve Subaccount will be held by the Trustee and pledged under the Indenture for the benefit of the Program, and shall be drawn upon and replenished only in the order set forth in the Twenty-Fifth Supplemental Indenture. The County Fiscal Officer, as the investing authority of the County, shall solely be responsible for selecting the Eligible Investments in which the County Additional Reserve Subaccount shall be invested and the County Fiscal Officer shall be responsible for providing written direction of such Eligible Investments to the Trustee in accordance with Section 2(c) of the Twenty-Fifth Supplemental Indenture. The Authority shall cause the Trustee to pay to the County all investment earnings on the amounts held in the County Additional Reserve Subaccount at the times and in the manner specified in Section 2(c) of the Twenty-Fifth Supplemental Indenture.

The County hereby agrees to maintain the County Deposit as a deposit in the County Additional Reserve Subaccount until _____, 2022 (the "Release Date"); provided, the Release Date will be automatically extended for a period of five calendar years unless the County Executive provides written notice to the Authority and the Trustee at least 80 days in

advance of such Release Date that the County objects to the extension of the Release Date. If the Release Date is not extended by the County in accordance with this paragraph, the Authority shall cause the Trustee to release the County Deposit from the County Additional Reserve Subaccount and promptly deliver the County Deposit to the County Fiscal Officer in accordance with Section 2(d) of the Twenty-Fifth Supplemental Indenture.

The Authority hereby agrees to notify the County promptly if the Authority becomes aware of any draw on the County Additional Reserve Subaccount in accordance with the terms of the Indenture.

(End of Article II)

ARTICLE III

Miscellaneous

Section 3.1. Term of Cooperative Agreement. This Cooperative Agreement will remain in full force and effect until the County Deposit has been released and delivered by the Trustee to the County following the occurrence of the Release Date pursuant to this Cooperative Agreement and Section 2(d) of the Twenty-Fifth Supplemental Indenture.

Section 3.2. 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, or delivered by overnight courier service, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request, or other communication given hereunder to any Cooperative Party shall also be given to the other Cooperative Party and the Trustee. The Cooperative Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests, or other communications shall be sent. 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 or courier service, any notice required to be mailed or delivered by courier service by the provisions of this Cooperative Agreement shall be given in such other manner as in the judgment of the Authority shall most effectively approximate mailing thereof or delivery by courier service, and the giving of that notice in that manner for all purposes of this Cooperative Agreement shall be deemed to be in compliance with the requirement for delivery under this Section. 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 3.3. Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Cooperative Parties contained in this Cooperative 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 officer, official, employee or agent of the Authority, the County or their respective Legislative Authorities in other than its official capacity, and neither the members of any Legislative Authorities nor any official executing this Cooperative Agreement will be liable personally or be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of the Authority or the County contained in this Cooperative Agreement.

Section 3.4. Binding Effect. This Cooperative Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Cooperative Parties and their respective permitted successors and assigns. This Cooperative Agreement may not be assigned by the County and the interests of the Authority under this Cooperative Agreement may not be assigned by the Authority (except to the extent contemplated in this Cooperative Agreement). This Cooperative Agreement may be enforced only by the parties, their assignees, and others who may, by law, stand in their respective places.

Section 3.5. Amendments and Supplements. This Cooperative Agreement may only be amended, changed, modified, altered, or terminated in a writing signed by both Cooperative Parties.

Section 3.6. Execution Counterparts. This Cooperative Agreement may be executed in counterparts 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 3.7. Severability. If any provision of this Cooperative 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 3.8. Limitation of Rights. With the exception of rights conferred expressly in this Cooperative Agreement, nothing expressed or mentioned in or to be implied from this Cooperative Agreement is intended or shall be construed to give to any Person other than the Cooperative Parties any legal or equitable right, remedy, power, or claim under or with respect to this Cooperative Agreement or any covenants, agreements, conditions and provisions contained herein. This Cooperative Agreement and all of those covenants, agreements, conditions, and provisions are intended to be for the sole and exclusive benefit of the Cooperative Parties.

Section 3.9. Governing Law. This Cooperative 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.

(End of Article III)

IN WITNESS WHEREOF, the Cooperative Parties have caused this Cooperative Agreement to be signed and delivered in their respective names, all as of the date first written above.

DEVELOPMENT FINANCE
AUTHORITY OF SUMMIT COUNTY

By: _____
Chris Burnham, President

Approved as to form and correctness:

COUNTY OF SUMMIT

Deborah S. Matz, Director, Department of Law,
Insurance and Risk Management
County of Summit

By: _____
Ilene Shapiro, County Executive

The undersigned, Kristen M. Scalise CPA, CFE, Summit County Fiscal Officer, hereby acknowledge and consent to the terms of this Cooperative Agreement, and further consent to and intend to deliver the County Deposit to the Trustee for deposit into the County Additional Reserve Subaccount, as more fully set forth in this Cooperative Agreement.

Kristen M. Scalise CPA, CFE
County Fiscal Officer

AUTHORITY'S FISCAL OFFICER'S CERTIFICATE

The undersigned, Assistant Secretary and Assistant Fiscal Officer of the Authority, hereby certifies that the money required to meet the obligations of the Authority during the year 2017 under the Cooperative Agreement have been lawfully appropriated by the Board of Directors of the Authority for such purposes and are in the treasury of the 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 Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2017

Assistant Secretary and Assistant Fiscal Officer
Development Finance Authority of Summit County

COUNTY'S FISCAL OFFICER'S CERTIFICATE

The undersigned, County Fiscal Officer hereby certifies that the money required to meet the obligations of the County during the year 2017 under the Cooperative Agreement have been lawfully appropriated by the Legislative Authority of the County for such purposes 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 Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2017

Kristen M. Scalise CPA, CFE
County Fiscal Officer