

**ANNEXATION AGREEMENT**

**BY AND BETWEEN**

**BETHEL TOWNSHIP (MIAMI COUNTY), OHIO**

**AND**

**THE CITY OF HUBER HEIGHTS, OHIO**

**Dated as of**

**June \_\_, 2023**

## ANNEXATION AGREEMENT

This Annexation Agreement (“Agreement”) is made and entered into on or as of the \_\_\_\_ day of June, 2023 (the “Effective Date” herein) by and between the Board of Trustees of Bethel Township, the legislative authority of and for Bethel Township, a political subdivision duly organized and validly existing under the laws of the State of Ohio (“Township” or “Bethel” herein), and the Council of the City of Huber Heights, Ohio, the legislative authority of and for the City of Huber Heights, Ohio, a municipal corporation duly organized and validly existing under its Charter and the Constitution and the laws of the State of Ohio (“City” or “Huber Heights” herein, collectively with the Township, the “Parties” and each a “Party” hereto).

WHEREAS, the Township and City are political subdivisions located adjacent and contiguous to each other and having, to a certain extent, overlapping jurisdictions within certain areas of Miami County, Ohio (“County” herein); and

WHEREAS, certain landowners have filed an annexation petition pursuant to the provisions of Section 709.023, which has subsequently been approved by the Miami County Board of County Commissioners and the City has expressed a desire to pursue and accept the annexation of the property consisting of 260.369+/- acres identified as Miami County Auditor tax parcel numbers A01-012300, A-01-012310, A01-044400, A01-012210, A01-012200, A01-015000, A01-016400 (collectively the Current Annexation); and

WHEREAS, the Parties agree there is an additional acreage located next to the current property seeking to annex that may be annexed by the City in the future pursuant to the terms of this Agreement.

WHEREAS, the Parties believe that annexation of a certain parcels of real property, which include the Current Annexation parcels, located within Bethel Township, which parcels are listed and described in Attachment A, which is attached hereto and incorporated herein, will benefit the City in future development (collectively, the “Annexation Parcels”); and

WHEREAS, the Annexation Parcels are further depicted and shown on the map labeled “Annexation Parcel Map” attached hereto and incorporated herein as Attachment B, provided that in the event there is any discrepancy between Attachments A and B, the specific tax parcels reference contain in Attachment A shall prevail; and

WHEREAS, the Parties have further agreed that upon the annexation of the Annexation Parcels in the Annexation Parcel Map, that the City will conform the boundaries of such parcels pursuant to Chapter 503 of the Ohio Revised Code and the Township will waive any required statutory reparations due and owing to the Township; and

WHEREAS, the City has further agreed to an annexation prohibition during the term of this Agreement of all parcels located outside of the Annexation Parcels and Annexation Parcel Map that are located in the unincorporated area of the Township; and

WHEREAS, the City and Township are willing to entertain requests for economic development assistance in connection with infrastructure improvements and extensions of utility services affecting parcels in the Annexation Parcels and Annexation Parcel Map and potential future commercial, industrial and retail uses located in the unincorporated areas of the Township upon terms mutually satisfactory to both Parties; and

WHEREAS, this Agreement is authorized under the provisions of Section 709.192 of the Ohio Revised Code and other applicable laws of the state of Ohio, and has been approved by the respective legislative authority of both Parties.

NOW, THEREFORE, in consideration for the mutual promises contained herein, the Parties covenant and agree as follows:

## ARTICLE 1

### ANNEXATION OF ANNEXATION PARCEL AND LIMITATIONS

**Section 1.1. Designation of Agreement Territory and Annexation Parcels.** This Agreement shall cover and be applicable to all of the area within the unincorporated area of the Township (the “Agreement Territory”). This Agreement shall also apply to the annexation of the Annexation Parcels enumerated on Attachment A. The perimeter boundary of the Annexation Parcels contained in the Annexation Parcels Map is graphically set forth on Attachment B for purposes of reference only.

**Section 1.2. Annexation of Annexation Parcels.** The Township agrees and consents to the annexation of the Annexation Parcels to the City in accordance with the terms of the Agreement.

- A. **Current Annexation Petition:** Landowners have filed an annexation petition pursuant to Section 709.023 of the Ohio Revised Code for the Current Annexation. The Current Annexation was approved by the Miami County Board of County Commissioners. Said parcels are listed as Annexation Parcels and within the Annexation Parcels Map. In the event the parcels contained in the Current Annexation are subdivided, this Agreement shall apply to any new tax parcels created provided that such parcels are not located outside of the geographical area depicted in the Annexation Parcels Map. The Township agrees to support the Current Annexation based upon the City agreeing to an annexation moratorium as set forth in this Agreement. In addition, Township officials and representatives shall refrain from attending City Council meetings and/or otherwise opposing the Current Annexation petition for a period of six (6) months commencing upon the Effective Date of this Agreement.
- B. **Future Procedure:** The petitioners for future annexations of any parcel listed in the Annexation Parcels to the City shall file the annexation pursuant to and shall comply with the provisions of “Expedited Procedure No. 1” as contained in Sections 709.021 and 709.022 of the Ohio Revised Code. The Township hereby

specifically consents to and does not oppose the annexation of any such property, provided such annexation complies with the terms of this Agreement. From and after the Effective Date of this Agreement, annexations of Annexation Parcels from the Township to the City shall only be accepted by the City 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 the Township to the City be filed pursuant to, comply with and be processed and approved under the provisions of “Expedited Procedure No. 1,” and to prohibit the City from accepting an annexation petition which fails to comply with this requirement or that is not an Annexation Parcel or outside of the Annexation Parcel Map. 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, the City shall refrain from accepting any annexation petition.

If any annexation petition is filed and processed seeking to annex to the City any real estate property within the Township which does not comply with the terms of this Agreement, the City 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 Bethel.

- C. Effect of Annexation: The City shall conform the boundaries of all Annexation Parcels, including the Current Annexation, which have previously been or may be annexed to the City from the Township which have not yet been conformed under and pursuant to Section 503.07 of the Ohio Revised Code in order to exclude the Township from such area(s). The City shall conform the boundaries of the Annexation Parcels within six (6) months following the City’s acceptance of an annexation petition. Upon the exclusion of the Township from any such area, the City shall not be required to make any compensation payments to Bethel as set forth in Section 709.19 of the Ohio Revised Code, as said Section exists on the Effective Date of this Agreement.

- D. Township Tax Increment Financing District. The Township passed legislation Bethel Township Resolution Numbers 21-12-095 and 21-10-076 pursuant to Section 5709.73(B) of the Ohio Revised Code creating a tax increment financing over a portion of the area covering the Annexation Parcels. The Township Board of Trustees shall within six (6) months following the City's acceptance of the Current Annexation, pass the appropriate legislation rescinding Bethel Township Resolution Numbers 21-12-095 and 21-10-076 thereby removing the Annexation Parcels from the tax increment financing district. Nothing in this Agreement shall prevent the Township from passing legislation implementing tax increment financing in the Agreement Territory outside of the Annexation Parcels.
- E. Cooperative Efforts: Utilities for the Annexation Parcels are within the existing Facility Planning Area provided by Miami County and Clark County utility systems. The Township will not oppose the extension of such utilities to the Annexation Parcels.

## ARTICLE 2

### ANNEXATION PROHIBITION

**Section 2.1. Annexation Limitation.** No property located within the Agreement Territory, except those identified as Annexation Parcels, shall be annexed to or accepted for annexation by the City under any of the annexation procedures provided for in Chapter 709 of the Revised Code (or any similar statutes of like tenor or effect) during the term or any renewal of this Agreement unless such annexation has been approved, in writing, by the Board of Trustees of the Township. For so long as this Agreement is in effect, the City shall not (i) accept any such annexation petitions for any property located within the Agreement Territory, (ii) process or assist in the processing of an annexation petition seeking to annex any property located in the Agreement Territory to the City, or (iii) assist property owners to annex their property located in the Agreement Territory to the City.

**Section 2.2. Collaborative Efforts.** The Township is willing to entertain requests for economic development assistance without annexation in connection with infrastructure improvements and extensions of utility services affecting parcels in the Agreement Territory that are outside of the Annexation Parcels contained in this Agreement for potential future commercial, industrial and retail uses located in the unincorporated areas of the Township upon terms mutually satisfactory to both Parties.

## ARTICLE 3

### TERM OF AGREEMENT

**Section 3.1. Term and Renewal.** The initial term of this Agreement (the “Initial Term”) shall be for a period of fifty (50) years, commencing on the Effective Date and shall, upon timely prior written notice, terminate at midnight, \_\_\_\_\_, 207\_. 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 twenty-five (25) year term provided for in this Section, this Agreement shall automatically be renewed for an additional period of twenty-five (25) years, and this Agreement shall continue to be automatically renewed thereafter for similar twenty-five (25) 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. The “Term” of this Agreement shall include the Initial Term and any extensions thereof pursuant to this Section.

## ARTICLE 4

### GENERAL PROVISIONS

**Section 4.1. Support of Agreement.** In the event that this Agreement, or any of its terms, conditions or provisions, is challenged by any third party or parties 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 terms or provisions thereof.

**Section 4.2. Signing Other Documents.** 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 either Party may reasonably request in order to effectuate the purposes of this Agreement.

**Section 4.3. Mediation.** In the event the Parties have a dispute as to any of the terms of 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. 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, or if the dispute has not been resolved within ninety (90) days after notice of the dispute has been provided to the other Party, 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.

**Section 4.4. Default.** A failure to comply with the terms of this Agreement shall constitute a default hereunder. The Party in default shall have ninety (90) days, after receiving

written notice from the other Party of the event of default, to cure that default. If the default is not cured within that time period, the non-defaulting Party may sue the defaulting Party for specific performance under this Agreement or for damages or both; or may pursue such other remedies as may be available. In any litigation between the Township and the City, the prevailing Party shall be entitled to recover from the losing Party all reasonable costs and expenses of suit, including reasonable attorney fees.

**Section 4.5. Character of Payments.** Nothing in this Agreement is to be interpreted as the sharing of the proceeds of any tax levy by and between any Parties. Any language within this Agreement which employs an amount of any tax to be collected as part of a calculation for determining a sum to be paid by one Party to the other Party is intended, and therefore to be interpreted, as a reasonable, practical and convenient mechanism which the Parties have agreed to use to compute, in a less controversial manner, the payments to be made by one Party to another for services and other items of value to be received by the paying Party. No payments to be made under this Agreement are intended to be a sharing of proceeds of any tax levy proscribed by Section 709.192(D) of the Ohio Revised Code.

**Section 4.6. Amendments.** This Agreement may be amended only by a writing approved by the legislative authorities of all of the Parties by means of appropriate legislation authorizing such amendment. Any amendment, in order to be effective, must be authorized by appropriate legislation passed by each of the Parties.

**Section 4.7. Immunities Preserved.** By entering into this Agreement, none of the Parties intend to relinquish or waive any of the immunities they now have or may hereafter be accorded under state and/or federal laws, including, without the limitation of any such immunities, all those immunities accorded to governmental entities and their officers and employees under O.R.C. Chapter 2744.

**Section 4.8. No Personal Liability.** All covenants, obligations and agreements of the Parties contained in this 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 member, officer, agent or employee of any Party in other than their official capacity, and no official or member of a legislative authority executing this Agreement on behalf of any Party or any present or future member, officer, agent or employee of any Party shall be liable personally by reason of the covenants, obligations or agreements of the Parties contained in this Agreement.

**Section 4.9. Powers Preserved.** This Agreement is not intended to be in derogation of the powers granted to municipal corporations by Article XVIII, Ohio Constitution, or any other provisions of the Ohio Constitution or of the Ohio Revised Code; nor is it intended to be in derogation of the powers granted to township under any provisions of the Ohio Constitution or of the Ohio Revised Code. The Parties hereby acknowledge their belief as to the lawfulness of this Agreement and agree not to challenge or contest it, or any provisions contained herein.

**Section 5.10. Beneficiaries.** This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors. This Agreement shall not inure to the

benefit of anyone other than as provided in the immediately preceding sentence. Except for the Parties, this Agreement is not intended to and does not create rights or benefits of any kind for any other persons or entities that are not a party to this Agreement.

**Section 4.11. Agreement.** The Parties acknowledge and agree that this Agreement is intended to and shall serve as an annexation agreement pursuant to Section 709.192 of the Ohio Revised Code.

**Section 4.12. Liberal Construction.** 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 Annexation Agreements, 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.

**Section 4.13. Notices.** 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 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) The Township at:

Bethel Township Board of Trustees  
8735 S. Second Street  
Tipp City, Ohio 45371  
Attention: Township Administrator

(b) The City at:

6131 Taylorsville Road  
Government Center  
Huber Heights, OH 45424  
Attention: City Manager

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

**Section 4.14. Captions and Headings.** The captions and headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections hereof.



**Section 4.15. Counterparts.** 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.

**Section 4.16. Governing Law and Choice of Forum.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between the Parties or their respective agents and employees arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Miami County, Ohio.

**IN TESTIMONY WHEREOF**, the Parties have caused multiple counterparts hereof to be executed by their duly authorized officers on or as of the date first set forth above.

**ATTEST:**

**THE CITY OF HUBER HEIGHTS,  
MONTGOMERY AND MIAMI  
COUNTIES, OHIO**

\_\_\_\_\_  
Anthony Rodgers Huber Heights Council Clerk

By: \_\_\_\_\_  
Bryan Chodkowski, Acting City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
David H. Mongtomery, Law Director

**ATTEST:**

**BETHEL TOWNSHIP  
MIAMI COUNTY, OHIO**

\_\_\_\_\_  
Deborah Watson, Township Fiscal Officer

By: \_\_\_\_\_  
Andy Ehrhart,  
Township Administrator

**FISCAL OFFICERS' CERTIFICATIONS**

The undersigned fiscal officer of Bethel Township (Miami County), Ohio hereby certifies that the moneys required to meet the financial obligations of the Township under the foregoing Annexation Agreement have been appropriated lawfully for that purpose, and are in the treasury of the Township or in the process of collection to the credit of an appropriate fund, free from encumbrances. This certification is made in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

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Deborah Watson  
Fiscal Officer, Bethel Township,  
Miami County, Ohio

The undersigned Director of Finance of City of Huber Heights, Ohio hereby certifies that the moneys required to meet the financial obligations of the City under the foregoing Annexation Agreement have been appropriated lawfully for that purpose, and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from encumbrances. This certification is made in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

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James Bell  
Director of Finance, City of Huber Heights, Ohio

**ATTACHMENT A**  
**ANNEXATION PARCELS**

Miami County Auditor Tax Parcel Numbers: A01-009800, A01-009810, A01-009850, A01-009900, A01-010100, A01-010200, A01-010300, A01-010400, A01-010500, A01-010700, A01-010800, A01-010900, A01-010950, A01-011100, A01-011200, A01-011510, A01-012200, A01-012210, A01-012310, A01-012400, A01-012450, A01-012500, A01-012510, A01-012520, A01-012600, A01-012700, A01-012800, A01-012900, A01-013000, A01-013100, A01-013200, A01-013300, A01-013400, A01-013500, A01-013510, A01-013520, A01-013530, A01-013600, A01-013800, A01-014050, A01-014060, A01-014400, A01-014401, A01-014402, A01-014403, A01-014405, A01-014500, A01-014540, A01-014800, A01-014900, A01-015000, A01-015100, A01-015200, A01-015300, A01-015400, A01-015500, A01-015600, A01-015700, A01-015800, A01-015801, A01-015802, A01-015803, A01-015804, A01-015805, A01-015900, A01-015901, A01-015902, A01-016000, A01-016100, A01-016200, A01-016300, A01-016450, A01-016660, A01-044000, A01-044300, A01-044310, A01-044500, A01-044540, A01-046300, A01-046400, A01-046420, A01-046500, A01-046600, A01-047000, A01-047100, A01-047200, A01-047300, A01-047350, A01-047400, A01-047500, A01-047600, A01-047700, A01-047800, A01-047900, A01-048200, A01-048250, A01-048252, A01-048253, A01-048255, A01-048256, A01-048300, A01-048400, A01-048500, A01-048700, A01-086046, A01-086048, A01-086050, A01-086051, A01-086052, A01-086053, A01-086054, A01-086055, A01-086056, A01-086058, A01-086059, A01-086060, A01-086061, A01-086062, A01-086063, A01-086064, A01-086065, A01-086066, A01-086067, A01-086068, A01-086069, A01-086070, A01-086071, A01-086073, A01-086074, A01-086075, A01-086076, A01-086077, A01-086078, A01-086079, A01-086080, A01-086083, A01-086084, A01-086085, A01-086086, A01-086087, A01-086088, A01-086092, A01-086093, A01-086094, A01-086095, A01-086096, A01-086097, A01-086098, A01-086099, A01-086100, A01-086101, A01-086102, A01-086103, A01-086104, A01-086105, A01-086106, A01-086107, A01-086108, A01-086109, A01-086110, A01-086111, A01-086112, A01-086113, A01-086114, A01-086115, A01-086116, A01-086117, A01-086118, A01-086119, A01-086120, A01-086121, A01-086122, A01-086123, A01-086125, A01-086129, A01-086130, A01-086131, A01-086132, A01-086133, A01-086134, A01-086135, A01-086136, A01-086137, A01-086138, A01-086139, A01-086140, A01-086141, A01-086142, A01-086143, A01-086144, A01-086145, A01-086146, A01-086211, A01-086212, A01-086213, A01-086214, A01-086215, A01-086216, A01-086220, A01-086221, A01-086229, A01-250005, A01-250008, A01-250040, A01-250042, A01-250055, A01-250105, A01-250107, A01-250122, A01-250140, A01-250142, and A01-250144.

