

RESOLUTION NO. 33-2005

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN ECONOMIC DEVELOPMENT AGREEMENT WITH THE CITY OF CLEVELAND AND DECLARING AN EMERGENCY

WHEREAS, the Township of Richfield and the Village of Richfield have proposed the creation of a Joint Economic Development District to create and preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio, the Village and the Township; and

WHEREAS, in order to furnish water to the District, the Village of Richfield and the City of Cleveland have proposed an Economic Development 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 an Economic Development Agreement with the City of Cleveland, 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 economic development and jobs within the State of Ohio and the JEDD District at the earliest possible time; wherefore, provided this Resolution 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: 7/19/05

Thomas Luyford
President of Council

Michael Pires
Mayor

Dated: 7/20/05

ATTEST:

Carolyn E. Sullivan
Clerk of Council

ECONOMIC DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF CLEVELAND

AND

THE VILLAGE OF RICHFIELD

This Agreement ("Agreement") is entered into this _____ day of _____, 2005, between the City of Cleveland, under the authority of Ordinance No. _____, passed _____, 2005, and the Village of Richfield, under the authority of Ordinance No. 33-2005, passed 7/19, 2005.

RECITALS

- 1) The Village of Richfield ("Village") and the Township of Richfield ("Township") desire to create a Joint Economic Development District ("JEDD") under the provisions of the Ohio Revised Code to govern development of property located in the Township and to share the income-tax revenues generated by businesses located in the JEDD; and
- 2) The Village and the Township desire to obtain Cleveland water service to supply the businesses in the designated District; and
- 3) The City of Cleveland ("City") and the Village entered into a Direct Water Service Agreement on April 16, 1982, known as Cleveland Contract No. 32095 (the "Contract"); and
- 4) Sections 4 and 6 of Article XVIII of the Ohio Constitution authorize the City to extend its water service outside the City's corporate limits and to determine the terms and conditions under which such service will be extended; and
- 5) The City and the Village have entered into a modification of the Contract on this date to extend water service to the designated District under the JEDD agreement between the Village and the Township; and
- 6) In consideration of such extension of water service by the City's Division of Water to the JEDD, the Village has agreed to enter into this

agreement ("Agreement") to compensate the City for its contribution toward the creation and operation of the JEDD.

AGREEMENT

Article I. JEDD Agreement

A) Creation of JEDD. Under the JEDD Agreement between the Village and the Township, the Township will contribute certain real property located within the Township and the Village will contribute sanitary sewer services, the extension of water service, and various engineering, planning, and administrative services. The JEDD Agreement provides that ten percent (10%) of the gross income-tax revenues generated within the JEDD will be allocated equally between the Village and the Township for administrative fees associated with administration of the JEDD. Of the remaining ninety percent (90%) (the "net income-tax revenue"), one third will be distributed to the Village for the extension of water service to the District, one third will be distributed to the Village for its other contributions under the JEDD Agreement, and one third will be distributed to the Township for its contributions under the JEDD Agreement. The JEDD Agreement contemplates a two percent (2%) income-tax rate within the JEDD. The initial term of the JEDD Agreement ends fifty years after execution of the Agreement.

B) Administration. Under the JEDD Agreement, the Village and the Township will enter into a Tax Agreement to administer, collect, and enforce the income tax on behalf of the District. The JEDD Agreement designates the Director of Finance of the Village as the Administrator of the income tax of the JEDD, who will be responsible for the receipt, safekeeping, and investment of the income-tax revenues collected within the JEDD.

C) Tax Abatement or Economic Incentives. Notwithstanding anything to the contrary in the JEDD Agreement or this Agreement, the Village shall not consent to any tax abatements or economic incentive programs that are directed at or available to any Cleveland Businesses, or that would impact the compensation to the City under this Agreement.

Article II. Compensation to City

A) Amount. The City and the Village agree that in consideration of the City's agreement to extend water service to the JEDD, the Village agrees to pay to the City an amount equal to the 33.33% share of the net income tax revenue received by the Village through the JEDD Agreement for the extension of water service to the JEDD. The Village shall pay the City its share of the net income-tax revenue within thirty (30) business days after the Village receives its share of

net income-tax revenue from the JEDD. The Village shall include with its payment to the City the financial documentation required in this Article.

B) Documentation. The Village's payments to the City shall be accompanied by documentation of the collection and distribution of the income-tax receipts of the JEDD in sufficient detail to substantiate the Village's compliance with this Agreement. The Village shall also provide the City with the same reports, statements, and other documentation provided to the Village and the Township regarding the collection and distribution of the income tax of the JEDD, the operating income and expenses of the JEDD, and any other information pertaining to the operation of the JEDD.

C) Access to Records; Audit. Subject to the confidentiality provisions of Ohio Revised Code Chapter 718, the Village shall provide the City with access to the District's tax withholding and estimated tax records, and any other information reasonably necessary for the City to ascertain the Village's compliance with this Agreement. The Village shall allow the City and its representatives and employees to make (at the City's expense) and keep photocopies of portions of the JEDD's and/or Village's records that pertain to such tax withholdings and estimates. The City shall have the right, on an annual basis, to have an independent auditor inspect and audit the books and records of the District and any reports provided to the City by the Village and/or the JEDD. If, as a result of an appeal or otherwise, a refund is owed to a taxpayer, the City shall be charged its proportionate amount of such refund or credit. Such refund or credit shall be subtracted from future amounts owed to the City under this Agreement.

D) Nature of Compensation. The parties expressly recognize that the City is not a party to the JEDD Agreement between the Village and the Township and that payments made by the Village to the City under this Agreement shall not be construed as a sharing of tax revenues generated by the JEDD. Such payments are intended to be consideration for the City's extension of water service and shall not be considered tax receipts or revenues of the City's water system.

E) Expansion of the District. Any and all JEDD income-tax revenue generated on new property added to the JEDD during the term of this Agreement shall be distributed in accordance with Articles I (A) and II (A).

F) Cleveland Businesses. The Village and the Township, through the JEDD Agreement, shall not take any action to directly solicit a Cleveland Business ("Cleveland Business") to relocate out of Cleveland and into the JEDD, including providing tax abatement or other incentives to Cleveland Businesses. If a Cleveland Business relocates to the JEDD, as a result of such solicitation, the compensation to the City described in Articles I (A) and II (A) shall be adjusted to provide the City with 50% of the net income tax revenue generated by the

relocated business for a period of 10 years. Further, the Village and the Township, through the JEDD Agreement, agree to provide notice to the City of Cleveland if any Cleveland Business proposes to relocate to the JEDD and/or files for approval of such a move with the Village or the Township, or if the Village or the Township become aware that a Cleveland Business has expressed interest in relocating to the JEDD.

Article III. Term

The term of this Agreement shall begin on the date of its execution and shall run concurrently with the term of the JEDD Agreement, including any renewals or extensions.

Article IV. Water Service Agreement

A) Water Service To The JEDD. The parties have entered into an amendment to the Contract on this date to expand the service area to include the JEDD. The City's obligation to provide water service to the District is contingent upon the City's receipt of the payments described in Article II (A) of this Agreement.

B) Water Service Outside The JEDD. The City shall not be required to extend water service outside the District to property in the unincorporated areas of the Township unless the Township trustees and the Village approve the extension of water lines and /or facilities and the City agrees, subject to the City system requirements, including economic, engineering, and legal feasibility, to extend such service.

C) Termination. In the event that either this Agreement or the JEDD Agreement between the Village and the Township are terminated or are deemed to be unenforceable under any local, state, or federal law or any municipal Charter, or for any reason the Village ceases to make the payments to the City required by Article II (A), the City shall have the right, upon six months' written notice to the Village and the Township, to terminate the Amended Water Service Agreement with the Village, and discontinue water service to the District.

Article V. Default and Remedies

A failure to comply with the terms of this Agreement shall constitute a default hereunder. The party in default shall have sixty (60) days after receiving written notice from the other party of the event of default to cure that default. If the default is not cured within that time period, the non-defaulting party may sue the defaulting party for specific performance under this Agreement or for

damages or both. Other than as provided in Section XI(A) of the JEDD Agreement or Section II(F) hereof, this Agreement may not be canceled or terminated because of a default unless all parties agree to such cancellation or termination, however, the parties may exercise any other remedies they may have at law or equity.

Article VI. **Miscellaneous**

- A) Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the laws of Ohio.
- B) Captions and Headings. The captions and headings used in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any contract provision.
- C) Binding On Successors. This Agreement shall be binding upon successor governmental authorities of the respective municipalities to the extent permitted by law.
- D) Amendments to Be In Writing. This Agreement shall not be amended, modified, discharged or extended except by written instrument executed by the parties, under their respective ordinances and charters, and the laws of Ohio.

Article VII. **Form of Notices**

Any notice or demand to be given by or to any of the parties and every alleged breach of a warranty, representation, or agreement contained in this Agreement shall be made in writing and shall be deemed to have been given or delivered, as the case may be, two (2) days after deposit in the U.S. Post Office, registered or certified mail, postage prepaid, return receipt requested and addressed as follows (or as to each party, to such other address as the party may designate by a notice given in accordance with the provisions of this Section):

Notice to the City shall be addressed to:

Director of Public Utilities
City of Cleveland
Cleveland City Hall
1201 Lakeside Avenue
Cleveland, OH 44114

With a copy to:

Director of Law
City of Cleveland
Cleveland City Hall
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114

Notice to the Village shall be addressed to:

Village of Richfield
Attn: Mayor
4410 West Streetsboro Road
P. O. Box 387
Richfield, OH 44286-0387

With a copy to:

Charles T. Riehl, Director of Law
Village of Richfield
Walter & Haverfield LLP
The Tower at Erieview
1301 East Ninth Street, Suite 3500
Cleveland, OH 44114-1821

Signed in the presence of:

VILLAGE OF RICHFIELD

By: _____

Its Mayor

And: _____

Its Finance Director

Approved:

Charles T. Riehl, Director of Law
Village of Richfield

Date: _____, 2005

CITY OF CLEVELAND

By: _____

Robert H. Baker
Director of Finance

Approved:

Teresa M. Beasley
Director of Law

By: _____

Katie K. Novak
Assistant Director of Law

Date: _____, 2005