

ANNEXATION AGREEMENT

This is an Annexation Agreement (the “Agreement”) entered into on or as of June 1, 2011 (the “Effective Date”) by and between the Council of the City of Columbus, Ohio, the legislative authority of and for the City of Columbus (“Columbus”) and the Board of Trustees of Washington Township, Franklin, Delaware and Union Counties, Ohio, the legislative authority of and for Washington Township (“Washington” and, collectively with Columbus, the “Parties” and each a “Party”), pursuant to the provisions of Ohio Revised Code Section 709.192.

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

WHEREAS, prior to the enactment of Ohio’s new annexation law (as codified by the 124th General Assembly in Amended Substitute Senate Bill Number 5 in 2001), Columbus would routinely conform the boundaries of property annexed from Washington Township to the City of Columbus under Section 503.07 of the Ohio Revised Code; and

WHEREAS, following the passage of Senate Bill 5, the conformance of boundaries under Section 503.07 of the Ohio Revised Code became somewhat problematic in the absence of an agreement between the affected municipality and township; and

WHEREAS, the Parties, recognizing the benefits in conforming the boundaries of property annexed from Washington to Columbus, entered into an agreement similar to the one set forth herein on January 24, 2005 whereby territory consisting of approximately 304 acres was annexed under “Expedited Procedure No. 1” and the boundaries of that territory were subsequently conformed in order to exclude Washington from the area; and

WHEREAS, prior to the Effective Date of this Agreement and except for the referenced annexation and related agreement mentioned above, property within Washington Township has been annexed to the City of Columbus and Columbus has not conformed its boundaries under and pursuant to Section 503.07 of the Ohio Revised Code in order to exclude Washington Township from such area(s) (with these properties currently being categorized as Taxing Districts 277 and 485) due to changes in Ohio’s annexation laws brought about as a result of the passage of Senate Bill 5; and

WHEREAS, Columbus contemplates that future annexations may occur whereby property within Washington Township will be annexed to the City of Columbus; and

WHEREAS, if Columbus was able to conform the boundaries of properties annexed from Washington Township to the City of Columbus under Section 503.07 of the Ohio Revised Code, real estate taxes in these annexed areas would be reduced by approximately 14%, with no change in the current levels of fire and emergency medical services; and

WHEREAS, Columbus and Washington are desirous of having Columbus conform the boundaries of all properties annexed from Washington Township to the City of Columbus, which includes those newly annexed properties which have previously been annexed to the City of Columbus and those properties currently located within the unincorporated area of Washington Township which may be annexed to the City of Columbus in the future; and

WHEREAS, Columbus and Washington 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

WHEREAS, this Agreement is authorized under Section 709.192 of the Ohio Revised Code and other applicable laws and has been approved by the Board of Trustees of Washington Township by Resolution Number _____ adopted on _____, 2011 and by the City Council of the City of Columbus by Ordinance Number 0765-2011 adopted on May 23, 2011.

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

1. This Agreement is entered into pursuant to the provisions of Ohio Revised Code Section 709.192 to permit the annexation of property located within the unincorporated area of Washington Township to the City of Columbus pursuant to the provisions of Ohio Revised Code Sections 709.021 and 709.022. Washington 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.
2. From and after the Effective Date of this Agreement, annexations of property from Washington Township to the City of Columbus 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 Sections 709.021 and 709.022 of the Ohio Revised Code, 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 Washington 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. Until the affected portion(s) of the Agreement

is so revised, Columbus shall refrain from accepting any annexation petition in accordance with the provisions of Section 4, hereof. 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 the City of Columbus in order to exclude Washington Township from such area(s).

3. In no case shall any real estate owned, whether in whole or in part, by Washington be annexed to the City of Columbus without the written consent of the Board of Trustees of Washington Township. This shall exclude dedicated road rights-of-way and other real estate where Washington's interest consists solely of a right-of-way interest.
4. If an annexation petition is filed and processed seeking to annex to the City of Columbus any real estate located within Washington Township which does not comply with the terms of this Agreement, Columbus shall refrain from any act which would, directly or indirectly, contribute to the success of such petition. This obligation shall include, without limitation, refusing to furnish any City services to the area proposed to be annexed; signing and providing affidavits and furnishing representatives to provide factual testimony in any proceeding in order to oppose the annexation; vigorously resisting, in both administrative and judicial forums, and with the assistance of the City's legal counsel, any action seeking such an annexation; refusing to accept any such annexation; and otherwise undertaking such actions as may be reasonably requested by Washington which would be detrimental to the success of such annexation. Washington agrees not to oppose, directly or indirectly, any annexation petition(s) seeking to annex to the City any real estate located within Washington Township which complies with the provisions of this Agreement. Notwithstanding the foregoing obligation, the Parties agree that Columbus may take any action in response to an annexation petition that is required by law.
5. Columbus shall conform the boundaries of all properties which have previously been or may be annexed to the City of Columbus from Washington Township which have not yet been conformed under and pursuant to Section 503.07 of the Ohio Revised Code in order to exclude Washington Township from such area(s). This provision specifically includes, and requires Columbus to conform the boundaries of, all newly annexed territories which have been annexed from Washington Township to the City of Columbus prior to the Effective Date of this Agreement. For any land within Washington Township which has been annexed to the City of Columbus prior to the Effective Date, Columbus shall conform the boundaries of such annexed lands within four (4) months following the Effective Date of the Agreement. In all other cases, Columbus shall

conform the boundaries of such annexed land within six (6) months following Columbus' acceptance of the annexation petition. Upon the exclusion of Washington Township from any such area, Columbus shall not be required to make any compensation payments to Washington as set forth in Section 709.19 of the Ohio Revised Code, as said Section exists on the Effective Date of this Agreement.

6. This Agreement is not intended to supersede, impact or otherwise affect the Mutual Aid Agreement for the exchange of emergency service currently in place between the Parties. Furthermore, each Party agrees to work cooperatively and in good faith with the other in an effort to maintain their response relationship as it relates to emergency services.
7. 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 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 sixty (60) days after one of the Parties has requested that a dispute arising under this Agreement be mediated, then any of the Parties may commence a lawsuit or commence such other method of pursuing such remedies as may be available to any of the Parties.
8. 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 default is not cured within such time period, 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.
9. 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.
10. 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.

11. 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.
12. 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.
13. In the event that any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason:
 - a. that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein;
 - b. the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof;
 - c. each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law; and,
 - d. in the event of invalidation of any portion of this Agreement, a Party shall, upon the written request of the other Party, meet within thirty (30) days after receipt of such request, and modify the invalidated provision(s) in such a manner so as to accomplish the purpose and intent of this Agreement, with time being of the essence.

14. The Parties agree that just as Section 709.192 of the Ohio Revised Code is to be liberally construed to allow the Parties to enter into an annexation agreement, the Parties further agree that this Agreement shall be liberally construed in order to facilitate the desires of each of the Parties to carry out this Agreement. Each provision of this Agreement shall be construed and interpreted so as to permit maximum advantage to the Parties allowed by Section 709.192 of the Ohio Revised Code.
15. All notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, notices shall be addressed to:

a. Washington at:

Washington Township Board of Trustees
6200 Eiterman Road
Dublin, Ohio 43016
Attention: Denise Franz King, Trustee

With a copy simultaneously sent or delivered to:

Donald F. Brosius
Loveland & Brosius, LLC
50 West Broad Street, Suite 3300
Columbus, Ohio 43215

b. Columbus at:

The City of Columbus, Ohio
Department of Development
50 West Gay Street
Columbus, Ohio 43215
Attention: Director of Development

With a copy simultaneously sent or delivered to:

Josh Cox, Chief Counsel
Columbus City Attorney
90 West Broad Street
Columbus, Ohio 43215

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.

16. The initial term of this Agreement (the “Initial Term”) shall be for a period of ten (10) years, commencing on the Effective Date and shall, upon timely prior written notice, terminate at midnight, May 31, 2021. Unless all legislative authorities of the Parties affirmatively act to terminate this Agreement within one (1) year prior to the expiration of the Initial Term or any subsequent five year term provided for in this Section, this Agreement shall automatically be renewed for an additional period of five (5) years, and this Agreement shall continue to be automatically renewed thereafter for similar five (5) year periods at the end of each renewal period with no limit upon the number of such renewals. The provision herein for automatic extension of this Agreement recognizes that the accrual of benefits to the Parties from this Agreement may take decades and that the Parties’ investment in the areas affected and the infrastructure costs along with other possible capital improvements contemplated herein is of permanent usefulness and duration. The “Term” of this Agreement shall include the Initial Term and any extensions thereof pursuant to this Section.
17. This Agreement may be executed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.
18. This Agreement shall be governed exclusively by and construed in accordance with the laws of the state of Ohio, and in particular, Ohio Revised Code Section 709.192 in effect as of the date of execution of this Agreement by the Parties. In the event that any provision of Ohio Revised Code Section 709.192 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 Ohio Revised Code Section 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.

- 19. The Parties agree that any financial obligation under this Agreement is subject to the appropriation and authorization of the expenditure by the Columbus City Council and the Washington Township Trustees as may be necessary. These obligations are further subject to the certification of funds for such purpose by the Columbus City Auditor and the Township Fiscal Officer.

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

WASHINGTON

COLUMBUS

By _____
Gene Bostic, Trustee

By _____
Boyce Safford, III,
Director of Development

By _____
Denise Franz King, Trustee

APPROVED AS TO FORM:

By _____
Chuck Kranstuber, Trustee

City Attorney, City of Columbus