

RESOLUTION NO. 60-2008

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, through Resolution 49-2008, authorized the Mayor and 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 September 11, 2008, this Council received suggestions and comments concerning a revised agreement from the Richfield Township Trustees; and

WHEREAS, on September 25, 2008, this Council, through Resolution 56-2008 authorized the Mayor and Finance Director to enter into the Revised Agreement with the County of Summit, Richfield Township, Water & Sewer, LLC and Richfield Furnace Run, LLC to provide water to the Briarwood Water Service Area; and

WHEREAS, subsequently, this Council has received additional comments from Water & Sewer, LLC and Richfield Furnace Run, LLC which comments have been reviewed and approved by the Law Director; and

WHEREAS, this Council wishes to approve the latest Revised 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 the Revised Agreement with County of Summit, Richfield Township, Water & Sewer, LLC and Richfield Run, LLC to provide water to the Briarwood Water Service Area, a copy of which Revised Agreement is attached hereto as Exhibit "A" and incorporation herein fully as if by reference.

SECTION 2. That Resolutions 49-2008 and 56-2008 be, and the same hereby are, repealed.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: 10/21/08

[Signature]  
President of Council

[Signature]  
Mayor

Dated: 10/21/08

ATTEST:

[Signature]  
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 ("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 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 is a privately owned water-works and sewage disposal system company regulated by the Public Utilities Commission of Ohio ("PUCO") and provides water and sewer service in certain areas in both Richfield Village and the Township; and

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

WHEREAS, all parties agree to the establishment of the Briarwood Water Service Area as set forth in Exhibit "D" attached hereto (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 donate and transfer ownership of its water lines to Richfield Village under the terms and conditions set forth herein; and

WHEREAS, Richfield Village is willing to accept the donation and transfer of 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 Richfield Village and 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 Water Service Area which is identified in yellow on such map (The accuracy of any other designation or legend contained in the Third Expansion Map has not been confirmed by the parties and, therefore, should not be relied on by any person or party for any other purpose); and

WHEREAS, Cleveland and Summit have entered into a Memorandum of Understanding of even date herewith whereby Cleveland and Summit have agreed to expand the Water Service

Area of Contract 47291 into the Briarwood Water Service Area, a copy of which Memorandum of Understanding is attached hereto as Exhibit "E"; 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 "F";

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

1. Upon the last to occur of: (a) the approval by the City of Cleveland Department of Utilities, Water Division ("Cleveland Water Division") of plans to be submitted by LLC for the connection ("Connection") between the existing terminus of the Richfield Village water lines in Streetsboro Road and LLC's water lines in Sawbridge Road, (b) the issuance by the Ohio Environmental Protection Agency ("OEPA") of a Permit to Install the Connection, and (c) the consent and approval of the PUCO to terminate LLC's operation as a water-works company, LLC shall at its own cost, construct the Connection in accordance with the plans as approved by the Cleveland Water Division.

2. After construction of the Connection and verification that the water lines are operational, LLC shall donate and transfer to Richfield Village and Richfield Village shall accept and acknowledge such donation and transfer of ownership of all of LLC's water lines and appurtenances thereto, including, but not limited to, those in Burrwood Drive, Briarwood Drive, Scanwood Drive, Sawbridge Drive, and Streetsboro Road, such transfer to be without cost to Richfield Village and without warranty, express or implied, by LLC. The foregoing transfer shall terminate LLC's right to install, maintain, and remove water lines within the public ways of Richfield Village.

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

4. Furnace Run shall be entitled to have Cleveland water service extended to the Furnace Run Property in the Briarwood Water Service Area as depicted in Exhibit "D" attached hereto; provided, however, that Furnace Run shall construct the necessary water lines for such service in accordance with the standards of the Cleveland Water Division, and upon completion of the construction in accordance with such standards, shall transfer to Richfield Village ownership of the water lines and Richfield Village shall accept the transfer of ownership, such transfer to be without cost to Richfield Village and without warranty, express or implied, by

Furnace Run. Furnace Run shall not be required to obtain the permission of the Township to extend the lines in Township roads prior to construction where the lines will be used to serve residential customers. By entering into this Agreement, the Township is, in no way, consenting to or representing that it is approving 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 attached hereto as Exhibits "E" and "F."

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

7. Upon approval by the Cleveland Water Division of plans for the Connection and the issuance by OEPA of the Permit to Install the Connection, LLC shall cause to be file with the PUCO an application to obtain consent and approval to terminate LLC's operation as a water-works company in order to effectuate this Agreement. The other parties to this Agreement shall support such application by providing such information as the PUCO may require. In conjunction with such application, LLC shall cause to be filed with the PUCO an application to withdraw that portion of its pending application in PUCO Case No. 08-227-WS-AIR requesting an increase in its rates and charges for water service, contingent upon approval of its application to terminate operation as water-works company. Nothing in this Agreement shall affect LLC's operation as a PUCO-regulated sewage disposal system company or LLC's right to continue to pursue that portion of its application in PUCO Case No. 08-227-WS-AIR requesting an increase in its rates and charges for sewer service.

8. Upon execution of this Agreement by all parties hereto, LLC shall proceed with due diligence to: (a) cause to be prepared and filed with the Cleveland Water Division plans for the Connection and, upon receipt of approval of such plans by the Cleveland Water Division, (b) shall cause to be prepared and filed with OEPA an application for the Permit to Install the Connection, and, upon receipt of such Permit to Install, (c) shall cause to be prepared and filed with the PUCO an application to obtain its consent and approval to terminate its operation as a water-works company.

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: *[Signature]*  
Its *Managing Member*

**RICHFIELD FURNACE RUN, LLC**

By: *[Signature]*  
Its *Managing Member*

**RICHFIELD TOWNSHIP**

By: David R. Wynter  
Trustee

By: Kevin P. Silnae  
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