

RESOLUTION NO. 28-2011

Offered by

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE REVISED 2011 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 Revised 2011 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 Revised 2011 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 Revised 2011 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. Resolution No. 7-2009, which approved the prior 2008 Summit County Intergovernmental Memorandum of Understanding for Job Creation and Tax Sharing, be, and the same hereby is, repealed.

SECTION 3. 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 4. 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: 5-17-11

Salvino Basileara
President of Council

William J. Ryan
Mayor

Dated: 5/17/2011

ATTEST:

Carolyn E. Sullivan
Clerk of Council

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

WHEREAS, the loss of jobs results 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 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 or destination 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 financial assistance, as defined herein, to

potential employers and/or businesses presently located within another signatory community may do so only as specified herein.

SECTION 2(a) As used in this Agreement:

- (1) “economic incentive or other financial assistance” means a financial or “in kind” benefit offered by a community to an employer or business of such a nature that it would provide a reasonably operated employer or business with an incentive to relocate its business from one signatory community to the community offering the financial benefit. For purposes of illustration and without limiting the scope of the term, examples of “economic incentives or other financial assistance” include tax abatements, exemptions or credits; reduction or subsidization of utility services not comparably offered to other businesses; direct financing of business-related costs, facilities or expenses at below market rates or differing market terms. For purposes of illustration and without limiting the scope of the term, “Economic incentive” does not include financial benefits that are available to all employers or businesses throughout the community such as free or low-cost advertising on a community website, other government services offered or available to all employers or businesses, utility and tax rates which may be lower than the departing community but are available to all businesses; “sales pitches” which provide information concerning existing matters in the community (ie. the availability of properly zoned property, commercial properties available for lease or sale, existing infrastructure capacity, current or proposed tax rates, etc.).
- (2) “departing community” means the signatory community from which the employer or business is moving.
- (3) “destination community” means the signatory community to which the employer or business is moving.
- (4) “communities affected by the relocation” means the “departing community” and the “destination community” collectively.
- (5) “income tax revenue” means both (i) the revenue received by a community for municipal income taxes on the compensation of the employees and officers of a business and (ii) the revenue received by a community for municipal income taxes on the income, profits and/or earnings of the business.
- (6) “aggregate income tax revenue” means the income tax revenue received by a community from all businesses in the community.

SECTION 2(b) The relocation of an employer or business between signatory communities, shall trigger revenue sharing in either of the following events: (i) the employer or business which relocated created a significant revenue loss to the community from which the employer or business departed. A significant revenue loss to the departing community will arise if the departing employer or business had, based on an average of the last two full calendar years prior to a relocation, either a \$3.5 million dollar or larger annual payroll or constituted 5% or

more of the aggregate income tax revenue of the departing community; or (ii) 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 2(c) As used in this Agreement, a “partial relocation” occurs when a business moves or transfers some of its employees and payroll from a departing community to a destination community but continues to maintain some business presence in the departing community.

If such a partial relocation occurred due to economic incentives or other financial assistance offered by the destination community, then revenue sharing shall be required as set forth in Section 4 of this Agreement.

If the partial relocation was not the result of economic incentives or other financial assistance offered by the destination community, revenue sharing will occur only if the partial relocation would support revenue sharing based on the criteria set forth in Section 4, Tier Two of this Agreement.

SECTION 2(d) As used in this Agreement, a “split relocation” occurs when a business moves or transfers some or all of its employees and payroll from a departing community to two or more destination communities and may or may not continue to maintain some business presence in the departing community.

If such split relocation occurred due to economic incentives or other financial assistance offered by any destination community, revenue sharing shall be required between the destination community which offered economic incentives or other financial assistance and the departing community as set forth in Section 4 of this Agreement.

If such split relocation was not the result of economic incentives or other financial assistance offered by a destination community, revenue sharing will occur only if the split relocation would support revenue sharing based on the criteria set forth in Section 4, Tier Two of this Agreement. In determining the threshold triggering criteria, as set forth in Section 4, Tier Two of this Agreement, the income tax revenue loss to, and the aggregate income tax revenue of, the departing community at the time of the split relocation shall constitute the base for determining whether all destination communities shall share revenue. In the event revenue sharing is required each destination community shall pay its proportional share for the time periods specified under this Agreement.

SECTION 2(e) “Satellite” or branch office occurs when a business expands to open an additional office or facility at another location. Satellite or branch office will be considered a separate business and not subject to revenue sharing under this Agreement providing the destination community did not offer economic incentives and the expansion does not involve a significant relocation of existing employer or business facilities or employees during the first year of its existence. For purposes of this Agreement, significant relocation will be considered twenty (20%) percent or greater based on the employer or businesses last annual payroll filed with the departing community.

SECTION 3. When a business or employer relocates from one signatory community to another, prior to invoking the hearing provisions of this Agreement, the communities affected by the relocation shall first attempt to agree between themselves on revenue sharing obligations.

The signatory communities involved in the relocation may use the formulas and other criteria as set forth in this Agreement as guidance in their negotiations. In the event the communities affected by the relocation enter into an agreement to share revenue, that agreement will control the parties' rights and obligations notwithstanding anything to the contrary contained herein and no other signatory community not affected by the relocation shall have standing to challenge the agreement entered into by the communities affected by the relocation.

In the event the communities affected by the relocation do not agree or cannot negotiate a resolution on any matter under this Agreement, a determination shall be made by the District Eight Public Works Integrating Committee of the Ohio Public Works Commission (hereinafter "Committee") after a hearing. Any signatory community affected by the relocation of the business or employer may petition the Committee for a hearing by sending notice to all Committee members or their designees and a copy of the hearing request to the County Executive. The Summit County Director 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 his or her community is a party to the hearing. Each party affected by the relocation of the business or employer shall be afforded a reasonable opportunity to present evidence and arguments on behalf of the position of its 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. The ultimate fact question for consideration by the Committee or arbitration panel is whether the triggering events for tax sharing have occurred and/or the amount of tax revenue to be shared.

Any community which disagrees with the determination of the Committee may, within sixty (60) days of the Committee determination, submit a demand in writing 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 in writing for arbitration to all other affected 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 with reasonable specificity and recite that the matter has been duly submitted to and a determination made by the Committee. The departing community shall select one arbitrator, the destination community or communities shall select one arbitrator and the County Executive shall select one arbitrator. Every arbitrator shall be an attorney duly licensed to the practice of law in the State of Ohio. All arbitrations hearings shall be held in the County of Summit, Ohio at a mutually agreeable time and place and no later than ninety (90) days after notice to affected communities as provided for herein. Any award or decision of the arbitrators shall be reduced to writing and be binding upon the parties as provided for by Chapter 2711 of the Ohio Revised Code. Notwithstanding any award or determination made by an arbitration panel hereunder, each community shall bear its own arbitration costs and shall equally share any arbitration costs incurred by the County.

Under no circumstances may the Committee or any Arbitration Panel award a sum of money for revenue sharing greater than the amount and percentages contained in Section 4 of this Agreement.

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 business relocations that involve the relocation of a business which, based on an average of the last two full calendar years prior to a relocation, had an annual payroll of less than \$3.5 million and constituted less than five (5%) percent of the aggregate income tax revenue of the departed community. In the first year of a tier one relocation, the destination community will pay forty (40%) percent of the new income tax revenue received from that business by the destination community to the departing community, thirty (30%) percent in the second year and twenty (20%) percent in the third year.

Tier Two. Tier two covers business relocations that involve the relocation of a business which, based on an average of the last two full calendar years prior to a relocation, had an annual payroll of more than \$3.5 million or constituted more than five (5%) percent of the aggregate income tax revenues of the departed community. In the first year of a tier two relocation, the destination community will pay fifty (50%) percent of the new income tax revenue received from that business by the destination community to the departing community, forty (40%) percent in the second year, thirty (30%) percent in the third year, twenty (20%) percent in the fourth year and ten (10%) percent in the fifth year.

For purposes of determining the revenue sharing formula provided under this section, the "new income tax revenue received from that business by the destination community" shall be capped at and shall not exceed the amount of income tax revenue that was collected by the departing community for that business in the last full calendar year prior to relocation. Additionally, if any destination community has an income tax rate exceeding 2%, then that community is only obligated to share income tax revenue in an amount that would be received by that community if it had an income tax rate of 2%.

It is acknowledged by the signatory communities that the above formula(s) are general and illustrative and the communities affected by the relocation may deviate therefrom in any agreement entered into between them.

In the event any signatory communities engage in revenue sharing under this Agreement, for any reason, and the community which had a business depart and received revenue sharing is thereafter able to fill the vacancy at the real property where the business was located, in whole or in part, before the expiration of revenue sharing, then the previously agreed or awarded revenue sharing shall be subject to modification or elimination. Should income tax revenues from the business which filled the vacancy equal or exceed the income tax revenues of the business which departed, in the last full calendar year prior to its departure, revenue sharing shall cease at the time new income tax revenue equaled or exceeded the income tax revenue of the departed business. Should income tax revenues from the business which filled the vacancy be less than that of the departing business, in the last full calendar year prior to its departure, then such revenue sharing shall be subject to modification. Any continuing revenue sharing should be calculated upon the difference between income tax revenue generated by the departing business in the last full year prior to its departure and the lower income tax revenue generated by the business filling the vacancy which led to revenue sharing under this Agreement. The same procedures to make a claim for revenue sharing under this Agreement shall be used by a

community that claims or requests an elimination or modification of previously agreed or awarded revenue sharing under this Section.

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 any business/employer arising from or due to any decision to relocate.

SECTION 6. When a business departs and relocates to another signatory community and the departing community believes it may be entitled to revenue sharing as set forth in Section 2(b) of this Agreement, the departing community shall provide the destination community with notice of a claim for tax sharing. Such notice shall be sent on or before ninety (90) days of the employer or business's last payroll tax filing with the departing community. Notice must be sent by personal delivery or U.S. certified mail, return receipt requested and notice shall also be served upon the County. Failure to send the notice provided for herein shall constitute a waiver of any claim to tax sharing.

In the event that a signatory community (i) offers financial incentives to a businesses which is currently located in another signatory community, (ii) is aware of the identity of the business and (iii) is aware that the business is located in another signatory community, then that community shall notify the current community of the offering of the financial incentives in writing, as soon as possible, but not later than three (3) business days of the satisfaction of all three conditions, above.

The community contacted by the business or offering a business financial incentive may provide information and may work with the prospective business.

It is understood by all signatory communities that the notice requirements set forth above reflect the intent to allow a community which may be negatively impacted by a business relocation between signatory communities to explore what action may be taken to retain the business in the community. A prospective community may nevertheless provide information since it is also recognized that if a business relocates it is preferable that the relocation be between signatory communities.

Any notice required when prospective business relocation is proposed or discussed shall include notice to the County of Summit as the facilitator of this Agreement. See Section 8.

The above notification provisions shall apply to business consolidations, which shall be treated as relocations.

SECTION 7. This Agreement is subject to the legislative approval of all participating communities including the 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) assist in any dispute resolution offered under this Agreement including offering mediation to signatory communities; (iii) 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.

SECTION 9. The County, in addition to other duties set forth above, will offer signatory communities opportunities to score an additional five (5%) percent of total possible points on applications for SCIP/LTIP, 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, provided 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. In the event it is determined by an opinion of the Ohio Attorney General or by a Court of competent jurisdiction that the County is prohibited by law from providing the signatory communities with the opportunity to score an additional five (5%) percent of total points on grant applications, as set forth herein, then any signatory community may withdraw from this Agreement by sending notice of their withdrawal to the County and they need not comply with the notice requirements provided for in Section 10 of this Agreement.

If a signatory community has been determined by written stipulation or by the Committee after the hearing provided for under this Agreement or by an Arbitration panel under this Agreement to have caused a business or employer to relocate from another signatory community by offering economic incentive(s), then a penalty on the above development-grant programs shall apply. The signatory community determined by stipulation, the Committee or arbitration panel to have caused a business relocation shall receive a deduction of five (5%) percent 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 incentives to induce the employer or business to relocate from another signatory community. The deduction provided for herein shall not be levied against any signatory community which has entered into a tax sharing agreement with another signatory community in lieu of the hearing and other remedies provided for in Section 3 of this Agreement. The failure of any signatory community to comply with the dispute resolution process as set forth in Section 3 of this Agreement including compliance with any lawful decision of the Committee or any Arbitration Panel will subject the non-complying community to the penalty deduction of total possible points on its grant applications for two(2) years from the time non-compliance began or until such time as the community comes into full compliance, whichever time period is shorter.

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 the County prior to the effective date of any legislation authorizing such withdrawal except as provided for below. Any community which exercises its right to withdraw

from this Agreement may not rejoin or otherwise become a signatory community to this Agreement for a minimum period of two (2) years after such a withdrawal.

Any existing signatory or member community may elect to withdraw from this Agreement without providing the one hundred eighty (180) day notice whenever a community's legislative body will not approve or accept a proposed modification to this Agreement made during the annual review as set forth above. In such event the community must pass a legislative resolution or ordinance affirmatively withdrawing from this Agreement due to proposed modifications. Such withdrawal will be effective immediately but will not alter, abrogate or otherwise modify any existing revenue sharing agreed upon or determined to be appropriate under this Agreement. Such withdrawal shall not alter any pending claim for revenue sharing which was initiated before a community withdrew from the Agreement. Should the proposed modification be subsequently eliminated or materially changed, such a community may rejoin the signatory communities to this Agreement with the two year waiting period being waived; otherwise the two year waiting period shall remain in effect. The decision to rejoin must be accomplished by legislative resolution or ordinance.

In the event an annual review is not conducted as contemplated above, this Agreement and its terms shall continue during the next year under those terms and conditions set forth in the most current version of this Agreement and the failure to conduct an annual review shall not cause this Agreement to terminate.

SECTION 11. 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 or supersede any existing Agreement between signatory communities.

SECTION 12. Time is of the essence of this Agreement.

(Signatures on following page.)

**IN WITNESS WHEREOF, WE HAVE SIGNED AS REPRESENTATIVES OF
OUR RESPECTIVE ENTITIES ON THIS _____ DAY OF _____, 2011.**

Title or Jurisdiction

Signature

County of Summit

Russell M. Pry, County Executive **Date**

Name and Title **Date**

Name and Title **Date**

Name and Title **Date**

Name and Title **Date**

Name and Title **Date**

Name and Title **Date**

Name and Title **Date**

Name and Title **Date**

Name and Title **Date**

MODEL CODE OF CONDUCT OF SIGNATORY COMMUNITIES

1. 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.
2. 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.
3. The signatory communities agree to participate in good-faith negotiations to resolve disputes and cooperatively participate in dispute resolution mechanisms provided for under this Agreement which may be required from time to time.
4. When considering changes or modifications to this Agreement, due consideration will be given to the needs and welfare of all signatory communities.
5. 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.