

**BIG DARBY ACCORD TOWN CENTER MASTER PLAN
CONSULTANT
PARTICIPATION AGREEMENT**

This Big Darby Accord Town Center Master Plan Consultant Agreement (“the Agreement”) is made and entered into as of **April 14, 2009**, by and between the Board of Trustees of Prairie Township, Franklin County; the Board of Trustees of Brown Township, Franklin County; the City of Columbus; and the Board of Commissioners of Franklin County, Ohio.

BACKGROUND INFORMATION

WHEREAS, all four (4) of the parties to this Agreement are local jurisdictions within the Franklin County portion of the Big and Little Darby Creeks’ Watershed (the “Watershed “); and

WHEREAS, all four parties to this agreement have adopted the Big Darby Accord plan, which is intended to protect the water quality and other natural resources of this planning area, while recognizing growth pressures and the rights of property owners; and

WHEREAS, the Big Darby Accord designates that a Town Center be developed in portions of Brown and Prairie Townships in Franklin County; and

WHEREAS, Brown Township, Columbus, Prairie Township and Franklin County all have a direct interest in the successful development and creation of the Town Center; and

WHEREAS, the parties to this Agreement must contract with a planning consultant or consultant team in order to prepare a Town Center Master Plan that ensures the successful development and creation of the Town Center; and

WHEREAS, the parties desire to have Franklin County enter into an Agreement with the consultant selected by mutual agreement among the parties; and

WHEREAS, the costs for hiring the consultant for this initiative are estimated to be approximately \$500,000.00; and

WHEREAS, the parties recognize that the costs for the hiring of the consultant should be shared by all four jurisdictions; and

WHEREAS, each of the parties has agreed to provide funds to finance a portion of the costs of the consultant, which funds shall be provided to Franklin County to be used by Franklin County, as the financial agent for the parties hereto, to pay such costs; and

WHEREAS, each party’s willingness to both participate in this initiative and provide a proportionate share of funding assistance is based upon the understanding and condition that all parties adhere to each and every element and principle contained in this Agreement.

NOW THEREFORE, in consideration of the above Background Information and the mutual promises and covenants contained in this Agreement, the parties hereto, intending to be legally bound, agree to the above Background Information and as follows:

1. Consultant. The parties agree that they shall jointly retain a consultant selected by mutual agreement of the parties, at a cost not to exceed Five Hundred Thousand Dollars (\$500,000.00), to develop and implement a Town Center Master Plan.

2. Franklin County to Act as Agent. The parties agree that Franklin County shall act as agent for the parties hereto and shall enter into a contract with the consultant (the "Contract") and shall oversee payments to the consultant for work performed pursuant to the Contract.

3. Payment of Contract Costs. The parties agree to jointly finance the costs of the Contract and to appropriate monies for the hiring of a consultant on the following basis:

- a)
 - Brown Township up to \$ 85,000.00 (17%)
 - Columbus up to \$ 50,000.00 (10%)
 - Franklin County up to \$ 280,000.00 (56%)
 - Prairie Township up to \$ 85,000.00 (17%)

b) Franklin County agrees to notify each party of the amount of each payment pursuant to the Contract as each such payment comes due, and each party agrees to pay to Franklin County their agreed upon percentage of each such payment within forty-five (45) days of such notice.

c) Franklin County agrees to make each payment to the lead consultant pursuant to the Contract, in a timely manner.

4. Scope of Work. The parties agree to the Scope of Work, which is included in the Contract and attached to this Agreement, and agree that any and all changes to this scope will require a consensus of the parties.

5. Participation. Each party agrees to assign a representative to attend meetings with the consultant and to keep elected officials informed of the consultant's progress. Each party further agrees to provide active representation at all meetings and to work with the other parties hereto to assess existing policies, procedures and resources; identify required improvements to existing policies, procedures and resources and to make recommendations for additional policies and procedures to assist in meeting the goals of this Agreement. Each party also agrees to assist Franklin County and the consultant in conducting research and gathering information to the extent such information is available to it and to secure necessary approvals from their own local government and departments. Each party agrees that decisions made concerning the consultant will be based upon a consensus of all participants.

6. Warranties. Each party represents, warrants and covenants to the other parties that (1) the officer or officers executing this Agreement on behalf of the party is or are duly authorized to enter into this Agreement on behalf of the party; (2) each party has all necessary power and authority to enter into this Agreement; (3) the execution of this Agreement constitutes the valid and binding obligation of the party in accordance with its terms and (4) approvals necessary to cause this Agreement to be effective and binding against each party have been or will be enacted and granted.

7. Notices. All notices, certificates, requests or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, addressed to the appropriate Notice Address or hand delivered to the other parties at the following addresses:

Columbus
ATTN: David Hull
109 North Front Street, First Floor
Columbus, Ohio 43215

Prairie Township
ATTN: Tracy Hatmaker
23 Maple Drive
Columbus, Ohio 43228

Brown Township
ATTN: Township Fiscal Officer
2495 Walker Road
Hilliard, Ohio 43026

Franklin County
ATTN: James Schimmer
280 East Broad Street, Suite 202
Columbus, Ohio 43215

7. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon each of the parties hereto and their respective successors and assigns. Each party shall at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in this Agreement. Each provision of this Agreement is binding upon such officer of each party as may, from time to time, have the authority or duty under law to take such actions as may be necessary to perform all or any part of the duty required by such provision.

8. Amendments, Changes and Modifications. This Agreement may only be amended by written instrument executed by all parties to this Agreement.

9. Severability. In case any section or provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part hereof, made, assumed, entered into or taken hereunder or any application hereof, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect the remainder hereof or any other section or provision hereof or any other covenant, stipulation, obligation, agreement, act or action, or part hereof, made, assumed, entered into, or taken hereunder, which shall be construed and enforced as if such illegal or invalid portion were not contained herein, nor shall such illegality or invalidity of any application hereof affect any legal and valid application hereof, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part hereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

10. Term. This Agreement shall be the same as the term of the Contract with the consultant.

11. Governing Law. This Agreement shall be governed exclusively and construed exclusively by and in accordance with the laws of the State of Ohio.

12. Assignment. This Agreement may not be assigned by any of the parties without the prior written approval of the other parties, except to a transferee through a merger or consolidation and only if such resulting entity expressly assumes in writing, in a form satisfactory to the other parties, all obligations of the party under this Agreement.

13. Entire Agreement. This Agreement is signed by the parties as a final expression of all of the terms, covenants and conditions of their Agreement and as a complete and exclusive statement of its terms, covenants and conditions, and is intended to supersede all prior agreements and understandings concerning the subject matter of this Agreement.

14. Counterparts. This Agreement may be signed 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 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.

15. Legislative Approval. The financial obligations of the parties herein are contingent upon the passage and effectiveness of legislation from their respective legislative bodies authorizing the execution of this Amendment and appropriating the funds therefore.

IN TESTIMONY WHEREOF, the parties have caused this Agreement to be executed in their respective names by their duly authorized officers all as of the date hereinbefore written.

CITY OF COLUMBUS

By _____

Approved as to form:

City Attorney

PRAIRIE TOWNSHIP BOARD
OF TRUSTEES

By _____

BROWN TOWNSHIP BOARD
OF TRUSTEES

By _____

FRANKLIN COUNTY

By _____

Approved as to form:

County Prosecutor