

RESOLUTION NO. 56-2008

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH THE COUNTY OF SUMMIT, RICHFIELD TOWNSHIP, WATER & SEWER, LLC AND RICHFIELD FURNACE RUN, LLC CONCERNING THE PROVISION OF WATER TO THE BRIARWOOD WATER SERVICE AREA AND DECLARING AN EMERGENCY

WHEREAS, on September 11, 2008, this Council passed Resolution No. 49-2008 entitled “A Resolution Authorizing The Mayor And The Finance Director To Enter Into An Agreement With The County Of Summit, Richfield Township, Water & Sewer, LLC And Richfield Furnace Run, LLC Concerning The Provision Of Water To The Briarwood Water Service Area and declaring an emergency”; and

WHEREAS, subsequent to the passage of Resolution No. 49-2008, there have been additional comments and revisions to the Agreement; and

WHEREAS, this Council wishes to approve the revised Agreement; and

WHEREAS, this Council wishes to repeal Resolution No. 49-2008, which approved the prior version of the Agreement.

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

SECTION 1. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into an Agreement with the County of Summit, Richfield Township, Water & Sewer, LLC and Richfield Furnace Run, LLC to provide water to the Briarwood Service Area, substantially in the form of the Agreement which is attached hereto as Exhibit “A” and incorporated herein fully as if by reference, the final form of which Agreement shall be subject to the approval of the Village Law Director, with the dates to be determined by the Mayor and Law Director at the earliest possible time.

SECTION 2. That Resolution No. 49-2008, passed September 11, 2008, which Resolution approved the prior version of the Agreement, be, and the same hereby is, repealed.

SECTION 3. 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 provide potable water to the Briarwood Water Service Area 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: 9/25/08



President of Council



Mayor

Dated: 10/1/08

ATTEST:



Clerk of Council

AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2008, by and among the VILLAGE OF RICHFIELD (“Richfield Village”), COUNTY OF SUMMIT (“Summit”), RICHFIELD TOWNSHIP (“Township”), WATER AND SEWER LLC (“LLC”) and RICHFIELD FURNACE RUN, LLC (“Furnace Run”).

WHEREAS, the City of Cleveland and Richfield Village entered into a Water Service Agreement dated April 16, 1982, known as Cleveland Contract No. 32095 as set forth in Exhibit “A”; and

WHEREAS, the City of Cleveland and Summit have entered into a Direct Service Agreement dated May 17, 1994, known as Cleveland Contract No. 47291 as set forth in Exhibit “B”; and

WHEREAS, LLC owns and operates a private water service company regulated by the Public Utilities Commission of Ohio (“PUCO”) providing water in both Richfield Village and Richfield Township; and

WHEREAS, Furnace Run owns property in Richfield Township, a legal description of which is attached hereto as Exhibit “C” and incorporated herein fully as if by reference (the “Furnace Run Property”) and is desirous of being assured that Richfield Township consents that water lines can be extended throughout its property to provide water to future development in the its property and to provide water for future residential development in the Furnace Run Property; and

WHEREAS, all parties agree to the establishment of that water lines may be extended in Richfield Township into the Briarwood Water Service Area set forth as Exhibit “CD” attached hereto and referred to the Briarwood Water Service Area; and

WHEREAS, the Township wishes to be assured that water lines cannot be extended beyond the Briarwood Water Service Area without prior Township approval; and

WHEREAS, LLC is willing to transfer ownership of its water lines in both Richfield and Richfield Township under the terms and conditions set forth herein; and

WHEREAS, Richfield Village is willing to accept ownership of the water lines under the terms and conditions set forth herein; and

WHEREAS, the Third Expansion Map identified as Exhibit A to the memorandum of understanding between the Village of Richfield and County of Summit, known as the Third Expansion of Water Service Area of Contract 47291 in Richfield Township, Summit County, Ohio, is attached for the sole purpose of depicting the Briarwood Service Area which is identified in yellow on such map. Such map should be used for no other purpose and the accuracy of any other designation or legend has not been confirmed by the parties and therefore should not be relied on for any other purpose; and

WHEREAS, Cleveland and County of Summit have entered into a Memorandum of Understanding of even date herewith whereby Cleveland and Summit have agreed to expand the service area into the Briarwood Water Service Area, a copy of which Memorandum of Understanding is attached hereto as Exhibit “~~DE~~”; and

WHEREAS, Richfield Village and Summit have entered into a Memorandum of Understanding of even date herewith whereby Richfield Village has agreed to undertake all of Summit’s rights, duties and obligations in the Briarwood Water Service Area under the Direct Service Agreement dated May 17, 1994 between Cleveland and Summit set forth as Exhibit “B” attached hereto, a copy of which Memorandum of Understanding between Richfield Village and Summit is attached hereto as Exhibit “~~EF~~”; and

WHEREAS, all parties agree to the expanded Briarwood Water Service Area as described in Exhibit “~~DE~~” attached hereto.

NOW, THEREFORE, IT IS HEREBY AGREED by and among the parties:

1. Not later than _____, 20____, LLC shall, at its own cost, construct a connection as approved by the standards of the City of Cleveland, Department of Utilities, Water Division between the existing terminus of the Village of Richfield water lines in Streetsboro Road and LLC’s water lines in Sawbridge Road.

2. After construction of the connection and verifying that the lines are operational, but not later than _____, 20____, LLC shall transfer, without cost, the ownership all of its water lines and appurtenances in including, but not limited to Burrwood Drive, Briarwood Drive, Scanwood Drive and Sawbridge Drive and Streetsboro Road to Richfield Village. The foregoing transfer represents the transfer of all of LLC’s water lines and will terminate the water utility franchise.

3. Thereafter, Cleveland, pursuant to its contract with Richfield (Exhibit “A”) and its Memorandum of Understanding with County of Summit (Exhibit “~~ED~~”) shall provide water through Richfield Village’s water lines to the areas formerly served by LLC in Richfield Village and Richfield Township and all of LLC’s current customers as well as areas to be served in the future under the expanded Water Service Area known as the Briarwood Water Service Area attached hereto as Exhibit “~~CD~~.” Richfield Village agrees that it will not withhold the provision of future water service to Township residents within the Briarwood Service Area in order to compel annexation of such areas to the Village. Such representation, however, will not prohibit the Village from consenting to, or any property owner in the Briarwood Service Area requesting annexation from the Township to the Richfield Village.

4. Furnace Run shall be entitled to have Cleveland water service extended to its property in the Briarwood Water Service Area (Exhibit “~~CD~~” attached hereto) provided it shall construct the service lines in accordance with the standards of the City of Cleveland, Department of Utilities, Water Division and shall, upon acceptance of construction, transfer, without cost, ownership of the water lines to Richfield Village. Furnace Run shall not need to obtain permission of Richfield Township to extend the lines in Township roads prior to construction for residential purposes. By the Township entering into this Agreement, the Township is, in no way,

consenting to or representing that it is approving of or authorizing any development of the Furnace Run property.

5. Any future maintenance of the water lines shall be provided per the Memoranda of Understanding (Exhibits “DE” and “EF” attached hereto).

6. The rates charged by Cleveland for water service in the Briarwood Service Area shall be governed by the Memorandum of Understanding between the City of Cleveland and County of Summit as set forth in Exhibit DE attached hereto.

7. Not later than _____, 20____, LLC shall dismiss, with prejudice, that portion of its current application before the Public Utilities Commission of Ohio, being Case No. _____, dealing with water rate increases and shall further take all necessary steps to terminate its operation as a public utility in Ohio for the purposes of water only. LLC may, until further agreement, continue its operation as a public utility providing sewer service in Ohio.

8. Should LLC fail to construct the connection as set forth in Paragraph 1 within the timeframe set forth in Paragraph 1, Richfield Village may construct the connection and LLC shall pay all of Richfield Village’s costs in connection with construction of the connection.

9. All individuals signing this Agreement represent that their signatures are their free act and deed and that they have been so authorized to execute this Agreement by the entity on whose behalf they are executing this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have set their hands as of the date and place first above written.

VILLAGE OF RICHFIELD

By: _____
Michael K. Lyons, Mayor

And: _____
Eleanor Lukovics, Finance Director

As authorized by Resolution No. ____-2008
passed _____, 2008

APPROVED AS TO LEGAL FORM

Charles T. Riehl, Law Director

COUNTY OF SUMMIT

By: _____
Russell M. Pry, County Executive

As authorized by Resolution No. _____
passed _____, 2008

APPROVED AS TO LEGAL FORM

Richard E. Dobbins, Law Director
County of Summit

WATER AND SEWER LLC

By: _____
Its _____

RICHFIELD FURNACE RUN, LLC

By: _____
Its _____

RICHFIELD TOWNSHIP

By: _____
Trustee

By: _____
Trustee

By: _____
Trustee

FISCAL OFFICER'S CERTIFICATE

The undersigned Director of Finance of the Village of Richfield, Ohio, hereby certifies that the monies required to meet the obligations of such Village during the fiscal year 2008 under the foregoing Agreement by and among the Village, the City of Cleveland, Richfield Township, Summit County and Water and Sewer LLC have been lawfully appropriated by the Council of such Village for such purposes and are in the Treasury of such Village or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances.

Date: _____

Eleanor Lukovics, Director of Finance
Village of Richfield

FISCAL OFFICER'S CERTIFICATE

The undersigned Fiscal Officer of the County of Summit, Ohio, hereby certifies that the monies required to meet the obligations of the County of Summit during the fiscal year 2008 under the foregoing Agreement by and among the County of Summit, the Village of Richfield, Richfield Township, the City of Cleveland and Water and Sewer LLC have been lawfully appropriated by the Council of the County of Summit for such purposes and are in the Treasury of the County of Summit or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances.

Date: _____

Fiscal Officer
County of Summit