

CITY OF FRANKLIN, OHIO  
RESOLUTION 2024-06

**AUTHORIZING THE CITY MANAGER TO EXECUTE A COST SHARING CONTRACT  
BETWEEN THE CITY OF FRANKLIN AND FRANKLIN TOWNSHIP, WARREN COUNTY, OHIO  
FOR PAUL E. FITZGERALD POOL OPERATIONAL COSTS**

WHEREAS, the Paul E. Fitzgerald Pool located at 306 E. Sixth Street, Franklin, Ohio 45005 (the "Pool") is a public pool amenity benefitting residents of the City of Franklin and Franklin Township, Warren County, Ohio;

WHEREAS, the City and the Township have historically shared in the cost and expense of operating the Pool;

WHEREAS, the City and the Township have negotiated a new Cost Sharing Contract, attached as Exhibit A to this Resolution, setting forth the parties' respective responsibilities to operate the Pool and pay for Pool expenditures during the 2024-2028 Pool seasons;

WHEREAS, City Council finds that it is in the best interests of City residents to continue sharing in the cost and expense of operating the Pool with Franklin Township; and

WHEREAS, City Council further finds that the terms and conditions of the Cost Sharing Contract are fair and reasonable.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Franklin, Ohio, a majority of members present concurring, that:

Section 1. The City Manager is hereby authorized to execute the Cost Sharing Contract in substantially the same form as the attached Exhibit A. The City Manager is further authorized to execute any and all additional documentation, and take any other actions, necessary to carry out the intent of this Resolution and/or the Cost Sharing Contract.

Section 2. It is found that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including Chapter 121 of the Ohio Revised Code, and the Rules of Council.

Section 3. This Resolution shall be effective immediately upon its passage.

ADOPTED: February 5, 2024

ATTEST: Khristi Dunn  
Khristi Dunn, Clerk of Council

APPROVED: Brent Centers  
Brent Centers, Mayor

**CERTIFICATE**

I, the undersigned Clerk of Council for the Franklin City Council, do hereby certify that the foregoing is a true and correct copy of Resolution 2024-06 passed by City Council on February 5, 2024.

Khristi Dunn  
Khristi Dunn, Clerk of Council

**APPROVED AS TO FORM:**

Ben Yoder  
Ben Yoder, Law Director

**COST SHARING CONTRACT FOR PAUL E. FITZGERALD POOL  
BETWEEN  
CITY OF FRANKLIN AND FRANKLIN TOWNSHIP**

This Contract is made by and between the **City of Franklin, Ohio** ("City") and **Franklin Township, Ohio** "(Township)", who agree as follows:

**WHEREAS**, the City and Township have shared in the expenses to operate the Paul E. Fitzgerald Pool ("Pool") to provide popular summer family recreation to their residents for a number of years and desire to continue in that tradition;

**WHEREAS**, the Pool traditionally operates at a loss which is historically dependent upon the unknown factor of the weather; and

**WHEREAS**, each Party has appreciated the other Party's partnership with respect to the Pool over the years, and the benefits that partnership has provided to the City and Township residents.

**NOW, THEREFORE**, for and in consideration of the promises, covenants and agreements herein contained, the Parties mutually agree as follows:

- 1. COST SHARING; POOL OPERATIONS.** The City and Township agree to share the burden of final expenditures of the Pool operations, total income minus total expenses, in the following manner during the Term:
  - In years 1-3 of the Term (2024-2026), the Township shall contribute Thirty Thousand Dollars and 00/100 (\$30,000) towards Pool operations. The City shall be responsible for payment of the remaining balance of Pool expenditures.
  - In years 4-5 of the Term (2027-2027), the Township shall contribute Thirty-Five Thousand Dollars and 00/100 (\$35,000) towards Pool operations. The City shall be responsible for payment of the remaining balance of Pool expenditures.

The Township shall deposit with the City its annual monetary contribution towards Pool operations in a single lump-sum payment on or before March 1 of each year during the Term. The City shall be entitled to use the payment in any manner the City deems necessary to continue Pool operations in the given year.

The Township shall have no responsibility to operate the Pool, other than by sharing in the costs of such operation as outlined above. The City shall have all administrative responsibilities relating to the operation of the Pool, including but not limited to the following:

- A.** Oversight of all operations, maintenance, employment, and administrative tasks, including the purchasing of insurance, relating to the Pool, whether accomplished through City staff or contracted services.

- B.** Hiring and employment of all Pool personnel; payment of benefits to such employees, if any; maintenance and payment of statutory workers compensation insurance and/or unemployment insurance and all claims relating to each as required by law. No City employee assigned to tasks relating to the Pool shall be employed or deemed to be employed by, nor independently contracted by, the Township.
- 2. INSURANCE.** The City shall be responsible for insuring the pool against all liabilities, and shall provide insurance coverage sufficient to cover all liabilities relating to operation of the Pool. By endorsement to the Comprehensive General Liability coverage of the Pool, Franklin Township shall be named as an additional insured with the same primary coverage as the principal insured – no policy that provides only excess coverage for an additional insured is permitted. The City shall provide the Township with a certificate of insurance evidencing such coverage and conditions set forth herein, and shall provide thirty (30) days’ notice of cancellation or non-renewal to the Township. Such certificate shall provide that the insurer notify the Township in writing should any of the policies relating to the Pool be cancelled before the expiration date thereof.
- 3. LIMITATION OF LIABILITY.** The Township will not be held responsible or liable for any claim, injury, delay, death, or loss of property resulting from the City’s operation of the Pool. Neither Party shall be held responsible or liable for any claim, injury, delay, death, loss of property, or other damage of any kind or nature whatsoever arising out of any act or omission of an official, officer, employee, representative, agent or contractor of the other Party.
- 4. TERM.** This Contract shall remain in effect for a period of five (5) Pool seasons, 2024 through 2028, following the execution of the Contract and pursuant to the terms and conditions stated herein. In 2028, the Parties may agree in writing to renew this Contract for an additional five (5) year Term (or such other Term to which the Parties may agree in writing). If the Contract is renewed by mutual written agreement of the Parties, they will review the Township’s investment in Pool operations and determine an appropriate cost-sharing arrangement between the Parties for continued Pool operations during the renewal Term.
- 5. GOVERNING LAW.** This Contract shall be governed by, and construed in accordance with, the laws of the State of Ohio. All actions regarding this Contract shall be filed and venued in a court of competent subject matter jurisdiction in Warren County, Ohio. The Parties hereby consent to the jurisdiction and venue of such courts and waive any right to assert forum non conveniens.
- 6. COMPLIANCE WITH LAWS AND POLICIES.** Both the City and Township agree to comply with all applicable Ohio laws (including but not limited to Ohio ethics laws) at all times during the Term.
- 7. NOTICES.** All notices hereunder shall be in writing and shall be delivered by: (i) certified mail, return receipt requested; or (ii) electronic mail, with confirmed delivery receipt, and addressed as follows (either Party may amend its contact information at any time upon written notice to the other Party):

If to City of Franklin:           City Manager  
  City of Franklin  
  1 Benjamin Franklin Way  
  Franklin, OH 45005

Jwestendorf@franklinohio.org

If to Franklin Township:       Township Administrator  
  Franklin Township  
  418 Fairview Drive  
  Franklin, OH 45005

Darryl.cordrey@franklintownshipohio.us

**8. SEVERABILITY.** In the event that any provision of this Contract is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions and each provision of the Contract will be and is deemed to be separate and severable from each other provision.

**9. MISCELLANEOUS.**

- A.** This Contract represents the entire and integrated agreement of the parties, and supersedes all past negotiations, representations, and/or agreements, written or oral, regarding cost sharing for Pool expenses.
- B.** This Contract may only be modified or amended by a written agreement between the Parties, and may be terminated only upon the written agreement of the Parties. Any and all written agreements shall be signed by authorized representatives of both Parties.
- C.** The headings of the various sections of this Contract are inserted for convenience only and do not, expressly or by implication, limit, define, or extend the specific terms of the sections so designated.
- D.** The waiver by either Party of a breach or a violation of this Contract shall not operate as or be construed to be a waiver of any subsequent breach of any term or condition of this Contract. No waiver shall be effective against any Party unless the waiver is in writing and signed by that Party.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Township has executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**CERTIFICATION OF AVAILABILITY OF  
FRANKLIN TOWNSHIP FUNDS**

I hereby certify that the funds required for this Contract have been lawfully appropriated and are in the Treasury, or are in the process of collection to the credit of the appropriate fund, free from prior encumbrance.

\_\_\_\_\_  
Scot Fromeyer, Fiscal Officer

\_\_\_\_\_  
Darryl Cordrey, Township Administrator

**APPROVED AS TO FORM:**

David P. Fornshell  
Prosecuting Attorney, Warren County, Ohio

\_\_\_\_\_  
Assistant Prosecutor

IN WITNESS WHEREOF, the City has executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Jonathan Westendorf, City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Benjamin J. Yoder, Law Director