

ANNEXATION AGREEMENT

This Annexation Agreement is made and entered into on _____ by and between the City of Columbus (“Columbus” or “City”), duly authorized by Ordinance No. _____ passed _____, and Perry Township, Franklin, County, Ohio, (“Perry” or “Township” and collectively “the Parties”) duly authorized by Resolution _____ passed _____, and pursuant to the provisions of Ohio Revised Code Sections 709.192 and 709.38

WHEREAS, the Parties are political subdivisions located entirely within the State of Ohio, with Columbus and Perry being contiguous and, in some cases, having overlapping boundaries within areas located within Franklin County, Ohio; and

WHEREAS, the Parties wish to cooperate in matters affecting the territory to which this Agreement pertains, including the extension and subsequent provision of centralized water and sewer services within areas encompassed under this agreement; and

WHEREAS, the Parties wish to come to an agreement with regard to current and future annexations, with the goal of providing more certainty with regard to the boundaries of Perry and Columbus, and with the goal of eliminating overlapping parcels that are in both jurisdictions; and

WHEREAS, Columbus and Perry have determined that it is in the best interest of their respective residents, citizens and taxpayers to enter into this Agreement upon the terms hereinafter set forth; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, Columbus and Perry agree as follows:

SECTION 1 DESIGNATION OF TERRITORIES

1. This agreement shall cover and be applicable to all territory in Franklin County which is located within the Township, including all Township areas located within the City, and including the following properties within the City of Columbus, but not in Perry: parcel 590-129676-00 known as the Baddour-Columbus property, parcels 610-260572, 610-260573, 260-260574 collectively known as the Hadden property; and four individual parcels 610-2722014, 610-2722015, 610-2722016, 610-2722017, addressed as 1520-1544 Newcomer Road. The territories included in this agreement are depicted on Attachment A, Perry Township Map.

2. The Parties agree that the continued availability of Columbus water and sewer service, the extension of Columbus water and sewer service, and the availability of annexation or detachment shall be governed for these territories as defined by Attachment A and the provisions of this agreement. Except as otherwise provided herein, the Parties also agree that such service will be delivered either directly by Columbus or through a separate contract with Franklin County.

SECTION 2
EFFECTIVE DATE

1. Pursuant to Section 4, paragraph 3(b), there are certain parcels designated as “Riverside Detach” on attachment C to this agreement. Pursuant to that section of this agreement, the owners of these parcels may file petitions to detach from Columbus within 6 months of the date of the final signature set forth below. If any of the property owners fails to file a detachment petition within 6 months of the date of the final signature set forth below, or if Franklin County Commissioners fail to approve a detachment petition for any of the parcels designated as “Riverside Detach” within nine months of the date of the final signature set forth below, this entire agreement shall be null and void and of no further force and effect.

2. The Effective Date for this agreement, other than the provision for the Riverside Detach properties, shall be the date that the Franklin County Commissioners approve the final detachment petition of the Riverside Detach properties. If the Effective Date has not occurred within nine months of the date of the final signature set forth below, this entire agreement shall be null and void and of no further force and effect.

SECTION 3
TOWNSHIP TERRITORY

1. After the Effective Date, the following provisions will be applicable to the parcels on Attachment A that are designated Township Territory (blue). These parcels are to remain in the Township and not be annexed to the City. These shall be treated as “areas that will not be annexed” pursuant to ORC 709.192(C)(2).

2. If an annexation petition is filed seeking to annex to the City of Columbus any real estate located within the area designated Township Territory, Columbus shall refuse to accept the petition and refuse to furnish any City services to the area proposed to be annexed.

3. Any parcel designated as Township territory that is currently receiving Columbus water and/or sewer service may continue to do so, and may obtain any needed additional or upsized service that is available.

4. If Perry Township acquires ownership of any parcel in the township that is not subject to a separate suburban water/sewer contract for the purpose of township activities (administrative offices, service garage, police station, etc), it shall become designated as Township Territory for purposes of obtaining water and/or sewer service. This designation is limited to the period during which the parcel is used for township purposes.

5. Annexation will not be a prerequisite for any parcel designated Township Territory that is currently not receiving Columbus water and/or sewer to obtain such service. Such service is available to these parcels under the following conditions:

a. Any needed extension of water or sewer lines will not be provided by or paid for by the City or the Township unless otherwise authorized by the Board of Trustees;

b. All of the applicable City regulations, technical standards, rate charges and fees must be complied with;

c. Centralized service is not already being provided by another provider (e.g. Aqua Ohio); and

d. Provider of service (either City or County) to be determined at time new service is requested.

SECTION 4
OVERLAP PARCELS
DETACHMENT AND CONFORM

1. After the Effective Date, the following provisions will be applicable to the parcels on Attachment A that are marked with a cross hatch. These parcels are currently within the jurisdiction of both Columbus and Perry. These parcels are listed in Attachment B, Overlapping Parcels. It is one of the goals of this agreement to resolve all such overlapping parcels by either conforming the properties to Montgomery Township or detaching the parcels from Columbus so that they are solely within Perry.

2. CONFORM: The parcels designated as Conform to Columbus (red cross-hatched) on Attachment A shall be excluded from Perry Township and conformed to Montgomery Township. These parcels are also designated “Conform” on Attachment B. Pursuant to ORC 503.07, Columbus shall not submit a petition to Franklin County in order to conform the boundaries of these parcels to Montgomery Township until after the Effective Date. Upon the exclusion of any such parcel from Perry Township, Columbus shall not be required to make any compensation payments of any kind to Perry and specifically shall not be required to make any compensation payments as set forth in ORC 709.19.

3. DETACHMENT OPTION:

a. The parcels designated as Detachment Option (green) on Attachment A may detach from Columbus. These parcels are also designated “General Detach” on Attachment B and “Riverside Detach” on Attachment C. The property owner of any of these parcels on Attachment B General Detach may, within 12 months of the Effective Date of this Agreement, file a petition for detachment with the County Commissioners pursuant to ORC 709.38. Columbus shall provide an ordinance assenting to such detachment. Upon the detachment, Perry shall not be required to assume any existing indebtedness or make any payments to Columbus as set forth in ORC 709.38. Once detached, these parcels

shall be considered “Township Territory” for the purposes of retaining or obtaining water and/or sewer service.

Any of the parcels designated on Attachment B General Detach that have not had a detachment petition filed within 12 months of the Effective Date of this Agreement, or any parcel that has not completed detachment within 18 months of the Effective Date of this Agreement shall be considered non-detaching, and therefore become a Conform parcel. Columbus may conform any such non-detaching parcels after 60 days has elapsed from the conforming deadline (12 months to file petition, 18 months to complete). Upon the exclusion of Perry Township from any such parcel, Columbus shall not be required to make any payments of any kind to Perry and specifically shall not be required to make any compensation payments as set forth in ORC 709.19.

b. The property owner(s) of any of the parcels on Riverside Detach on Attachment C may, within 6 months of the date of the final signature set forth below, file a petition for detachment with the County Commissioners pursuant to ORC 709.38. Columbus shall provide an ordinance assenting to such detachment. Upon the detachment, Perry shall not be required to assume any existing indebtedness or make any payments to Columbus as set forth in ORC 709.38. Once detached, these parcels shall be considered “Township Territory” for the purposes of retaining or obtaining water and/or sewer service.

c. The Baddour-Columbus property is included in Attachment C Riverside Detach and is currently zoned in the City as PUD8, Z76-013(A). PUD276-013(A) contains specific density and open space requirements. It is the intent of the Township to allow for the residential development of the Baddour-Columbus property and two additional contiguous Township parcels 212-000414 and 212-000024, respectively known as the Baddour-Township and Kerber properties. These three parcels shall collectively be referred to as the “Development.” A site plan for the Development is attached hereto as Attachment E and is hereinafter referred to as the “Zoning Plan”. The Zoning Plan contains the Development’s proposed density and general overall site layout. The Development and the Zoning Plan is part of and consistent with a contiguous residential development previously approved and zoned by the City. Upon the detachment of Baddour-Columbus property, the Township shall adopt, maintain and enforce the Zoning Plan for the Development which includes abiding by the density and open space requirements contained in Z76-013(A) and in accordance with the general site plan attached herein. In addition, the Parties agree that the Development will need to be rezoned to the Planned Residential District under the Township Zoning resolution following the applicable provisions of Ohio Revised Code Section 519.021. Through this process, the Township may approve minor modifications of an insignificant nature to the Zoning Plan established for the Development. Minor modifications shall include changes to internal (but not loop) street alignments within proposed subdivisions, locations of lot lines and drainage easements and other similar administrative changes of an insignificant nature which do not materially affect the Zoning Plan for such area.

A minor modification shall not include any change or revision which represents a significant departure from the Zoning Plan for all or any portion of the Development including, without limitation: a change in the use or character of or for such area; or an increase in the overall density and/or open space that would violate the requirements contained in Z76-013(A). Except as may otherwise be permitted as a minor modification, there shall be no change, amendment, revision or modification of or to the Zoning Plan for all or any portion of the Development unless the applicable officials in the Zoning Departments of both Parties mutually consent in writing to the same.

The Township's failure to maintain and enforce the Zoning Plan without modification, except as permitted herein, shall constitute a default of this Agreement.

4. NON-PERRY PROPERTIES: The parcels designated as Detachment Option on Attachment A and B that are not overlap parcels are subject to the time limits for those parcels designated as General Detach on Attachment B. Notwithstanding the forgoing time limitation for detachment set forth above, the Township, in its sole and absolute discretion, may extend the time limit for filing a detachment petition an additional 12 months after the one year limit described above. In the event the Township exercises this additional 12 months extension, it shall provide written notice to Columbus. These properties are also not subject to conformance as described above. Lastly, notwithstanding anything contained herein, detachment of the Hadden Property will be dependent on the availability of water and/or sewer service, and Columbus agrees to work cooperatively to modify its contract with Del-Co and/or Delaware County to allow water and/or sewer service for these parcels once detached. These properties are: parcels 610-260572, 610-260573, 260-260574 collectively known as the Hadden property; and four individual parcels 610-2722014, 610-2722015, 610-2722016, 610-2722017, addressed as 1520-1544 Newcomer Road.

SECTION 5 SINGLE FAMILY SERVICE OPTION

1. After the Effective Date, the following provisions will be applicable to the parcels on Attachment A that are marked as Single Family Service Option (pink). These are single family residential properties that may or may not currently have Columbus sewer or water service. These parcels are also listed on Attachment D, Single Family Option. If the owner of any of these parcels petitions to annex to the City, the annexation will be handled in accordance with Section Seven of this agreement (Current Policy Remains). However, annexation will not be a prerequisite for any parcel designated Single Family Service Option that is currently not receiving Columbus water and sewer to obtain such service. Such service is available to these parcels under the following conditions:

a. The parcel is remaining a single family residential property, or is undergoing a lot split to accommodate additional single family homes, as long as the lot split does not meet the definition of “major subdivision” under section 201.09 of the Franklin County Subdivision Regulations

b. Any needed extension of water or sewer lines will not be provided by or paid for by the City or the Township unless otherwise authorized by the Board of Trustees;

c. All of the applicable regulations, technical standards, rate charges and fees must be complied with;

e. Centralized service is not already being provided by another provider (e.g. Aqua Ohio); and

f. Provider of service (either City or County) to be determined at time new service is provided.

SECTION 6 TO BE DETERMINED AREA

1 After the Effective Date, the following provisions will be applicable to the parcels on Attachment A that are marked To Be Determined (gold). These parcels are a subdivision known as Henderson Heights.

2. Columbus and the City of Upper Arlington have entered into contracts that provide for sewer service, dated April 4, 2005 and water service, dated December 3, 1999. The properties designated as To Be Determined on Attachment A are included in a non-exclusive growth area in these contracts. Nothing in this agreement is intended to alter, negate or otherwise modify the growth areas in Upper Arlington’s service contract. These parcels may petition to annex to Upper Arlington, and Upper Arlington may respond to any such petitions as it chooses.

3. If any of the parcels that are designated as To Be Determined file an annexation petition with Columbus, Columbus agrees it shall take no action in support of the petition without consulting with Perry. Columbus shall notify Perry of the petition, and the parties shall begin consultation within 30 days. It is the Parties intention to work together at such time, if such a time arises, to determine the best course of action in regard to such a petition. The factors the Parties may consider include, but are not limited to:

- a. Whether the parcel(s) are seeking annexation solely for the purpose of obtaining water and/or sewer service, and will remain a single-family home;
- b. Whether the parcel(s) are seeking annexation as part of a redevelopment project;

c. Whether water and/or sewer is readily available or whether main line extensions would be required; and

d. What changes if any have occurred in the surrounding area.

4. Once Perry and Columbus have had a chance to consult, Columbus will respond to the petition in accordance with any consensus reached by the Parties. If no consensus is reached, either party may elect to mediate in accordance with Section 8(2). If after engaging in good faith efforts to reach a consensus through meditation, the Parties fail to reach consensus then Columbus will proceed in accordance with Section Seven of this agreement.

SECTION 7 CURRENT POLICY REMAINS

1. After the Effective Date, the following provisions will be applicable to the parcels on Attachment A that are marked Current Policy Remains (yellow). These parcels are areas where the City's historic annexation policy still applies. Pursuant to that policy, these parcels may not obtain water and/or sewer service without annexing to Columbus, or to one of Columbus' suburban partners in accordance with a service contract with that suburb. Moreover, if the parcel already had water and/or sewer service, it may not upsize that service without annexation.

2. If any of the parcels marked Current Policy Remains petition to annex from Perry Township to the Columbus, it shall only be accepted by Columbus if the annexation petition is filed pursuant to, complies with and is processed and approved under the provisions contained in ORC 709.021 and 709.022, collectively referred to as "Expedited Procedure No. 1," as such provisions exist on the Effective Date of this Agreement. It is the intention and agreement of the Parties to require that any petition seeking to annex property from Perry Township to the City of Columbus be filed pursuant to, comply with and be processed and approved under the provisions of "Expedited Procedure No. 1," and to prohibit Columbus from accepting an annexation petition which fails to comply with this requirement. If the provisions of Expedited Procedure No. 1 are subsequently repealed or are modified in such a way as to adversely impact the purpose and intent of this Agreement, the Parties shall, upon the written request of a Party, meet within thirty (30) days after receipt of such request and revise the affected portion(s) of this Agreement in such a manner so as to accomplish the purpose and intent of this Agreement, with time being of the essence. The purpose and intent of this Agreement is to require that an annexation petition be signed by all owners of real estate within the area proposed to be annexed, and that Columbus timely conform the boundaries of properties annexed to Montgomery Township/in order to exclude such area(s) from Perry Township. Perry hereby specifically consents to, agrees with, and does not oppose the annexation of any such property, provided such annexation complies with the terms of this Agreement, and further hereby specifically consents to, agrees with, and does not oppose the exclusion of such area(s) from Perry Township. Upon the exclusion of any such parcel from Perry Township, Columbus shall not be required to make any compensation payments of any kind to Perry and specifically shall not be required to make any compensation payments as set forth in Section 709.19 of the Ohio Revised Code.

3. Upon acceptance of an annexation of property within the area designated as “Current Policy Remains,” Columbus shall submit a petition to Franklin County in order to conform the boundaries of said property, pursuant to ORC 503.07.

SECTION 8 ADDITIONAL PROVISIONS

1. The initial term of this Agreement (the “Initial Term”) shall be for a period of ten (10) years, commencing on the Effective Date. The Parties may agree to extend this for an additional periods of five (5) years or other agreed upon time. Any extension of this agreement must be approved by Columbus City Council and Perry Township Board of Trustees. The “Term” of this Agreement shall include the Initial Term and any extensions thereof pursuant to this Section.

2. In the event the Parties have a dispute as to any of the terms or applicability of this Agreement, the Parties agree to use their best efforts to resolve the dispute through a mutually acceptable non-binding mediation process prior to any Party filing a lawsuit in connection with such dispute. Each Party participating in mediation shall pay its own costs of mediation, including its proportionate share of the compensation and administrative expenses required by the mediator and by the mediation services provider selected by the Parties. If a mediator has not been selected by the Parties within twenty (20) days after one of the Parties has requested that a dispute arising under this Agreement be mediated, then within ten (10) days thereafter, each Party shall select one qualified mediator and, within five (5) days of the date of their selection, the two persons so selected shall select a third qualified mediator who will serve as the sole mediator for the dispute. Nothing in this section prevents either party from filing a lawsuit or pursuing other remedies that may be available.

3. A failure to comply with the terms of this Agreement shall constitute a default hereunder. A Party in default shall have ninety (90) days after receiving written notice from another Party of the event of default to cure the default. If the Party has taken no action to diligently pursue curing the default, the defaulting Party is in breach of this Agreement and a non-defaulting Party may sue the defaulting Party for specific performance or injunctive relief under this Agreement or for damages or both and may pursue such other remedies as may be available at law or in equity, all as provided in Section 709.192 of the Ohio Revised Code.

4. This Annexation Agreement may only be amended, revised or altered pursuant to an amendment in writing, executed by the Parties, and properly promulgated and approved in accordance with their respective legislative authorities.

5. In the event that this Agreement, or any of its terms, conditions or provisions, is challenged by any third party in a court of law, the Parties agree to cooperate

with one another and to use their best efforts in defending this Agreement with the object of upholding this Agreement. Each Party shall bear its own costs in any such proceeding challenging this Agreement or any term or provisions thereof.

6. The Parties agree to cooperate with one another and to use their best efforts in the implementation of this Agreement and to sign or cause to be signed, in a timely fashion, all other necessary instruments, legislation, petitions and similar documents, and to take such other actions as are necessary to effectuate the purposes of this Agreement.

7. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors; subject, however, to the specific provisions hereof. This Agreement shall not inure to the benefit of anyone other than as provided in the immediately preceding sentence. This Agreement is not intended to and does not create rights or benefits of any kind for any persons or entities that are not a Party to this Agreement.

8. All notices, demands, requests, consents or approvals shall be hand shall be addressed to:

a. Perry at:

Perry Township Board of Trustees
7125 Sawmill Road
Dublin, Ohio 43016

Columbus at:

The City of Columbus, Ohio
Department of Public Utilities
910 Dublin Road
Columbus, Ohio 43215
Attention: Director of Public Utilities

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, consents, demands, requests or other communications shall be sent.

9. This Agreement shall be governed exclusively by and construed in accordance with the laws of the state of Ohio, and in particular, ORC 709.192 and 709.38 in effect as of the date of execution of this Agreement by the Parties. In the event that any provision of ORC 709.192 or 709.38 is amended or is supplemented by the enactment of one or more new sections of the Revised Code relating to Annexation Agreements, the Parties shall follow the provisions of ORC 709.192 existing on the date of execution of this Agreement, unless the Parties agree to amend this Agreement in accordance with Section 9 of this Agreement.

IN TESTIMONY WHEREOF, the Parties have caused multiple counterparts hereof to be duly executed on or as of the Effective Date of this Agreement.