

RESOLUTION NO. 45-2015

Offered by All of Council

A RESOLUTION RATIFYING THE FILING OF A GRANT APPLICATION AND AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ACCEPT FUNDING AND ENTER INTO A JOBS AND COMMERCE ECONOMIC DEVELOPMENT AGREEMENT ON BEHALF OF THE VILLAGE OF RICHFIELD WITH THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, FOR THE KINROSS LAKES PARKWAY EXTENSION PROJECT, AND DECLARING AN EMERGENCY

WHEREAS, the Village of Richfield has been planning construction of further road improvements to support extending Kinross Lakes Parkway, 400 feet south of Wheatley Road, known as the Kinross Lakes Parkway Extension Project ("Project") which Project is estimated to total some \$557,800.00; and

WHEREAS, Section 5501.03(A)(3) of the Ohio Revised Code ("ORC") provides that the State of Ohio, Department of Transportation ("ODOT") may coordinate its activities with those of other appropriate state departments, public agencies, and authorities, and enter into any contracts with such departments, agencies, and authorities as may be necessary to carry out its duties, powers, and functions; and

WHEREAS, ORC Section 5501.11(A)(4) states that ODOT, with respect to highways, shall cooperate with the counties, municipal corporations, townships, and other subdivisions of the State in the establishment, construction, reconstruction, maintenance, repair, and improvement of the public roads and bridges; and

WHEREAS, funding is being made available for the Project by ODOT, through the Jobs and Commerce Economic Development Program ("JCED"); and

WHEREAS, the Village, therefore, is desirous of accepting such funds from the State of Ohio, Department of Transportation, in the amount of \$75,000.00, in order to assist with the cost of extending Kinross Lakes Parkway 400 feet south of Wheatley Road.

NOW THEREFORE, BE IT RESOLVED, by the Council of the Village of Richfield, County of Summit, State of Ohio:

SECTION 1. That this Council hereby ratifies, confirms and approves the filing of the Village's application for funds from the State of Ohio, Department of Transportation, Jobs and Commerce Economic Development Program.

SECTION 2. That the Mayor and the Finance Director be and they hereby are authorized and directed to accept such funds in the amount of \$75,000.00 from the State of Ohio, Department of Transportation, on behalf of the Village of Richfield, and to enter

into a Jobs and Commerce Economic Development Agreement in substantially the form attached hereto as Exhibit A.

SECTION 3. That the Mayor and the Finance Director be and they hereby are authorized to do all other things necessary to perform the terms and conditions required by the State of Ohio, Department of Transportation, for such funding for the extension of Kinross Lakes Parkway 400 feet south of Wheatley Road, in accordance with their respective responsibilities thereunder.

SECTION 4. That the Village's portion of costs for the Project shall be paid from the Village's Fund.

SECTION 5. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution 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 including Section 121.22 of the Ohio Revised Code.

SECTION 6. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare, and for the further reason that it is immediately necessary in order to promote jobs and economic development within the Village, to provide for safe flow of traffic within the Village, to meet grant requirements and deadlines, and conserve public funds at the earliest possible time; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 7-7-15

*Rick D. ...*  
President of Council

*Robin ...*  
Mayor

Dated: 7/7/15

ATTEST:

*Carol ... Sullivan*  
Clerk of Council

**JOBS AND COMMERCE ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION AND  
VILLAGE OF RICHFIELD**

**THIS AGREEMENT** is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the Village of Richfield, 4410 W. Streetsboro Rd., PO Box 387, Richfield, OH 44286 (hereinafter referred to as the VILLAGE).

1. PURPOSE

- 1.1 Section 5501.03(A)(3) of the Ohio Revised Code (ORC) provides that ODOT may coordinate its activities with those of other appropriate state departments, public agencies, and authorities, and enter into any contracts with such departments, agencies, and authorities as may be necessary to carry out its duties, powers, and functions.
- 1.2 ORC § 5501.11(A)(4) states the department of transportation with respect to highways shall cooperate with the counties, municipal corporations, townships, and other subdivisions of the state in the establishment, construction, reconstruction, maintenance, repair, and improvement of the public roads and bridges.
- 1.3 The VILLAGE is extending Kinross Lakes Parkway 400 feet south of Wheatley Road to aid the new construction of Nexen Tire (hereinafter referred to as the PROJECT). The ODOT program funds identified in this agreement are to be utilized for improvements to extension of Kinross Lakes Parkway.
- 1.4 The purpose of this Agreement is to set forth the responsibilities of the parties associated with the Jobs & Commerce Economic Development ("JCED") program funding (SAC 4JC7) that is being made available for the PROJECT by ODOT.
- 1.5 The VILLAGE shall comply with all applicable Federal and State laws, regulations, and applicable executive orders in regards to the PROJECT. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

2. FUNDING AND PAYMENT

- 2.1 The total cost for the PROJECT is estimated to be **\$557,800** as set forth below. Funds provided through ODOT shall be applied only to the eligible costs associated with the actual construction of the PROJECT improvements and construction engineering/inspection activities.

ODOT Jobs & Commerce ED Program Funds	\$75,000
DSA 629	\$125,000
Local Fund Source(s)	\$357,800
<b>TOTAL</b>	<b>\$557,800</b>

- 2.2 Funds provided by ODOT shall not exceed \$75,000 or 13 percent of the total PROJECT cost, whichever is the lesser amount. The VILLAGE shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and contractor claims.
- 2.3 All funding from ODOT under this Agreement operates on a reimbursement basis. The VILLAGE shall review and/or approve all invoices for materials, equipment and labor prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT.
- 2.4 The VILLAGE shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The VILLAGE must submit to ODOT a written request for reimbursement of the state share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted. The VILLAGE may submit a maximum of two requests for reimbursement at quarterly intervals. The deadline for the final reimbursement request is December 31, 2016.
- 2.5 Reimbursement to the VILLAGE shall be submitted to:

Village of Richfield  
 Director of Planning, Zoning and Economic Development  
 Brian Frantz  
 4410 W. Streetsboro Rd.  
 PO Box 387  
 Richfield, OH 44286-0387  
 (330) 659-9201

3. PROJECT DEVELOPMENT AND DESIGN

- 3.1 The VILLAGE is administering this PROJECT and is responsible for all aspects of the project, including but not limited to: environmental responsibilities, permit requirements, right of way or utility reimbursement, and construction contract administration.
- 3.2 Any right, claim, interest, and/or right of action, whether contingent or vested, of the VILLAGE, arising out of or related to any contract entered into by the VILLAGE for the work to be performed

by the Contractor on this PROJECT is the responsibility of the VILLAGE. ODOT expressly rejects any liability for the PROJECT and any claims arising from the PROJECT.

#### 4. CERTIFICATION AND RECAPTURE OF FUNDS

4.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

4.2 If for any reason the PROJECT is found to not be in compliance with all applicable local, state, or federal rules and processes the VILLAGE shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT.

#### 5. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

5.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the Revised Code.

5.2 The VILLAGE hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the VILLAGE's obligations made or agreed to herein.

#### 6. NOTICE

6.1 Notice under this Agreement shall be directed as follows:

If to the VILLAGE:

Village of Richfield  
Director of Planning, Zoning and  
Economic Development  
Brian Frantz  
4410 W. Streetsboro Rd.  
PO Box 387  
Richfield, OH 44286-0387

If to ODOT:

Christina Wagner, Regional Manager  
Office of Jobs & Commerce, ODOT  
2208 S Arlington Rd  
Akron, OH 44306  
(330)786-3122

#### 7. GENERAL PROVISIONS

7.1 *Record Retention:* The VILLAGE when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its books, documents, and records relating to the VILLAGE's obligations under this

Agreement. All such books, documents, and records shall be kept for a period of at least three years. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute.

- 7.2 *Ohio Ethics Laws:* VILLAGE agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.
- 7.3 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the VILLAGE hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 7.4 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 7.5 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 7.6 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 7.7 *Term of Agreement:* This Agreement shall be in effect from the last day executed by the parties through the date which is three (3) years after the Project Completion Date. VILLAGE acknowledges that the Term extends beyond the Project Completion Date for purposes of reporting by the VILLAGE and monitoring by Grantor of the results of the award of Grant Funds.
- 7.8 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

**MAYOR OF RICHFIELD  
OR AUTHORIZED REPRESENTATIVE**

**STATE OF OHIO  
OHIO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Jerry Wray  
Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_