

RESOLUTION NO. 76 -1999

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH THE TOWNSHIP OF RICHFIELD, RPS, INC. AND JJJ PROPERTIES FOR THE ANNEXATION OF APPROXIMATELY 33 ACRES OF LAND FROM THE TOWNSHIP TO THE VILLAGE AND DECLARING AN EMERGENCY

BE IT RESOLVED by the Council of the Village of Richfield, State of Ohio:

SECTION 1. That the Mayor and Finance Director be, and they hereby are, authorized and directed to enter into an agreement with the Township of Richfield, RPS, Inc. and JJJ Properties for the annexation of approximately 33 acres of land from the Township to the Village, a copy of which agreement 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 provide for annexation and development of the property 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: September 28, 1999

Michael Lyons
President of Council

Donald W. Lassen
Mayor

Dated: 9/28/99

ATTEST:

Carole Gibson
Clerk of Council

AGREEMENT

THIS AGREEMENT made at Summit County, Ohio, this 28th day of September, 1999, by and between THE TOWNSHIP OF RICHFIELD, 4410 West Streetsboro Road, Richfield, Ohio 44286-0387 (hereinafter the "Township"); the VILLAGE OF RICHFIELD, 4410 West Streetsboro Road, Richfield, Ohio 44286-0387 (hereinafter the "Village"); RPS, INC., P.O. Box 108, Pittsburgh, Pennsylvania 15230 ("RPS") and JJJ Properties, 5585 Canal Road, Valley View, Ohio 44125 .

WHEREAS, RPS has contracted to purchase from JJJ Properties approximately 33 acres of land in the Township, a map of which land is attached hereto as Exhibit A, and a legal description of which land is attached hereto as Exhibit "B" ("the Parcel"); and

WHEREAS, RPS intends to develop the Parcel and construct an RPS Distribution Facility at that location; and

WHEREAS, the development of the Parcel and construction of an RPS Distribution Center in a timely manner is an essential term and condition of this Agreement; and

WHEREAS, the Parcel is adjacent to and connects to the Village; and

WHEREAS, the Parcel can be serviced off of Columbia Road; and

WHEREAS, the Village owns and operates a sanitary sewer system and authorizes the operation of a water system (the "Utilities") which RPS wishes to have made available to service the Parcel; and

WHEREAS, the Village has indicated that it can make the Utilities available to the Parcel if the Parcel is annexed to the Village; and

WHEREAS, JJJ Properties, being a one hundred percent (100%) owner of the Parcel, and RPS, in order to obtain water and sanitary sewer for the development of the Parcel, desire to have the Parcel become a part of the Village through annexation; and

WHEREAS, the Township has indicated a policy of opposing annexations; and

WHEREAS, to settle legal claims and disputes and to mutually agree on certain tax sharing considerations as set forth in this Agreement, the parties desire to enter into this Agreement; and

WHEREAS, Revised Code §709.191 provides that the legislative authority of a municipal corporation and the Township Trustees may enter into an agreement, whereby the municipal corporation agrees to make annual payments to the Township to compensate the township for lost revenues; and

WHEREAS, RPS has agreed to make certain payments in lieu of taxes to the Township to settle all claims and disputes and to mutually agree on certain tax sharing considerations as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, the parties hereby agree as follows:

1. The prefatory paragraphs set forth in this Agreement are hereby incorporated herein by reference.
2. Taxes Collected in Arrears. The Township shall remain entitled to receive all real estate and personal property taxes which are collected in arrears by the County of Summit for the Parcel for the time period up to the effective date of the annexation. Nothing in this Agreement shall be construed to abrogate that entitlement.

3. Consideration Given by the Village. Commencing with its receipt of real estate and personal property taxes collected in arrears for the Parcel which are related to the time period commencing upon the date on which the annexation is effective, the Village shall remit to the Township all real estate and personal property tax it receives from the County of Summit for the Parcel for a period of fifteen (15) years thereafter. In addition, during that fifteen (15) year period, the Village shall remit to the Township any increase in the real estate or personal property tax revenue received by the Village for the Parcel whether as a consequence of the development and improvement of the Parcel or for any other reason. Said consideration due under this Section shall be made thirty (30) days from the date the Village receives the revenue from the County of Summit. In the event the Village fails to remit said revenue within 30 days, the payment shall include interest at ten percent (10%) per annum, accrued from the date the payment was due.

A. The real estate or personal property tax revenue remitted to the Township by the Village shall not be reduced by any tax abatement which may, in the future, be granted by the Village to any owner of the Parcel. That is, tax revenue received under this Agreement by the Township will not be affected by any tax abatement and the Township shall receive revenue from the Village as if there were no tax abatement. The real estate property tax revenue remitted to the Township shall not include any monies received by the Village for assessments, if any, for the installation of any public improvements.

B. The remission of real estate and personal property tax revenues under this Section shall be made by the Village to the Township for a period of 15 years, commencing with the first receipt of real estate and personal property tax collected in arrears for the Parcel which is related to the time period commencing upon the date on which the annexation is effective.

4. Consideration Given by RPS. RPS, as payment in lieu of taxes, shall pay for a period of ten (10) years, the difference between the revenues which the Township would have derived under

Township millage as if no annexation occurred and the real and personal property tax revenue remitted by the Village to the Township as set forth in Section 3. The payment of the tax differential by RPS to the Township provided for in this section shall not exceed a total of Sixty Thousand Dollars (\$60,000.00) per year collectively for real estate taxes and personal property taxes. The calculation of the tax differential and said payment by RPS shall include the increase in value on the Parcel, when the Parcel is developed and improved with real property or personal property and inventory. The payment by RPS under this Section shall be made within thirty (30) days from the date the Village remits its revenues under Subsection 3 of this Agreement, i.e. within sixty (60) days from the date that the Village receives the revenue from the County of Summit. An illustrative example of the method of calculation of the payment is attached hereto as Exhibit "C".

The calculation of the revenues to be paid by RPS to the Township shall initially be calculated by RPS and shall be subject to verification by the Township. The period for the payment by RPS under this Section shall be for a period of ten (10) years, commencing thirty (30) days from the date the Village remits revenues under Section 3 of this Agreement for the first tax period after RPS takes title to the Parcel.

5. Additional Consideration by RPS. In addition to the consideration given by RPS under Subsection 4 of this Agreement, RPS shall remit an impact payment of Twenty-Five Thousand Dollars (\$25,000.00) per year for a period of ten consecutive years. The initial \$25,000.00 payment shall be made on the later of June 1, 2000 or the date RPS takes title to the Parcel. Thereafter, the \$25,000.00 payment shall be made on the following June 1 for nine (9) additional consecutive years.

If for any reason the Township shall cease to exist, RPS's payments under this Agreement shall not be paid to any successor governmental interest.

6. Annexation. Within 30 days of this Agreement, JJJ Properties shall file the annexation petition with the Summit County Council to annex the Parcel from the Township to the Village. The Village shall support and accept the annexation. The Township agrees not to oppose the annexation, and covenants not to sue and not to challenge the annexation in court, should the annexation be granted by the Summit County Council.

Should the annexation not be granted by the Summit County Council or should a third party challenge the annexation in court, and the final unappealable order of a court overturns the annexation, this Agreement shall be null and void.

7. Consideration by the Township. The Township, agrees not to oppose the annexation and covenants not to sue and not to challenge the annexation in court should the annexation be granted by the Summit County Council.

8. Construction Period. This Agreement and the annexation are contingent upon the development of the Parcel by RPS and the construction of an RPS Distribution Center at that location. In the event that construction of that Distribution Center has not commenced within one year after the effective date of the annexation of the parcel to the Village, and RPS has not elected to extend the construction commencement date, as hereafter stated, the then owner of the Parcel shall file a petition with the Summit County Council to detach the Parcel from the Village and attach it to the Township. In such event, the Village agrees not to oppose the detachment and covenants not to sue and not to challenge the detachment and to take whatever action necessary to assist the detachment. RPS may extend the commencement date of construction of the Distribution Center

beyond the one year deadline, by giving the Village and Township written notice before the one year has elapsed that RPS has not terminated its plans to acquire the Parcel and is diligently proceeding to purchase the Parcel and is waiting for approval from one or more governmental agencies to develop the Parcel for the Distribution Center. The extension notice shall state the type of approval(s) pending, the agency considering the approval mitigation or impact on wetlands, streams, or the like and the expected date of approval. The extension shall be for such period of time necessary to obtain such approval(s), close on the purchase of the Parcel, obtain any building permits and start construction, not to exceed a period of two years from the effective date of annexation.

9. Columbia Road. The Village agrees, to the extent legally possible, to continue with the improvement of Columbia Road under the currently approved Issue 2 Project. The Village will assume the Township liabilities for the improvement of Columbia Road under the Issue 2 Project and shall pay the Township's \$43,000.00 obligation under the Project. In the event of subsequent detachment of the Parcel from the Village and attachment of the Parcel to the Township as referenced in sections 8 and 19 of this Agreement, the Township shall reimburse the Village the \$43,000.00.

The Village will install a left turn lane of the length recommended by the Village Engineer after consulting the traffic study to be provided by RPS, in order to accommodate vehicles leaving the parcel, but in no event shall the left turn lane have a length of less than 300 feet.

10. Water and Sewer. The Village agrees to make available to RPS, Village utilities on the same terms and conditions as are available to all other property owners in the Village. RPS agrees, at its costs, to design (subject to Village reasonable engineer approval) and extend the Village utility lines from their current terminus in Columbia Road to the Parcel. Additionally, RPS, at its costs, will hire a traffic engineer to study the traffic patterns at the Columbia Road - Brecksville Road

interchange. The Village and RPS agree to cooperate in the upgrade of the Columbia Road - Brecksville Road interchange, as may be agreed upon in the future. The Village agrees not to assess RPS for the costs of the improvement of Columbia Road under the Issue 2 grant, and the Village further agrees to pay for the upgrade of the intersection of Columbia Road and Brecksville Road, including the addition of the left hand turn lane.

11. Effect of the Agreement. This Agreement is a complete resolution of the matters of the annexation of the Parcel between the parties and shall not be treated as any admission by any party for any purpose.

12. Length of Contract and Termination. This Agreement will continue to run and be binding on the parties until all of the payments from the Village and RPS under section 3, 4 and 5 are received by the Township. This Agreement may not be terminated for any reason without the written consent of both the Village and the Township and RPS.

13. Modification. This Agreement may not be modified in any manner, except by the written consent of the Village, the Township and RPS.

14. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties, its agents, servants, members, trustees, officials, employees, representatives, assigns and successors when permitted by this Agreement.

15. Legal Construction. In the event one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

16. Prior Agreements Superseded. This Agreement constitutes the entire Agreement of the parties and supersedes any prior understanding or previous oral or written agreement between the parties respecting the subject matter of this Agreement.

17. Governing Law. This Agreement, and all rights, duties and obligations of the Village and the Township, shall be construed under and in accordance with the laws of the State of Ohio, and all obligations of the parties created hereunder are performable in Summit County, Ohio.

18. Remedies. If any action at law or equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursement in addition to any other relief to which that party may be entitled.

19. Purchase by RPS. This agreement is contingent upon RPS taking title to the parcel. Should RPS not complete its purchase agreement and take title to the parcel, this Agreement shall be null and void. In such event, if the annexation petition has been filed and is pending, JJJ Properties shall withdraw the annexation petition. If the annexation has been granted by Summit County Council and RPS fails to take title to the Parcel, JJJ Properties shall file a petition with the Summit County Council to detach the Parcel from the Village and attach it to the Township. In such event, the Village agrees not to oppose the detachment and covenants not to sue and not to challenge the detachment and to take whatever action necessary to assist the detachment.

20. Counterparts. This Agreement may be executed in any number of separate counterparts by the parties, but no counterpart need be executed by more than one party. Each

counterpart, when so executed and delivered, shall be an original, and all counterparts together shall constitute one and the same instrument.

Executed, in multiple counterparts, on the day and year first above written.

Witness:

Mr. A. Jimm
[Signature]

VILLAGE OF RICHFIELD

By: [Signature]
Its Mayor

And: [Signature]
Its Clerk Finance Director

RICHFIELD TOWNSHIP

[Signature] 09-16-99

[Signature] 09/16/99

[Signature] 9/19/99

[Signature] 9/19/99

[Signature] 09/20/99

[Signature] 09/20/99

By: [Signature] 09/16/99
Its Trustee

By: [Signature] 9/19/99
Its Trustee

By: [Signature] 9/20/99
Its Trustee

RPS, INC.

By: _____

Its _____

and

By: _____

Its _____

JJJ PROPERTIES

By: _____

Its _____

and

By: _____

Its _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Law Director, Village of Richfield

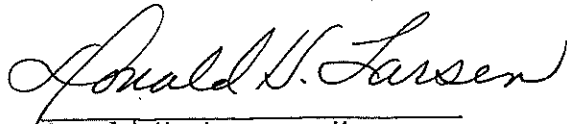
Eric Cougle

Attorney for Richfield Township

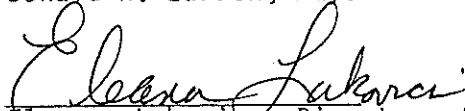
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CERTIFICATION OF CONTRACT AUTHORIZATION

We hereby certify that Village Council duly approved the foregoing agreement, and authorized the Mayor and Director of Finance to enter into same on behalf of the Village of Richfield, Ohio, through approve of Resolution No. 76-1999 on the 28th day of September, 1999.



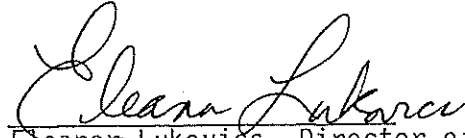
Donald H. Larsen, Mayor



Eleanor Lukovics, Director of Finance

CERTIFICATE OF AVAILABILITY OF FUNDS

I hereby certify that the money for the payment of the foregoing obligation has been lawfully appropriated for the purposes stated herein, and is in the treasury or in the process of collection to the credit of the appropriate fund free from any previous encumbrance.



Eleanor Lukovics, Director of Finance