

RESOLUTION NO.

79-2006

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A SETTLEMENT AGREEMENT AND GENERAL RELEASE WITH CIOFFI & SON CONSTRUCTION, INC. FOR THE BRECKSVILLE ROAD RECONSTRUCTION PROJECT AND DECLARING AN EMERGENCY

WHEREAS, litigation was commenced in the Summit County Common Pleas Court, entitled *Cioffi & Son Construction, Inc. v. Village of Richfield*, being Summit County Court of Common Pleas Case No. 2006-01-0197; and

WHEREAS, Cioffi and the Village each desire to resolve the differences between them and to avoid the uncertainty, expense and inconvenience of continued litigation as well as terminate all matters in the controversy; and

WHEREAS, for the sake of resolution of the differences between both parties, both Cioffi and the Village wish to enter into a Settlement Agreement and General Release; and

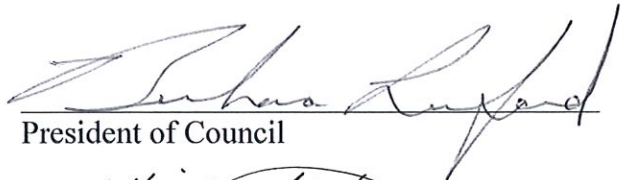
WHEREAS, the Law Director has recommended to Council the Settlement Agreement and General Release.

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 a Settlement Agreement and General Release with Cioffi & Son Construction, Inc., a copy of which is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. 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 terminate expensive litigation 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: 11/7/06



President of Council

ATTEST:


Clerk of Council



Mayor
Dated: 11/9/06

FRANTZ WARD LLP
ATTORNEYS AT LAW

Council set
RECEIVED AUG 09 2007

2500 KEY CENTER, 127 PUBLIC SQUARE • CLEVELAND, OHIO 44114-1230 • 216.515.1660 • FAX 216.515.1650
www.frantzward.com
(216) 515-1602 • ANDREW J. NATALE • anatale@frantzward.com

August 8, 2007

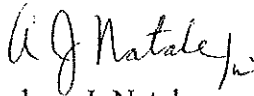
Charles T. Riehl, Esq.
Walter & Haverfield LLP
The Tower at Erieview
1301 East Ninth Street
Suite 3500
Cleveland, OH 44114-1821

Re: *Cioffi & Son Construction, Inc. v. Village of Richfield*

Dear Chuck:

I have enclosed two originals of Cioffi's executed counterpart of the Agreement dated July 27, 2007. I understand that Dominic Cioffi will be working directly with the Village's representatives to schedule the remediation work. As always, thank you for your courtesy and cooperation in getting this matter resolved.

Sincerely,


Andrew J. Natale

AJN:jcm

cc: Dominic Cioffi (w/ attachments)

AGREEMENT

THIS AGREEMENT is made this 27th day of July, 2007 by and between CIOFFI & SON CONSTRUCTION, INC., 1001 Eastwood Avenue, Akron, Ohio 44305 (hereinafter "Cioffi") and the VILLAGE OF RICHFIELD, OHIO, 4410 West Streetsboro Road, P. O. Box 387 Richfield, Ohio 44286-0387 (hereinafter the "Village").

WHEREAS, Cioffi and the Village entered into a Settlement Agreement dated _____, 2006; and

WHEREAS, Paragraph 3 of the Settlement Agreement provided that the Village's claims relating to the asphalt installed by Cioffi's subcontractor, Karvo Paving, and against Cioffi's surety were reserved out of the Settlement Agreement; and

WHEREAS, Paragraph 4 of the Settlement Agreement provided that Cioffi reserved its defenses to the reserved asphalt claims of the Village; and

WHEREAS, the Village's Consulting Engineer, CT Consultants, Inc., has reviewed the condition of the asphalt and has made a pavement analysis as of January, 2007; and

WHEREAS, Cioffi, by letter dated May 4, 2007, attached hereto as Exhibit A, proposed a method for repair of the asphalt roadway; and

WHEREAS, CT Consultants, Inc., by letter dated May 11, 2007, attached hereto as Exhibit B, has recommended certain additions to the Cioffi recommendation of May 4th.

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

1. Cioffi, at no expense to the Village, shall cause to be made the repairs to the asphalt roadway of the Brecksville Road Reconstruction Project in accordance with its letter of May 4, 2007 attached hereto as Exhibit A (the "Repairs"). Pavement striping shall be performed by the Village at the Village's expense, without recourse against or contribution by Cioffi.

2. The Village, in accordance with CT Consultants' letter dated May 11, 2007 shall, at no cost to Cioffi, hire an independent laboratory for ODOT 448 verification testing of both the asphalt plant and contractor application. Further, Cioffi shall cause its subcontractor to follow recommended items 1 through 7 of Exhibit B attached hereto.

3. All work as set forth in Exhibits A and B shall be completed by October 15, 2007, weather permitting and absent other factors beyond Cioffi's control that delay or hinder progress.

4. Cioffi, for itself, heirs, personal representatives, directors, officers, employees, agents, shareholders, successors and assigns, agrees to release the Village, its officers, employees, and agents from any and all claims, demands, liabilities and causes of actions, claims for interest, whether in law or equity, which were asserted or could have been asserted for the reserved matters set forth in Paragraphs 3 and 4 of the Settlement Agreement.

5. The Village, with the exception of warranty claims under the contract that have not yet been discovered and installation of detectors in the roadway at the intersection of Everett and Brecksville Roads, for itself, its officers, employees, agents and assignees, agrees to release Cioffi, and Cioffi's Surety and their heirs, personal representatives, directors, officers, employees, agents, shareholders, successors and assigns, from all claims, demands, liabilities and causes of action and claims for interest, whether in law or in equity, which were asserted or could have been asserted under the Contract or the Settlement Agreement.

6. The parties represent and warrant to the other that they have had an opportunity to inquire as to all material facts pertinent to this Agreement and that they have had an opportunity to consult with counsel with respect to this Agreement and that they understand the terms of this Agreement.

7. This Agreement is a completely voluntary act by both parties, and this Agreement shall not be subject to any claim of mistake of fact.

8. The parties further agree that this Agreement expresses the entire agreement between the parties and represents full and complete satisfaction and resolution of all differences between them.

9. The parties further agree that the invalidity or unenforceability of any one provision or part of this Agreement will not render any other provision or part thereof invalid or unenforceable and that such provisions shall remain in full force and effect.

10. The parties further agree that the person signing this Agreement on behalf of each party has fully authority to bind it pursuant to law. This Agreement was authorized by Richfield Resolution No. 79-2006, passed November 7, 2006.

IN WITNESS WHEREOF, the parties have set their hands this 27th day of July, 2007.

Signed in the presence of:

VILLAGE OF RICHFIELD, OHIO

Julianne Butcher

By: Michael K. Lyons
Michael K. Lyons, Mayor

Stephanie M. Brady

And: Eleanor Lukovics
Eleanor Lukovics, Finance Director

CIOFFI & SON CONSTRUCTION, INC.

[Signature]

By: [Signature]
Its Pres