

RESOLUTION NO. 07-2009

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE SUMMIT COUNTY INTERGOVERNMENTAL MEMORANDUM OF UNDERSTANDING FOR JOB CREATION AND TAX REVENUE SHARING, AND DECLARING AN EMERGENCY.

WHEREAS, job losses result in social and human costs which can be a significant burden to the area, the region and the State, and

WHEREAS, the County of Summit (“County”) and communities throughout Summit County including the Village of Richfield recognize that it is imperative to cooperate and collaborate with each other for the economic benefit of the region and it’s resident tax-payers in order to attract and retain businesses and jobs; and

WHEREAS, there are many current and prospective employers who desire to remain or locate in Summit County; and

WHEREAS, the County, communities and the Village of Richfield recognize that cooperation is necessary for regional prosperity and enhancement of the local tax base and to successfully compete in global markets; and

WHEREAS, the County works with employers, prospective employers and individual communities within Summit County to provide tax and other incentives for purposes of retaining and locating prospective employers and facilities in communities within Summit County including the Village of Richfield; and

WHEREAS, the County and communities throughout Summit County including the Village of Richfield desire to execute the Summit County Intergovernmental Memorandum of Understanding for Job Creation and Tax Revenue Sharing for the purposes of discouraging business poaching between communities, providing for revenue sharing between signatory communities in the event certain businesses relocate, and to provide certain economic development grant scoring incentives to signatory communities; and

WHEREAS, the County and communities do not desire to have any adverse impact on a business or company’s decision to locate or relocate within Summit County but merely wish to address the relationship of government bodies that may be affected by those independent business decisions; and

WHEREAS, this Council, after reviewing all pertinent information , has determined that it is necessary and in the best interests of the Village of Richfield to authorize the Mayor to execute the Summit County Intergovernmental Memorandum of Understanding.

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

SECTION 1. The Mayor is hereby authorized to execute the Summit County Intergovernmental Memorandum of Understanding for Job Creation and Tax Sharing , attached hereto as Exhibit A, and incorporated as if fully rewritten herein, on behalf of the Village of Richfield, County of Summit, State of Ohio.

SECTION 2. This Resolution is hereby declared to be an emergency measure necessary for the preservation of the public health, safety and welfare of the residents of the Village of Richfield, County of Summit, State of Ohio and for the further purpose of allowing the Memorandum of Understanding to be immediately signed by the Mayor and other participating communities.; 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 adoption and approval by the Mayor (or Board of Township Trustees); otherwise it shall take effect and be in force at the earliest time provided by law.

SECTION 3. 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.

PASSED: 4/21/09

  
\_\_\_\_\_  
President of Council

  
\_\_\_\_\_  
Mayor

Dated: 4/21/09

ATTEST:

  
\_\_\_\_\_  
Clerk of Council

**SUMMIT COUNTY INTERGOVERNMENTAL MEMORANDUM  
OF UNDERSTANDING FOR JOB CREATION AND  
RETENTION AND TAX REVENUE SHARING**

**WHEREAS**, job losses result in social and human costs which can be a significant burden to the area, the region and State, and

**WHEREAS**, the County of Summit and communities throughout the County recognize that it is imperative to cooperate and collaborate with each other for the economic benefit of the region and its resident-taxpayers in order to attract and retain businesses and jobs; and

**WHEREAS**, there are many current and prospective employers who desire to remain or locate in the County of Summit; and

**WHEREAS**, the communities further recognize that cooperation is necessary for regional prosperity and enhancement of the local tax base and to successfully compete in global markets; and

**WHEREAS**, the County of Summit, hereinafter "County", works with employers, prospective employers and individual communities within the County to provide tax and other incentives for purposes of retaining and locating prospective employers and facilities in communities within the County; and

**WHEREAS**, the communities further recognize that active attempts to relocate businesses from other local communities has a negative effect on economic development and growth in the region; and

**WHEREAS**, this agreement is not intended to have any adverse impact on a business or company's decision to locate or relocate within the County but merely addresses the relationship of government bodies that may be affected by those independent business decisions; and

**WHEREAS**, unincorporated areas within the County that are not a partner in a Joint Economic Development District (JEDD) shall not be subject to the revenue sharing provisions of this agreement, either as a departing community or incoming community. However, those same communities shall receive the 5% additional points on grant application(s) and be subject to deduction of points on grant applications as more fully set forth herein.

**NOW THEREFORE**, the County and the communities who are signatories herein have reached an understanding concerning their joint and respective interests touching upon a mutual desire to retain and attract businesses and jobs. As a result, the parties agree as follows:

**SECTION 1.** The signatory communities agree to adhere to a Model Code of Conduct which is attached to this Agreement and made a part hereof as if fully re-written herein. Communities offering any economic incentive or other inducement to potential employers and/or businesses presently located within another signatory community may do so as specified herein.

**SECTION 2.** The relocation of an employer or business between signatory communities, regardless of whether or not the re-locating community offered any economic incentive or other inducement, shall trigger tax revenue sharing as set forth herein. Said tax revenue sharing shall be triggered by either of the following events: (1) the business which relocated was significant to the tax base of the community where the employer or business is departing. A significant revenue loss to the departing community will occur if the departing employer/ business had either a \$3.5 million dollar or larger inflation-adjusted annual payroll or constituted 5% or more of the income tax revenue of the departing community; or (2) the employer or business which relocated was the beneficiary of any economic incentive(s) or other financial assistance from the community to which it relocated.

**SECTION 3.** Revenue sharing shall be determined on a case by case basis with due consideration for the individual circumstances and other relevant factors particular to each case. It shall first be the obligation of the signatory communities to attempt to agree between themselves on revenue sharing obligations. The signatory communities shall use the formulas and other criteria as set forth in this Agreement as broad parameters in their negotiations. In the event the communities cannot agree if a business relocation was caused by economic incentives or other financial assistance offered by the community to which a business relocated and/or the amount of revenue sharing due under this Agreement, or any other matter under this Agreement, a determination shall first be made by the District Eight Public Works Integrating Committee of the Ohio Public Works Commission (hereinafter "Committee"). Any signatory community may petition the Committee for a hearing by sending notice to all current members or their designees and a copy of the hearing request to the County Executive. The Director of the County Department of Community and Economic Development shall set a meeting of the Committee within sixty (60) days of receipt of notice. No committee member may participate in such a determination if their community is a party to the hearing. Each party shall be afforded a reasonable opportunity to present evidence and arguments on behalf of the position of their community. Determinations by the Committee shall be by majority vote of those present subject to quorum and other applicable rules for the routine conduct of Committee business.

Any community which disagrees with the determination of the Committee may, within sixty (60) days of the Committee determination, submit a demand to present any matter(s) for determination to arbitration pursuant to Chapter 2711 of the Ohio Revised Code. The party requesting submission of the matter to arbitration must set forth a demand for arbitration to all other signatory communities and the County Executive. All demands for arbitration must be sent by certified U.S. mail, return receipt requested, and must set forth the subject of the dispute and recite that the matter has been duly submitted to and a determination made by the Committee. The County shall select one arbitrator and an arbitrator shall be selected by each community which is a party to the dispute as permitted by R.C. 2711.04.

Every arbitrator selected shall be an attorney duly licensed to practice law in the State of Ohio. All arbitration hearings shall be held in the County of Summit, Ohio, at a mutually agreeable time and place and any award or decision of the arbitrators shall be reduced to writing. The participating communities shall equally share the costs of the arbitration, including the cost of all arbitrators.

**SECTION 4.** Should revenue sharing be deemed appropriate under this Agreement, the recommended approach would be a two tier model as more fully set forth below:

**Tier One.** Tier One covers projects defined as those with less than \$3.5 million in total, inflation adjusted income payroll and less than 5% of the income tax revenue of the departed community and would require the relocating business being the beneficiary of economic incentives or financial assistance from the community to which it relocated.

Tier One projects would share 40% of the total income tax revenue received by the destination community in the first year with the departing community, 30% in the second year and 20% in the third year.

**Tier Two.** Tier Two covers projects defined as those with more than \$3.5 million in total, inflation adjusted income payroll or more than 5% of the income tax revenues of the departed community. Tier Two projects would share 50% of the total income tax revenue received by the destination community in the first year, 40% in the second year, 30% in the third year, 20% in the fourth year and 10% in the fifth year.

Computation(s) undertaken with any of the above formulas shall use the tax base/revenues of the old (departing) community and shall not be based upon the tax base/revenues of the new (destination) community excepting when the business is relocating for purposes of consolidation or otherwise downsizing in which event the tax base/revenues shall be based upon new (incoming) community when determining computations under the above formulas.

It is acknowledged by the signatory communities that the above formula(s) are general and illustrative and deviation may be agreed upon between the communities in any dispute resolution hearing.

**SECTION 5.** Except as otherwise provided herein, this Agreement sets forth the exclusive rights of the communities concerning business relocations and tax revenue sharing between and among themselves and limits any and all claims for legal relief to the monetary remedies and grant fund inducements set forth herein. The parties waive any and all claims to injunctive or other equitable relief which could or might be asserted hereunder. **It is further acknowledged that this Agreement is only between the communities and may not be used to prohibit, impede, delay or otherwise encumber any business/employer from moving or relocating.** This Agreement may not be used to assert any claim or cause of action in law or equity against or on behalf of any business/employer arising from or due to any decision to relocate.

**SECTION 6.** When a business with a \$3.5 million dollar or larger inflation adjusted annual payroll or a business which constitutes 5% or more of the income tax revenue of a community departs and relocates to another signatory community, the departing community must provide the relocated community with notice of a claim for tax sharing under this Agreement. Such notice must be sent on or before 180 days of the employer or business's last payroll tax filing with the departed community. Notice must be sent by personal delivery or U.S. certified mail and notice shall also be served upon the County.

**SECTION 7.** This Agreement is subject to the legislative approval of all participating communities including County.

**SECTION 8.** The County of Summit shall act as facilitator of the provisions of this Agreement and shall: (1) assist the signatory communities in applying for and participating in any state or federal programs or other eligible grant fund programs which may be offered to communities for economic assistance; (2) County shall assist in any dispute resolution offered under this Agreement including offering mediation to signatory communities; (3) County shall also be noticed or sent copies of any notices required under this Agreement. The Director of Community and Economic Development of the County of Summit shall be designated as the person to receive any notice required under this Agreement unless otherwise specified herein.

**SECTION 9.** The County, in addition to other duties set forth above, will offer signatory communities opportunities to score an additional 5% of total possible points on applications for SCIP/LTIP, CDBG funding, Job Ready Sites, Industrial Site Improvement Funding, and other application mechanisms that are administered or scored by the County, beginning with Fiscal Year (FY) 2010 projects, providing approval for the same has been granted or given by the necessary grantor agencies. This incentive structure has been approved by the Ohio Public Works Commission for SCIP/LTIP funding.

If a signatory community has been determined to have caused a business or employer to relocate from another signatory community by offering economic incentive(s) or other financial inducements then a penalty on the above development programs shall apply. The community determined to have caused a business relocation will have a deduction of 5% of the total possible points on each application for the above cited programs which are administered and/or scored by the County. Said deduction shall last for a period of two (2) years from the final determination that a signatory community offered economic incentive(s) or financial assistance to induce an employer to relocate from another signatory community.

**SECTION 10.** All signatories to this Agreement agree to participate in a review of this Agreement once per year to consider any modifications, alterations or other changes which the signatories may find necessary or desirable. Any change or modification to this Agreement must be approved by the legislative body of each participating community. A community electing to withdraw from this Agreement shall provide at least one hundred eighty (180) days advanced notice, in writing, to



Name and Title

Date

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Name and Title

Date

**MODEL CODE OF CONDUCT OF SIGNATORY  
COMMUNITIES**

1. The signatory communities recognize that active attempts to entice businesses from other local communities by offering economic incentives or direct financial assistance has a potential negative impact on economic development and job growth for the County and agree not to engage in such practices.
2. The signatory communities recognize that in a free marketplace employers and business can and will relocate. This Agreement concerns only jobs and businesses locating from one Summit County signatory community to another Summit County signatory community. Jobs and businesses relocating from outside of Summit County do not qualify for tax revenue sharing under this Agreement.
3. The signatory communities recognize that good faith efforts to fulfill their rights and obligations between themselves are essential to successful job creation/retention and revenue sharing. This includes the obligation to provide timely notice to fellow communities and the County as required under this Agreement, accurate disclosure of financial data, tax information and other matters and the prompt sharing of tax revenues which may be due pursuant to this Agreement.
4. This Agreement does not prohibit or otherwise limit the signatory communities from entering into Agreements between themselves concerning job creation/retention or revenue sharing. This Agreement does not abrogate any existing Agreement between the communities.
5. The signatory communities agree to participate in good-faith negotiations to resolve disputes and cooperatively participate in mediations and other dispute resolution mechanisms which may be required from time to time.
6. When considering changes or modifications to this Agreement, due consideration will be given to the needs and welfare of all signatory communities.

7. The signatory communities will not attempt to circumvent their obligations imposed hereunder by means of subterfuge, the use of third party intermediaries or other methods.