

ORDINANCE NO. 2022- 036

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO SIGN AN ANNEXATION AGREEMENT WITH FRANKLIN TOWNSHIP AS PART OF THE ANNEXATION OF PARCEL NO. 12-049-00-00-012-000 (6700 STATE ROUTE 43) INTO THE CITY'S JURISDICTIONAL BOUNDARIES, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent and Franklin Township have cooperated in numerous matters in order to foster and promote harmony and development within each of their respective jurisdictional areas; and

WHEREAS, Davey Tree Expert Company ("Davey" or "Petitioner") purchased Permanent Parcel No. 12-049-00-00-012-000, 6700 State Route 43, (the "Annexation Parcel") with the intention of using the Annexation Parcel as a research and development site. The Annexation Parcel is currently located in Franklin Township. Davey has expressed a desire to annex the Annexation Parcel into the City by following the annexation procedure, commonly known as Expedited Type 1 Annexation, as set forth in Sections 709.021 and 709.022 of the Ohio Revised Code; and

WHEREAS, in order for the Annexation Parcel to be annexed into the City through the Expedited Type 1 Annexation procedure, the City and Township must enter into either an annexation agreement or a cooperative economic development agreement; and

WHEREAS, the City and Franklin Township have worked together to negotiate an annexation agreement which contains terms and conditions agreeable to both communities (the "Annexation Agreement"), a copy of said Annexation Agreement is attached hereto as Exhibit "A"; and

WHEREAS, this Council has reviewed the Annexation Agreement, approves its terms and conditions, and hereby authorizes the City Manager to execute the Annexation Agreement; and

WHEREAS, it is necessary that this Ordinance take immediate effect as an emergency measure in order to ensure that Davey may promptly file a fully executed certified copy of the Annexation Agreement along with its Petition for Annexation of the Annexation Parcel into the City, and to ensure that Davey can immediately begin to enjoy the benefits associated with the Annexation Parcel being located in the City.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, that:


SECTION 1. Kent City Council hereby authorizes the City Manager, or his designee, to execute the Annexation Agreement with Franklin Township, attached hereto as Exhibit "A."

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.


SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council, this Ordinance is hereby

declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: April 20, 2022
Date


Jerry T. Fiala
Mayor and President of Council

EFFECTIVE: April 20, 2022
Date

ATTEST: 
Amy Wilkens
Clerk of Council

I, AMY WILKENS, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF ORDINANCE No. 2022-036, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON April 20, 2022.

(SEAL)


AMY WILKENS
CLERK OF COUNCIL

ANNEXATION AGREEMENT

This Annexation Agreement ("Agreement") is made and entered into on or as of the ___ day of March, 2022 (the "Effective Date" herein) by and between the Board of Trustees of Franklin Township, the legislative authority of and for Franklin Township, a political subdivision duly organized and validly existing under the laws of the State of Ohio ("Township" or "Franklin" herein), and the Council of the City of Kent, Ohio, the legislative authority of and for the City of Kent, 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 "Kent" 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 within Portage County, Ohio ("County" herein); and

WHEREAS, the Township and City have cooperated in numerous matters in order to foster and promote harmony and development within each of the Parties' respective jurisdictional areas; and

WHEREAS, Davey Tree Expert Company ("Davey" or "Petitioner") purchased Permanent Parcel No. 12-049-00-00-012-000, 6700 State Route 43, (the "Annexation Parcel") with the intention of using the Annexation Parcel as a research and development site. The Annexation Parcel is currently located in Franklin Township. Davey has expressed a desire to annex the Annexation Parcel into the City by following the annexation procedure, commonly known as Expedited Type 1 Annexation, as set forth in Sections 709.021 and 709.022 of the Ohio Revised Code; and

WHEREAS, in order for the Annexation Parcel to be annexed into the City through the Expedited Type 1 Annexation procedure, the City and Township must enter into either an annexation agreement or a cooperative economic development agreement ("CEDA"); and

WHEREAS, this Annexation 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 PROCEDURE

Section 1.1. Procedure. The Parties agree and consent to the following procedure:

- a. The Petitioner will file an annexation petition to annex the Annexation Parcel into the City in compliance with the provisions of the Expedited Type I annexation procedure contained in Sections 709.021 and 709.022 of the Ohio Revised Code.

- b. Immediately upon the City's acceptance of the Annexation Parcel into its municipal boundaries, the City will petition the Board of County Commissioners to exclude the Annexation Parcel from the Township pursuant to R.C. 503.07.

The Parties agree that upon completion of this procedure, the Annexation Parcel shall be treated and viewed as a part of the City for all purposes, and as such the Annexation Parcel will no longer remain subject to the Township's real property taxes or other tax levies.

Section 1.2. Cooperative Efforts, Consent, and No Objections to Procedure. The Parties shall cooperate in good faith to facilitate the completion of the procedure described in this Article. Consistent with the Parties' good faith efforts in that regard, each Party agrees to refrain from taking any action that would directly or indirectly delay the procedure described in this Article. For the avoidance of doubt, Township and City both expressly consent to, and affirmatively agree that they shall not file objections related to, the Petitioners petition for annexation of the Annexation Parcel into the City and/or the City's exclusion of the Annexation Parcel from the Township, as set forth in this Article.

ARTICLE 2 SERVICES TO THE ANNEXATION PARCEL

Section 2.1. Contribution of Services. Upon completion of the procedure set forth in Article 1, the City shall furnish to the Annexation Parcel all of the customary governmental services furnished by the City to other areas of the City including, but not limited to, public utilities (water and sewer), street maintenance, police, fire, and Emergency Medical Technician resources.

The Parties further agree that, upon completion of the procedure set forth in Article 1, the Township shall have no obligation to provide any governmental services to the Annexation Parcel.

ARTICLE 3 REIMBURSEMENT AND REVENUE SHARING

Section 3.1. Reimbursement and Revenue Sharing. In consideration of the mutual promises contained herein and the Township's consent to the procedure set forth herein, the City shall reimburse the Township as follows:

- a. Reimbursement of real property taxes foregone as a result of annexation for the period of time between approval of Petitioner's annexation petition and when a certificate of occupancy is issued and income taxes begin to be collected. For context, the Parties understand that the amount of real property taxes that the Township would have received for 2020 on the Annexation Parcel, paid in 2021, was \$5,228.07. The Petitioner anticipates being fully operational on the Annexation Parcel in the second half of 2025.

- b. From the first full year that income taxes begin to be collected on the Annexation Parcel (likely 2026 tax year) and for the next nine years thereafter (for a total of ten years), City will reimburse Township an amount equal to forty five percent (45%) of the gross amount of income taxes actually collected by City from the net profits of any business located on and from persons working on the Annexation Parcel. Applying this formula to the estimates provided by Petitioner, the Parties estimate the annual sum paid by City to Township will be approximately \$22,500.00.

ARTICLE 4 TERM OF AGREEMENT

Section 4.1. Term. The obligations set forth within this Agreement shall terminate upon City's completion of the reimbursement obligations set forth in Article 3, except that the Parties' continued consent to the annexation of the Annexation Parcel into the City and the Annexation Parcel's exclusion from the Township shall survive in perpetuity.

ARTICLE 5 GENERAL PROVISIONS

Section 5.1. 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 5.2. 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 5.3. Dispute Resolution. 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 prior to any party filing a lawsuit.

Section 5.4. Default. A failure to comply with the terms of this Agreement shall constitute a default hereunder. The Party in default shall have thirty (30) 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 5.5. 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. 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 5.6. 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 5.7. 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 5.8. 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 5.9. 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 5.11. 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 5.12. 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 5.13. 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: Franklin Township Board of Trustees
Attention: Township Administrator
218 Gougler Ave.
Kent, OH 44240

(b) The City at: City of Kent
Attention: City Manager
301 S. Depeyster Street
Kent, OH 44240

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 5.14. 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 5.15. 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 5.16. 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 Portage 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.

[Signature Page to follow]

ATTEST:

**THE CITY OF KENT,
PORTAGE COUNTY, OHIO**

Council Clerk

By: _____
Dave Ruller, City Manager

APPROVED AS TO FORM:

Hope Jones, Law Director

ATTEST:

**FRANKLIN TOWNSHIP
PORTAGE COUNTY, OHIO**

Scott Swan, Franklin Twp. Trustee

Kellie Kapusta, Franklin Twp. Trustee

Glenn Russell, Franklin Twp. Trustee

APPROVED AS TO FORM:

Brett R. Bencze, Assistant Prosecutor

FISCAL OFFICER CERTIFICATION

The undersigned Director of Finance of the City of Kent, 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.

Rhonda Hall, Director of Finance
City of Kent