

RESOLUTION NO. 51-2011

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE CITY OF MACEDONIA FOR THE PROVISION OF PLANNING AND ZONING SERVICES ON A CONSULTING BASIS.

WHEREAS, the City of Macedonia has an ongoing need for planning services including but not limited to review of site plans, subdivisions, BZA cases, and other customary planning-related activities; and

WHEREAS, the Village of Richfield has recently employed a full-time Director of Planning and Zoning who has sufficient experience and training to provide the planning services needed by Macedonia; and

WHEREAS, the Richfield Planning and Zoning Director has the present ability to devote approximately twenty hours per month to the provision of planning services for the City of Macedonia.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio.

SECTION 1: That the Mayor be, and he hereby is, authorized and directed to enter into an agreement with the City of Macedonia, substantially in accordance with the agreement attached as Exhibit A, for the provision of planning services to Macedonia by Richfield's Planning and Zoning Director, for which Macedonia shall pay the fees contained in the agreement attached as Exhibit A.

SECTION 2: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED:     Sep 20, 2011    

    Robert Basl      
President of Council

    [Signature]      
Mayor

Dated:     9/20/11    

ATTEST:

    Cathy Edallwin      
Clerk of Council

**PLANNING CONSULTING SERVICES AGREEMENT**

This AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011 (the "Effective Date") by and between the Village of Richfield, a municipal corporation organized and existing pursuant to the laws of the State of Ohio ("RICHFIELD"), and the City of Macedonia, a municipal corporation organized and existing pursuant to the laws of the State of Ohio ("MACEDONIA"), collectively the "parties".

**BACKGROUND AND INTENT STATEMENTS**

- A. MACEDONIA has an ongoing need for planning services, including but not limited to review of site plans, subdivisions, signs, landscape plans, BZA cases, rezoning proposals, conditional use applications and other customary planning related activities
- B. RICHFIELD recently employed a full-time Director of Planning and Zoning named Brian Frantz who has sufficient experience and training to provide the planning services MACEDONIA needs.
- C. RICHFIELD has determined that at this time the Village's planning and zoning department staff (principally Brian Frantz) has the capacity to meet the planning and zoning needs of the Village of Richfield and provide planning services to MACEDONIA at a level that is anticipated to average approximately twenty hours per month.
- D. MACEDONIA has received planning service from Brian Frantz and is familiar with his professional qualifications, and desires to obtain such services from RICHFIELD while Frantz is employed by RICHFIELD.
- E. RICHFIELD is willing to provide planning services to MACEDONIA in accordance with the terms and conditions set forth below.

In consideration of the Terms and Conditions contained herein, the parties agree as follows:

**TERMS AND CONDITIONS**

**1. Relationship**

- 1.1. This is an arms-length Agreement between independent parties.
- 1.2. At all times, Frantz will remain the employee of RICHFIELD. Frantz will not be considered an employee of MACEDONIA for any reason whatsoever. RICHFIELD shall be responsible for all federal, state and local taxes and associated reporting requirements for Frantz. RICHFIELD shall remain responsible for providing compensation and employee benefits, including applicable workers compensation and unemployment insurance, to Frantz throughout the duration of this Agreement and any extension thereof.

- 1.3. In performance of the work, duties and obligations arising under this Agreement, it is mutually understood that Frantz is at all times serving as an independent contractor providing professional services to MACEDONIA. Amounts paid to RICHFIELD are for consulting services rendered by Frantz and amounts paid to RICHFIELD shall be deemed to be fees paid to independent contractors/vendors.
  - 1.4. There are no third-party beneficiaries to this Agreement.
2. **Position and Services**
- 2.1. The Parties agree that Frantz is expected to provide up to twenty (20) hours of consulting services to MACEDONIA per month, at such times as may be mutually agreed upon and subject to the requirement that Frantz's provision of services to MACEDONIA not conflict with or interfere with his duties as Richfield's Planning and Zoning Director.
  - 2.2. Frantz shall maintain a record of his time worked in providing services to MACEDONIA. RICHFIELD will bill MACEDONIA monthly based upon the hours worked by Frantz for MACEDONIA in the prior month. Billings shall be calculated at the rate of **Fifty-five Dollars (\$55.00) per hour**. MACEDONIA shall pay billed amounts no later than thirty (30) calendar days after receipt of the invoice from RICHFIELD.
  - 2.3. In the event that Frantz makes a complaint, claim, charge, accident report or any other report related to or occurring during his work for, or on the premises of, MACEDONIA, MACEDONIA shall report such complaint, claim, charge, accident report or any other report to RICHFIELD as soon as it becomes known to MACEDONIA, but no later than the next business day after MACEDONIA becomes aware.
  - 2.4. Any and all records and reports that Frantz writes, generates or receives in the course of performing duties under this Agreement (regardless of media) shall be considered the property of MACEDONIA.
  - 2.5. The parties acknowledge that Frantz, in the course of performing duties under this Agreement, may have access to information that MACEDONIA considers privileged and confidential ("Confidential Information"). Frantz will be instructed by RICHFIELD not to use Confidential Information for any purpose other than performing duties for MACEDONIA under this Agreement, and not to disclose Confidential Information to any third party without MACEDONIA's written authorization.
  - 2.6. The parties acknowledge that Frantz may communicate with legal counsel for MACEDONIA with respect to services performed for MACEDONIA. RICHFIELD will instruct Frantz not to do anything to jeopardize the attorney-client privilege or any other privilege that protects information created in the course of compliance activities.

- 2.7 The term of this Agreement shall be month to month. Either MACEDONIA or RICHFIELD may terminate this Agreement without cause by giving a 30-day written Notice, unless the parties agree to waive Notice. If Frantz is terminated from, or leaves, his employment with RICHFIELD, this Agreement shall terminate immediately and RICHFIELD shall notify MACEDONIA as soon as practicable.

### 3. Insurance

- 3.1 MACEDONIA shall release, defend, and hold harmless RICHFIELD and its officials, employees and agents (collectively, the "RICHFIELD Parties") from and against any losses, liabilities, claims, obligations and/or expenses including, without limitation, court costs and reasonable attorneys' fees (collectively "Damages") that may be incurred by or asserted against any of the RICHFIELD Parties, arising from or related to, in whole or in part, (i) any act or omission of MACEDONIA or Frantz while providing services to MACEDONIA pursuant to this Agreement; (ii) any claims asserted by or liability to third parties arising from or related to, in whole or in part, the activities of MACEDONIA or Frantz, while providing services to MACEDONIA, and (iii) any breach of this Agreement by MACEDONIA.

The provisions of this Section shall survive the term of this Agreement.

- 3.2 MACEDONIA shall obtain and maintain in full force and effect at all times throughout this Agreement comprehensive general liability insurance and professional liability insurance covering Frantz as follows:
- (a) A comprehensive general liability insurance policy in the minimum limit of One Million Dollars (\$1,000,000) insuring against bodily injury and property damage.
- 3.3 If MACEDONIA requires Frantz to drive a vehicle of any kind as part of the services he performs for MACEDONIA pursuant to this Agreement, MACEDONIA will provide liability insurance which will insure against public liability for bodily injury, death and property damage occurring while Frantz is acting on MACEDONIA's behalf with a minimum combined single limit of Five Hundred Thousand Dollars (\$500,000) and uninsured motorist insurance with a minimum combined single limit of Five Hundred Thousand Dollars (\$500,000).
- 3.4 MACEDONIA shall have its insurance carrier issue a certificate of insurance naming RICHFIELD as an additional insured in connection with services provided to MACEDONIA by Frantz and providing for not less than 30 days prior written notice to MACEDONIA and RICHFIELD of the cancellation of, or any changes to, such coverage.

4. **Notice**

All notices, demands or other writings shall be deemed sufficiently given if personally delivered or deposited in the United States mail in a properly stamped envelope, certified or registered mail, return receipt requested, or delivered to an overnight mail service, addressed to the party to whom it is given at the addresses set forth below or such other persons or addressees as shall be given by notice of any party, as set forth in Schedule A attached hereto.

5. **Changes or Modifications**

No changes or modifications of this Agreement shall be valid unless the same shall be in writing and signed by RICHFIELD and MACEDONIA. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the person or party against whom charged.

6. **Assignment**

Neither party may assign this Agreement or any rights, interests or obligations arising hereunder.

7. **Entire Agreement**

This Agreement constitutes the entire Agreement between the parties with respect to the subject Services. RICHFIELD and MACEDONIA acknowledge that in entering into and executing this Agreement, they have relied solely upon the representations and agreements contained in this Agreement. This Agreement supersedes any and all other prior agreements either written or oral, between the parties with respect to the subject matter hereof.

8. **Independent Legal Advice**

Each party acknowledges that it is solely responsible for obtaining independent legal advice regarding this Agreement, the relationships created hereby, as well as any related tax and employment laws.

9. **Governing Law**

This Agreement has been executed and delivered in, and shall be interpreted, construed and enforced pursuant to and in accordance with the laws of the State of Ohio.

10. **Severability**

The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

11. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

**CITY OF MACEDONIA**

**VILLAGE OF RICHFIELD**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

For City of Macedonia:  
Approved as to legal form and correctness:  
correctness:

For Village of Richfield  
Approved as to legal form and

\_\_\_\_\_

\_\_\_\_\_

**Fiscal Officer's Certificate**

As the Director of Finance of the City of Macedonia, I certify that, as of the date of execution of the within Planning Consulting Services Agreement, the amount required to satisfy payment under the Agreement has been fully appropriated, or authorized or directed for such purpose is in the City treasury to the credit of the fund for which it is drawn, or is in the process of collection, and not appropriated for any other purpose.

\_\_\_\_\_  
Scott Svab  
Director of Finance  
City of Macedonia