

**VILLAGE OF YELLOW SPRINGS, OHIO
RESOLUTION 2020-37**

**ADOPTING A RESOLUTION OF SERVICES TO BE PROVIDED FOR THE
PROPOSED ANNEXATION OF APPROXIMATELY 33.816 ACRES NORTH OF EAST
HYDE ROAD AND WEST OF SPILLAN ROAD PURSUANT TO OHIO REVISED
CODE 709.192 AND AUTHORIZING THE VILLAGE MANAGER TO EXECUTE AN
ANNEXATION AGREEMENT WITH MIAMI TOWNSHIP**

Whereas, on August 20, 2020, Greene County approved the surveyor's legal description for a tract of approximately 33.39 acres of real estate located in Miami Township, north of East Hyde Road and West of Spillan Road, adjacent to the Village of Yellow Springs corporation limit; as well as 0.46 acres of the east half of Spillan Road right-of-way which may be inside the Village corporation limit but has historically been maintained by Miami Township;

Whereas, the 33.39-acre parcel's property owner had previously expressed intent to file an "Expedited Type 1" petition to annex with Greene County, Ohio pursuant to Ohio Revised Code Sections 709.021 and 709.022, which provides that the legislative authorities of the Village and Township may enter into an annexation agreement under R.C. 709.192 or a cooperative economic development agreement as provided for in R.C. 701.07 outlining services to be provided to the annexed territory and conditions for annexation upon consent of all property owners; and

Whereas, the parcel's property owner has authorized Oberer Land Developers Ltd. to act as agent pursuant to a purchase contract and Oberer Land Developers Ltd. has provided a proposal to work with the Village with respect to replatting the parcel and developing the territory in accordance with Village development, planning and zoning standards;

**NOW, THEREFORE, COUNCIL FOR THE VILLAGE OF YELLOW SPRINGS, OHIO
HEREBY RESOLVES THAT:**

Section I. The Village of Yellow Springs, Ohio, upon final approval and acceptance of the annexation by the Board of Greene County Commissioners, shall provide all municipal services to the annexed territory including law enforcement, recreation, road repair and maintenance, planning, zoning and public utility services as the territory is developed and such services become appropriate upon any conditions the Village deems appropriate.

Section II. The Village Manager is authorized to execute, on behalf of the Village, the Annexation Agreement with Miami Township incorporated herein as Exhibit A and is authorized to negotiate, on behalf of the Village, a Development Agreement with Oberer Land Developers Ltd subject to final Council approval.

Section III. The Clerk is hereby directed to forward a copy of this Resolution to the Board of County Commissioners of Greene County, Ohio.

Brian Housh, Council President

Passed: 9-21-2020

Attest:_____
Judy Kintner, Clerk of Council

ROLL CALL

Brian Housh __Y__ Marianne MacQueen __Y__ Kevin Stokes _Y_
Lisa Kreeger _Y__ Laura Curliss _Y_

Exhibit A to Resolution 2020-37 (Village) and Resolution _____ (Township)

ANNEXATION AGREEMENT

This Annexation Agreement (“Agreement”) is made by and between the **MIAMI TOWNSHIP BOARD OF TRUSTEES**, the legislative authority of and for Miami Township, Greene County, Ohio (“Township”); and the **VILLAGE OF YELLOW SPRINGS, OHIO**, the legislative authority of and for the Village of Yellow Springs, Greene County, Ohio (“Village”); effective as of the date it becomes fully executed below (“Effective Date”), pursuant to Ohio Revised Code Section 709.192.

WHEREAS, the Township and Village are political subdivisions located adjacent and contiguous to each other and having, to a certain extent, overlapping jurisdictions within Greene County, Ohio; and

WHEREAS, the Township and Village have cooperated in numerous matters in the past, including but not limited to cooperation in the development and provision of services to citizens and properties within the Township and the Village in order to foster and promote harmony and development within each of the parties’ respective jurisdictional areas; and

WHEREAS, a certain landowner and developer have expressed a desire to pursue annexation of approximately 33.816 acres of property located in the Township contiguous to the Village, as more specifically identified in Exhibit A-1 hereto (“Annexation Parcel”); and

WHEREAS, the annexation of the Annexation Parcel will, if successful, facilitate its orderly development, to the mutual benefit of both parties; and

WHEREAS, the Annexation Parcel is further depicted on the map labeled “Annexation Parcel Map” attached and incorporated as Exhibit B, provided that in the event there is any discrepancy between Exhibits A-1 and B, the specific tax parcel reference in Exhibit A-1 shall prevail; and

WHEREAS, the Council of the Village of Yellow Springs met _____, 2020, and adopted Resolution 2020-37 approving the terms of this Agreement, and authorizing the Village Manager to execute this Agreement on behalf of the Village; and

WHEREAS, the Township Trustees met _____, 2020 and passed Resolution No. _____, approving the terms of this Agreement.

NOW, THEREFORE, concerning the annexation of the 33.816 acres known as the Annexation Parcel, the Township and Village agree as follows:

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ARTICLE I

ANNEXATION AND LIMITATIONS

Section 1.1: Designation of the Annexation Parcel. This Agreement shall apply only to the annexation of the Annexation Parcel described in Exhibit A-1 hereto. The perimeter boundary of the Annexation Parcel identified on Exhibit B is for reference purposes only.

Section 1.2: Annexation of Annexation Parcel. The Township agrees and consents to the annexation of the Annexation Parcel to the Village in accordance with the terms of this Agreement.

A. Procedure: The petitioners for the annexation of the Annexation Parcel to the Village shall file the annexation petition pursuant to and shall comply with the provisions of the ‘Type 1’ expedited annexation procedure as contained in Sections 709.021 and 709.022 of the Ohio Revised Code. Any such annexation of the Annexation Parcel shall also comply with the terms of this Agreement.

B. Scope of Petition: The agent for the annexation petitioner(s) shall process the annexation of the Annexation Parcel under one annexation petition which includes the entirety of the Annexation Parcel.

C. Cooperative Efforts: Upon the filing of any petition for the annexation of the Annexation Parcel to the Village in accordance with the terms of this Agreement, the Township and the Village shall cooperate in good faith to facilitate the approval and success of such petition. In such an instance, each party shall refrain

from taking any action that would directly or indirectly delay the annexation process or endanger the possible approval of the annexation petition by the Greene County, Ohio Board of Commissioners.

ARTICLE II

ZONING, UTILITIES, AND SERVICES

Section 2.1: Village Responsibilities. With the exception of the services set forth in Section 2.3 below, upon completion of the annexation, as between the Township and the Village, the Village shall be responsible for all zoning, law enforcement, utilities, and other municipal services routinely provided by the Village for the Annexation Parcel. The Township shall have no further right, duty, or obligation with respect to any such matters as they pertain to the Annexation Parcel. The parties recognize and agree that the Village has or will enter into a separate development agreement with the landowner and/or developer.

Section 2.2: Township Responsibilities. The Village shall not exclude the Township from any portion of the Annexation Parcel by initiating a change to the Township boundaries under Ohio Revised Code Section 503.07, so the Annexation Parcel remains subject to the Township's real property taxes, with the sole exception of the Township's road and bridge millage which may only be levied in the unincorporated portion of the Township. As the Village assumes full responsibility for the roadway maintenance of the entirety of Spillan Road upon annexation, no compensation is due to the Township for lost revenue as set forth in Ohio Revised Code Section 709.19 pursuant to Ohio Revised Code Section 709.192(C).

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Section 2.3: Fire and EMS. The parties currently participate in a joint fire/EMS district that provides fire and EMS services to the Annexation Parcel. From and after the Effective Date of this Agreement the parties shall continue to provide fire and EMS services to the Annexation Parcel in accordance with that current protocol.

Section 2.4: Limitations. Nothing in this Agreement shall be construed as obligating either party to provide a particular service, level of service, or financial commitment. Such matters shall be left to the further mutual agreement of the parties if necessary.

ARTICLE III

GENERAL PROVISIONS

Section 3.1: Support of Agreement. In the event that this Agreement, or any of its terms, conditions, or provisions, are 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 3.2: 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 3.3: 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 3.4: 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.

Section 3.5: 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 passed by each of the parties.

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Section 3.6: 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 3.7: 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 3.8: 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 townships under any provisions of the Ohio Revised Code.

Section 3.9: 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 3.10: 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 3.11: 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 3.12: 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 3.13: 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.

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Section 3.14: 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 Greene 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 identified below.

VILLAGE OF YELLOW SPRINGS

By:

Josue Salmeron, Village Manager

Date:

The undersigned Finance Director for the Village of Yellow Springs, Ohio certifies that the funds required to meet the financial obligations of the Village under this Annexation Agreement have been appropriated lawfully for that purpose, and are in the treasury of the Village 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.

By:

Finance Director

Date:

MIAMI TOWNSHIP, GREENE COUNTY, OHIO

By: By:

Mark Crockett, Miami Township Trustee Don Hollister, Miami Township Trustee

Date: Date:

APPROVED AS TO FORM:

By: By:

Breanne Parcels, Village Solicitor Anu Sharma, Greene County Assistant Prosecutor, as counsel for Miami Township

Date: Date:

ANNEXATION LEGAL DESCRIPTION VILLAGE OF YELLOW SPRINGS BEING PART OF A 42.3212 ACRE TRACT OF LAND OWNED BY KENNETH L. STRUEWING AND R. BETHEEN STRUEWING AS CONVEYED IN OFFICIAL RECORD 2474 PAGE 129 OF THE GREENE COUNTY DEED RECORDS AND PART OF A 6.700 ACRE TRACT OF LAND OWNED BY FRANK A. DODEN AND LORI J. ASKELAND AS CONVEYED IN OFFICIAL RECORD 3698 PAGE 246 OF THE GREENE COUNTY DEED RECORDS, SITUATED IN SECTION 19, TOWN 4, RANGE 8, M.R.S., MIAMI TOWNSHIP, GREENE COUNTY, OHIO AND BEING MORE FULLY DESCRIBED AS FOLLOWS: Commencing for reference at an iron pin found at the southwest corner of Lot 13 of the Southgate Plat No. 2 as recorded in Plat Cabinet 31 Page 202A-203A of the Greene County Plat of Records and the southeast corner of a tract of land owned by YSI Incorporated as recorded in Official Record Volume 2527 Page 500 of the Greene County Deed Records and being the point of beginning; thence, South 85°51'30" East, 1294.18 feet, along the south line of the said Southgate Plat No. 2, the south line of Hill Plat as recorded in Plat Cabinet 33 Page 58A-B of the Greene County Plat of Records, and the south line of a tract of land owned by Constance M. Richeson as recorded in Official Record Volume 902 Page 530 of the Greene County Deed Records, and the existing corporation line of the Village of Yellow Springs, to a Mag nail found at the southeast corner of said Richeson property on the centerline of Spillan Road; thence, South 85°51'30" East, 26.26 feet, along the extension of the south line of the said Richeson property, the existing corporation line, and through a tract of land owned by Frank A. Doden and Lori J. Askeland as recorded in Official Record Volume 3698 Page 246 to a point on the east right of way line of Spillan Road; thence, South 17°01'21" East, 736.91 feet, along the existing corporation line of Village of Yellow Springs and the east right of way line of Spillan Road, to a point at the intersection of the north right of way line of East Hyde Road and the east right of way line of Spillan Road; thence, South 66°50'50" West, 50.29 feet, leaving the existing corporation line of the Village of Yellow Springs, through the right of way of Spillan Road, to an iron pin set at the intersection of the west right of way line of Spillan Road and the north right

of way line of East Hyde Road; thence, South 59°02'56" West, 352.05 feet, along the north right of way line of East Hyde Road, to an iron pin set; thence, South 37°06'15" West, 444.28 feet, along the north right of way line of East Hyde Road, to an iron pin set on the north right of way line of East Hyde Road and the east line of a tract of land owned by Bonnie S. Werner as recorded in Official Record Volume 3552 Page 897 of the Greene County Deed Records; thence, North 02°19'46" East, 546.14 feet, along the east line of said Werner property, to an iron pin found at the northeast corner of said Werner property; thence, North 88°16'46" West, 75.75 feet, along the north line of said Werner property, to an iron pin found at the northwest corner of said Werner property and the northeast corner of a tract of land owned by David K. Chappelle as recorded in Official Record Volume 3677 Page 69 of the Greene County Deed of Records; thence, North 74°22'52" West, 174.92 feet, along the north line of said Chappelle property, to an iron pin found;

thence, North 84°02'57" West, 124.59 feet, along the north line of said Chappelle property, to an iron pin found;

thence, South 76°05'02" West, 189.98 feet, along the north line of said Chappelle property, to an iron pin found at the northwest corner of said Chappelle property and the northeast corner of a tract of land owned by Hydebrook Farms LLC as recorded in Official Record Volume 2473 Page 577 of the Greene County Deed Records;

thence, North 82°13'27" West, 957.76 feet, along the north line of said Hydebrook property, to an iron pin found at the southeast corner of a tract of land owned by Jerry Gasho Trust as recorded in Official Record Volume 3094 Page 387 of the Greene County Deed Records;

thence, North 23°05'59" East, 742.47 feet, along the east line of said Gasho property, to an iron pin found at the northeast corner of said Gasho property and on the south line of a tract of land owned by YSI Incorporated as recorded in Official Record Volume 2527 Page 500 of the Greene County Deed Records; thence, South 85°51'30" East, 272.13 feet, along the south line of said YSI Incorporated property, to the point of beginning.

Containing 33.816 acres more or less with all being subject to any legal highway and easements of record. Being 33.390 acres from the Struewing property as recorded in Official Record Volume 2474 Page 129 and 0.426 acres from the Doden/Askeland property as recorded in Official Record Volume 3698 Page 146.

The bearing of South 85°51'30" East along the south line of Southgate Plat No. 2 as recorded in Plat Book 31 Page 202A is based on NAD 83 CORS 96 adjustment, Ohio South Zone, ODOT VRS CORS Network. The above description was prepared by Allen J. Bertke, Ohio Professional Surveyor Number 8629, based on a field survey performed under his direct supervision and dated August 20, 2020.

08/20/2020

Allen J. Bertke, PS #8629 Date

PARCEL ID: 71900000180005800

