

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A RIGHT OF WAY USE PERMIT AGREEMENT WITH THE UNITED STATES OF AMERICA THROUGH THE NATIONAL PARK SERVICE AND DECLARING AN EMERGENCY

WHEREAS, the Village is preparing to construct a new sanitary sewer improvement to serve the Briarwood subdivision and adjacent areas; and

WHEREAS, as a part of the Briarwood Sanitary Sewer Improvement Project it will be necessary to install a pump station on land located within the Cuyahoga Valley National Park (CVNP), a part of the United States National Park Service (NPS) System; and

WHEREAS, the Village can obtain rights to utilize the land needed for Briarwood Sanitary Sewer Pump Station #1 for a period of ten (10) years, at no cost, by way of a renewable Right of Way Permit; and

WHEREAS, execution of the Right of Way Permit does not prohibit the Village from obtaining a permanent easement for use of the land required for the pump station when the existing, private sewer facility currently located on CVNP land is decommissioned in connection with the transfer of service to the Briarwood Sanitary Sewer System.

WHEREAS, this Council authorizes the Mayor and the Finance Director to enter into a Right of Way Permit Agreement to obtain rights to utilize CVNP land for a sewer pump station.

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 Right of Way Permit Agreement with terms substantially the same as those set forth in "Exhibit A" attached hereto.

SECTION 2. That the Mayor and Finance Director be, and they hereby are, authorized and directed to execute any other documents and take any other actions necessary or helpful to effectuate the terms of the Right of Way Permit Agreement.

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 were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 4. 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 effectuate the acquisition of rights to the property needed for Briarwood Sanitary Sewer Pump Station #1 at the earliest possible time in the interest of providing sewer service to Village residents; 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: 8-5-2014

*Rick Hudak*  
President of Council

*Bobbie Bashara*  
Mayor

Dated: 8-6-14

ATTEST:  
*Rebecca A. Garner*  
Clerk of Council

United States Department of the Interior  
National Park Service  
Right-of-Way Permit for  
**VILLAGE OF RICHFIELD**

WHEREAS, **The Village of Richfield**, (hereinafter Village) has applied to the United States of America, through the Department of the Interior, by and through the National Park Service (hereinafter NPS) for a right-of-way to construct, operate and maintain a Sanitary Lift Station and Associated Equipment and Conduit ("Sanitary Lift Station") within the boundaries of **Cuyahoga Valley National Park** (hereinafter Park), a unit of the National Park System, United States Department of the Interior; and

WHEREAS, the National Park Service (hereinafter NPS) administers the Park that was established as a unit of the National Park System, United States Department of the Interior pursuant to 16 U.S.C. § 460 ff; and

WHEREAS, the Director of the NPS (or his delegate) is required pursuant to 16 U.S.C. 1a-1 to authorize only those uses of land within the Park which will not be in derogation of the values and purposes for which the Park was established, except as may have been or shall be directly and specifically provided by Congress; and

WHEREAS, 16 U.S.C. 79 authorizes the use of rights-of-way through the Park for a wide variety of water conduits provided that the Director (or his delegate) finds that the same is not incompatible with the public interest; and

WHEREAS, the NPS has promulgated regulations at Title 36 Code of Federal Regulations, Part 14, regarding rights-of-way over, across and upon the lands administered by the NPS; and

WHEREAS, the NPS has been delegated the authority to allow such rights-of-way over, across and upon land under the jurisdiction of the Service pursuant to 245 Departmental Manual 5.1; and

WHEREAS, the NPS has determined that the proposed use of the park lands for the construction, maintenance and operation of the subject Sanitary Lift Station is neither incompatible with the public interest nor inconsistent with the use of such lands for park purposes; and

THEREFORE, the United States, through the NPS, an agency of the Department of the Interior, acting pursuant to the authority of 16 U.S.C. 79, issues this permit to the Village of Richfield, 4410 W. Streetsboro Road, P.O. Box 387, Richfield Ohio 44286-0387, for a right-of-way across Federal lands within Cuyahoga Valley National Park for the construction, operation and maintenance of a Sanitary Lift Station and Associated Equipment and Conduit.

EXHIBIT A

The Village agrees to comply with and be bound by the NPS regulations, 36 CFR Part 14, regarding rights-of-way over, across and upon lands administered by the NPS, in addition to the terms and conditions set forth in this permit.

MAP AND LEGAL DESCRIPTION OF RIGHT-OF-WAY

0.1945 ACRE RIGHT-OF-WAY

Situated in the Township of Richfield, County of Summit, State of Ohio and known as being a part of Lot 11, Tract 6, of said Township, as conveyed to the United States of America by Deed Volume 6189, Page 624 of the Summit County Records and being further described as follows;

Commencing at the southwest corner of said U.S.A. tract, the southeast corner of Lot number 36 of the Briarwood Allotment as recorded in Plat Book 46, Page 168, and on the easterly right of way line of Briarwood Road (50' wide), thence S 49° 52' 16" E along said easterly right of way line of Briarwood Road, a distance of 120.81 feet to a point of curvature, thence continuing along said easterly right of way line of Briarwood Road on a curve to the right with a chord bearing of S 48° 40' 13" E, a chord distance of 38.77 feet, a radius of 925.00 feet, an arc distance of 38.77 feet to a 5/8" rebar with "GPD" cap set and the True Place of Beginning for the parcel of land hereinafter described, thence across said U.S.A. tract clockwise along the following four ( 4) courses and distances;

1. Thence N 45° 28' 27" E, a distance of 90.00 feet to a 5/8" rebar with "GPD" cap set;
2. Thence S 44° 31' 33" E, a distance of 95.00 feet to a 5/8" rebar with "GPD" cap set;
3. Thence S 45° 28' 27" W, a distance of 90.00 feet to a 5/8" rebar with "GPD" cap set on the easterly right of way line of said Briarwood Road;
4. Thence along the easterly right of way line of said Briarwood Road, on a curve to the left with a chord bearing of N 44° 31' 33" W, a chord distance of 95.00 feet, a radius of 925.00 feet, an arc distance of 95.04 feet to the True Place of Beginning and containing 0.1945 acres of land, more or less, and subject to all easements, restrictions, and covenants of record, as surveyed under the supervision of Steven L. Mullaney, P.S. Number 7900, for Glaus, Pyle, Schomer, Burns & DeHaven, Inc., dba GPD Group, in January of 2014.

The Basis of Bearing is State Plane Grid North, NAD 83(2011), Geoid 12A, Ohio North Zone.

PPN: 48-00818

And as described on the drawing located in Exhibit A.

AUTHORITY TO ENTER INTO AGREEMENT FOR RIGHT-OF-WAY

The Village represents and warrants to the NPS that:

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(1) It is duly authorized and empowered under applicable laws of the State Of Ohio and by its Charter and ordinances to enter into and perform this agreement in accordance with the provisions;

(2) Its Village Council has duly approved, and has duly authorized the execution, delivery, and performance by it of this agreement by the Mayor.

(3) All action that may be necessary or incidental to the approval of this permit, and the due execution, delivery, and performance by the Village has been taken; and

(4) All of the foregoing approvals, authorizations, and actions are in full force and effect at the time of the execution and delivery of this permit.

#### PERMITTED USE OF RIGHT-OF-WAY BY THE VILLAGE

The right-of-way is for the sole purpose of constructing, operating and maintaining a Sanitary Lift Station across the above described lands, application for which was made in writing to the Park Superintendent (hereinafter Superintendent) on August 23, 2013, by the Village. That in utilizing the right-of-way the Village agrees to comply with and be bound by laws and regulations regarding the use and occupancy of the lands administered by the NPS and by the terms of this permit.

#### DEVIATION FROM APPROVED RIGHT-OF-WAY

The Village agrees that it will not deviate from the location of the approved right-of-way in its construction, operation and maintenance of the subject Sanitary Lift Station. All ingress and egress for construction, maintenance and operation of the Sanitary Lift Station shall be restricted to the right-of-way. In the event that the Village determines that ingress and egress over park lands not included in the right-of-way are necessary for the construction, maintenance and operation of the subject Sanitary Lift Station, then the Village must apply, in writing, to the Superintendent for approval of such ingress and egress.

#### EFFECTIVE DATE OF THE RIGHT-OF-WAY

The effective date of this permit shall be the date of its execution by the Regional Director (or delegate) and the Village. The right-of-way permit shall terminate TEN (10) years from the effective date, at noon, (State time) unless prior thereto it is relinquished, abandoned, or otherwise terminated pursuant to the provisions of this permit or of any applicable Federal law or regulation.

#### RENEWAL OF RIGHT-OF-WAY

Unless relinquished, abandoned, or otherwise terminated pursuant to the provisions of the permit or of any applicable Federal law or regulations, the Village may make application to the Superintendent, at least six months prior to its expiration date, for renewal of the right-of-way.

The Village shall file a written application, SF 299, in accordance with the existing Service regulations, to renew the right-of-way. The Village shall agree to comply with all the laws and regulations existing at such application date governing the occupancy and use of the lands of the Park for the purposes desired. The right-of-way permit may be renewed after full consideration of the application.

#### DISPOSAL OF PROPERTY ON TERMINATION OF RIGHT-OF-WAY

Upon the termination of the right-of-way permit by expiration or by cancellation for cause, in the absence of any agreement to the contrary, if all monies due the NPS have been paid, the Village shall be allowed six months, or such additional time as may be provided, in which to remove from the right-of-way all property or improvements of any kind placed by them; and if not removed within the time allowed, all such property and improvements shall become the property of the United States.

#### NONUSE OR ABANDONMENT

It is understood and agreed by the parties that all or any part of the right-of-way may be terminated at the discretion of the NPS in the event of nonuse or abandonment for a period of two years by the Village. In the case of termination, the NPS will provide the Village with written notice including reasons for the termination.

#### FEES FOR USE AND OCCUPANCY

The NPS and Village understand and agree that the consideration for utilization of the lands, pursuant to the right-of-way, for municipally operated projects is waived according to 36 CFR 14.26(c)(1).

#### FEES AND REIMBURSEMENT OF COSTS

Pursuant to 36 CFR 14.22(a)(2)(i) for state or local governments or agencies or instrumentalities thereof where the lands will be used for governmental purposes and continue to serve the general public, payment of fees and costs incurred by the NPS as a result of this permit are waived.

#### TERMS AND CONDITIONS

The permit is subject to the following terms and conditions:

(1) This permit shall not be construed as a permanent interest in the land of the right-of-way or as an abandonment of use and occupancy by the United States, but shall be considered a use of the land as described, anything contained to the contrary notwithstanding.

(2) This right-of-way permit may be terminated upon breach of any of the stated conditions or at the discretion of the Regional Director of the Service. The Village will be given written notice and thirty (30) days to allow an opportunity for corrective actions before termination may occur. The written notice shall describe the specific violations of the permit. If the Village does not correct the violations to the satisfaction of the , or present a reasonable plan acceptable to the NPS within the thirty (30) day period, then the NPS shall be entitled to revoke this permit.

(3) The Village shall comply with all applicable State and Federal laws and existing regulations promulgated thereunder in the construction, operation and maintenance of the Sanitary Lift Station.

(4) The Superintendent shall be notified in writing no less than TWO WEEKS prior to the start of initial construction on park lands. An on-site meeting will be conducted no less than one week prior to start of construction between representatives of the park and the Village construction/maintenance supervisor to determine and clarify the scope of the project and any requirements of the NPS. The Village construction/maintenance supervisor will contact the park on the morning of the first day of work and each morning thereafter prior to entering the park, advising the location and extent of work crews and equipment in the park. Except in extraordinary situations and with the agreement of the Superintendent, or as determined at or prior to the on-site meeting above, all work on park lands will be conducted on a Monday through Friday, 8:00 am through 5:00 pm basis. All work on park lands shall be completed to the satisfaction of the Superintendent or his or her representative.

(5) The Village shall have a right of ingress and egress within the right-of-way at all times for the purposes of maintaining and operating the Sanitary Lift Station and appurtenances.

(6) If any portion of the Sanitary Lift Station is to be installed underground within the road shoulders of public roads, they shall comply with the specifications of the highway department having jurisdiction. Detailed procedures of installation are also subject to approval in advance of construction by the Superintendent or his representative.

(8) The Village shall be responsible to pay the NPS for any damage resulting from this permit which would not reasonably be inherent in the use which the Village is authorized to make of the land. The NPS will give the Village written notice of such damage and the Village will either take corrective action or pay the indicated amount as agreed upon and approved by the Superintendent.

(9) Use by the Village of the land is subject to the right of the NPS to establish trails, roads, and other improvements and betterments over, upon or through said premises, and further to the use by travelers and others of such roads, trails, and other improvements already existing. If it is necessary to exercise such right, every effort will be made by the NPS to refrain from unduly interfering with or preventing use of the land by the Village for the purposes intended under this permit.

(10) The Village shall take adequate measures as directed and approved by the Superintendent to prevent or minimize damage to park resources. This may include restoration, soil conservation and protection measures, landscaping, and repairing roads, trails, fences, etc. The Village shall dispose of brush and other refuse as required by the Superintendent. The Superintendent or his/her representative may inspect the right-of-way area as deemed necessary.

(11) The Village will halt any activities and notify the Superintendent upon discovery of threatened or endangered species or archeological, paleontological, or historical findings. All artifacts unearthed remain the property of the park

(12) No vegetation may be cut or destroyed without first obtaining approval from the Superintendent. Any vegetation that must be removed shall be mitigated as specified by the Superintendent.

(13) Use of pesticides and/or herbicides on park lands is prohibited without prior written approval from the Superintendent.

(14) In the event any facilities covered by this permit should interfere with future NPS construction, the Village agrees to terminate the use or relocate them at no cost to the NPS within 60 days after written notice.

(15) The Village agrees to do everything reasonably within its power, both independently and on request of the Superintendent, to prevent and suppress fires resulting from the Village's activities on and adjacent to the right-of-way.

(16) The Village agrees that the right-of-way shall be subject to the express condition that the use will not unduly interfere with the management and administration by the NPS of the lands. Further, the Village agrees and consents to the occupancy and use by the park, its permittees, or lessees of any part of the right-of-way not actually occupied or required by the project, or the full and safe utilization, for necessary operations incident to such management, administration, or disposal.

(17) Upon expiration, revocation or termination of this permit, the Village shall leave the lands subject to the permit in as nearly the original condition as possible, as directed and approved by the Superintendent.

(18) The Village agrees that in undertaking all activities pursuant to this permit, it will not discriminate against any person because of race, color, religion, sex, or national origin.

(19) No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this permit or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this permit if made with a corporation for its general benefit.

(20) No transfer of the permit will be recognized unless and until it is first approved in writing by the Regional Director of the NPS. Such a transfer must be filed in accordance with existing regulations at the time of transfer, and must be supported by the stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way.

(21) This agreement is made upon the express condition that the United States, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury, or death to any person or property of any kind whatsoever, whether to the person or property of the Village, its agents or employees, or third parties, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this agreement or occasioned by any occupancy or use of said premises or any activity carried on by the Village in connection herewith, and the Village hereby covenants and agrees to indemnify, defend, save and

hold harmless the United States, its agents and employees from all liabilities, charges, expenses and costs on account of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring or damages growing out of the same.

(22) Any alterations to this permit must be in writing and signed by the parties. Renewals will be subject to regulations existing at the time of renewal and such other terms and conditions deemed necessary to protect the public interest.

(23) Any underground utilities previously located within this right-of-way which are damaged or disrupted during maintenance shall be repaired or restored by the Village within four hours.

(24) The Village shall be responsible for the provision and maintenance of proper signs, barricades or other means of warning motorists and pedestrians of danger during all periods of repair and maintenance.

(25) Nothing herein contained shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this permit for the fiscal year, or to involve the NPS in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

#### COMPLIANCE

Failure of the Village to comply with any provision of this right-of-way permit shall constitute grounds for immediate termination of this permit.

#### WAIVER NOT CONTINUING

The waiver of any breach of any provision of this right-of-way permit, whether such waiver be expressed or implied, shall not be construed to be a continuing waiver or a waiver of, or consent, to any subsequent or prior breach of the same or any other provision of this permit.

IN WITNESS WHEREOF, the Regional Director of the National Park Service, acting on behalf of the United States, in the exercise of the delegated authority from the Secretary of the Department of the Interior, has caused this Permit of Right-of-Way number **RW 6160 - 14 - 002** to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Acting Regional Director  
Midwest Region  
National Park Service  
United States Department of the Interior

ACCEPTED THIS 5 DAY OF August, 2014.

Bobbi Basler

Mayor  
Village of Richfield

Attest