

RESOLUTION NO. 27 -2011

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH THE OHIO DEPARTMENT OF DEVELOPMENT FOR A ROADWORK DEVELOPMENT GRANT (ECDD11-301)

WHEREAS, the Village Economic Development Director has recommended entering into a contract with the Ohio Department of Development to accept a \$40,000 grant to provide Section 629 Road Development Funds for a new traffic signal that has been installed at the intersection of Brecksville Road and Highlander Parkway; and

WHEREAS, the Mayor has recommended to this Council passage of legislation which would authorize the Mayor and the Finance Director to enter into an agreement with the Ohio Department of Development for the Roadwork Development Grant (ECDD11-301).

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 agreement with the Ohio Department of Development to accept a \$40,000 grant for roadwork development (ECDD11-301), a copy of which grant agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

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

PASSED: 4/5/11

Bahar Beshara
President of Council

[Signature]
Mayor

Dated: 4/5/11

ATTEST:

Carolyn E. Sullivan
Clerk of Council

GRANT AGREEMENT

Grantee:	Village of Richfield	Grant Control No.:	ECDD 11-301		
Address:	4410 Streetsboro Road				
City:	Richfield	State:	OH	Zip:	45286
Project Local Jurisdiction:	Village of Richfield	Effective Date:	March 28, 2011		
Project County:	Summit	Project Completion Date:	October 28, 2012		
Job Commitment and Investment					
Jobs to be Created:	0	Jobs to be Retained:	200	Investment:	\$82,650.00
Grant Funds					
Program	Authority			Amount	
Roadwork Development Grant	Am. Sub. H.B. 2 of the 128 th General Assembly, Section 207.10			\$40,000.00	
	Controlling Board No.:	DEV-0101542	Date:	March 28, 2011	

This Grant Agreement (the "Agreement") is made and entered into by and between the State of Ohio, Department of Development ("Grantor") and Grantee to set forth the terms and conditions upon which Grantor will provide financial assistance to Grantee and Grantee will use the financial assistance for costs associated with the completion of public roadwork improvements in support of Newark Corporation's expansion project located in the Village of Richfield, Summit County, Ohio (the "Project"). This Agreement incorporates by reference the "Scope of Work," which is attached as Exhibit I.

1. Project Funding.

(a) **State Grant.** Grantor hereby grants to Grantee funds in the aggregate amount of Forty Thousand Dollars (\$40,000.00) (the "Grant Funds") to be used for the sole and express purpose of undertaking and completing the Project. Grantee shall undertake and complete the Project substantially as described in Exhibit I. Grantee may not use the Grant Funds for any purpose other than completion of the Project.

(b) **Availability of Other Funds.** It is a condition to the award of Grant Funds that Grantee provides additional funds from other sources to pay Project costs in excess of the Grant Funds. Grantee represents and warrants to Grantor that Grantee has obtained such additional funds or that Grantee has a binding commitment for such additional funds and, with the exercise of reasonable diligence, will have obtained such additional funds no later than the time such funds will be required to pay Project costs as and when such costs are incurred and payable. No Grant Funds will be disbursed to reimburse Project costs unless and until Grantee obtains the additional funds necessary to pay the balance of the Project costs.

2. Payment of Grant Funds. Grantor shall disburse the Grant Funds on a reimbursement basis. Grantee shall submit to Grantor for review and approval requests for reimbursement detailing expenditures which have then been incurred by Grantee in accordance with the Project budget included in Exhibit I. Travel expenses will not be costs eligible for reimbursement with Grant Funds. Grantor shall be the sole judge of the adequacy of reimbursement requests. All expenses to be reimbursed with Grant Funds shall be supported by contracts, invoices, vouchers, paid receipts and other documentation as appropriate to evidence the costs incurred by

Grantee to perform the work described in Exhibit I. Grantor may request, and Grantee shall submit to Grantor, such additional documentation as may be necessary or useful to substantiate a reimbursement request.

3. Grant Funds Not Expended. If the Grant Funds are not expended by Grantee in accordance with the terms and conditions of this Agreement or within the time period set forth in this Agreement, the award of the Grant Funds shall cease and Grantor shall have no further obligation to disburse the Grant Funds. Grantor shall also have no obligation to disburse any amount of the Grant Funds that exceeds the eligible costs of the Project actually incurred by Grantee. If Grant Funds have been paid to Grantee and Grantor determines that Grantee has not performed in accordance with the terms and conditions of this Agreement, Grantee shall return such improperly expended Grant Funds within thirty (30) days after demand by Grantor. In the event that the Project does not become operational by the Project Completion Date (as such date may be extended as provided in Section 4(a)) and/or is affirmatively abandoned by Grantee, all Grant Funds paid by Grantor to Grantee under this Agreement shall be refunded to Grantor by Grantee within thirty (30) days after the Project Completion Date or abandonment has occurred.

4. Agreement Deadlines and Term.

(a) **Project Completion.** Grantee shall complete the Project not later than the Project Completion Date set forth on the first page of this Agreement. If Grantee anticipates that the Project will not be completed by the Project Completion Date, Grantee must request an extension of time to complete the Project at least sixty (60) days before the scheduled Project Completion Date. It will be within the sole discretion of Grantor to grant or deny such extension of time.

(b) **Term of Agreement.** This Agreement shall be in effect from the Effective Date set forth on the first page of this Agreement through the date which is three (3) years after the Project Completion Date (the "Expiration Date"), unless it is terminated earlier as provided in Section 10 (collectively, the "Term"). Grantee acknowledges that the Term extends beyond the Project Completion Date for purposes of reporting by Grantee and monitoring by Grantor of the results of the award of Grant Funds.

5. Job Creation and Maintenance of Operations. Grantor has approved an award of financial assistance to Grantee to induce Grantee to undertake and complete the Project with the goal of attracting and retaining business opportunities for the State of Ohio which create or retain a significant number of jobs for Ohioans. Accordingly, Grantee's obligations to create and/or retain jobs and maintain substantial operations at the Project site during the Term are essential terms of this Agreement.

(a) **Job Commitment.** From the Effective Date through the Expiration Date, Grantee shall create and/or retain or cause the creation and/or retention at the Project site the number of full-time jobs set forth as "Jobs to be Created" and "Jobs to be Retained" on the first page of this Agreement. Once created or retained, Grantee shall maintain or cause the maintenance of such jobs at least through the Expiration Date.

(b) **Notice of Change.** If the company or companies that have benefited from the Grant Funds intends to reduce the number of jobs at the Project site, sell or otherwise transfer its interests in the Project site, sell or transfer any equipment for which the purchase price was reimbursed in whole or in part with Grant Funds or cease substantial operations at the Project site prior to the Expiration Date, Grantee shall give Grantor written notice of such intended action at least five (5) business days prior to implementation unless Grantee is expressly prohibited by applicable law from giving such notice. If prior notice is prohibited by law, Grantee shall notify Grantor in the most expeditious manner possible at the time such intended actions are implemented. Vacancies created by resignation or other termination of employment of individual employees shall not require notice under this Section 5(b) if Grantee anticipates filling such vacancies within a reasonable time and in the ordinary course of its business.

(c) **Remedy.** If Grantee fails to satisfy its obligations under paragraphs (a) of this Section 5 or to ensure maintenance of substantial operations at the Project site during the Term, Grantor may require Grantee to pay to Grantor, as liquidated damages for such breach, an amount equal to the amount of the Grant Funds disbursed to Grantee under this Agreement. Grantor may, based on Grantor's assessment of market conditions and such mitigating factors regarding Grantee and its operations at the Project site as Grantor deems relevant, waive all or a portion of the liquidated damages amount. Grantee shall pay any damages claimed within thirty (30) days after written demand by Grantor.

6. **Non-Discrimination.**

(a) **Minority Hiring Goal.** Grantee shall make a good faith effort to employ minority persons in the completion and operation of the Project and in the fulfillment of Grantee's job creation obligations in the same percentage as the average percentage of minority persons who reside in the county in which the Project is located and any contiguous Ohio counties.

(b) **Equal Employment Opportunity.** Grantee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, military status or ancestry. Grantee shall ensure that applicants for employment are considered for employment, and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, military status or ancestry. Grantee will incorporate the requirements of this paragraph in all of its contracts for any of the work undertaken on the Project (other than subcontracts for standard commercial supplies or raw materials), and Grantee will require all of its contractors for any part of such work to incorporate such requirements in all subcontracts for such work.

7. **Reporting.**

(a) **Performance Reports.** Grantee shall submit to Grantor an Annual Employment Verification Report in the format required by Grantor from time to time (the "Annual Report"). Each Annual Report shall provide information for the applicable reporting period detailing the progress of the Project if required, the number of employees first hired by the company or companies benefiting at the Project site on or after the Effective Date and the number of employees first employed at the Project site prior to the Effective Date and retained at the Project site on or after the Effective Date. Annual Reports shall be submitted by Grantee for each year (or part of a year) during which this Agreement is in effect, and each Annual Report shall be received by Grantor no later than March 1 following the year covered by such Annual Report. In addition, Grantee shall provide to Grantor such additional information and reports as Grantor may reasonably from time to time require to evaluate Grantee's performance and the effectiveness of the award.

(b) **Signature and Costs.** The chief executive officer, chief financial officer, or other officer of Grantee authorized to sign tax returns on behalf of Grantee shall certify by his or her signature of each Annual Report that the information reported by Grantee is true, complete and correct. All costs incurred by Grantee to comply with the reporting requirements of this Agreement shall be borne by Grantee and shall not be an allowable expense reimbursable from Grant Funds.

(c) **Remedy.** Performance reports are essential for Grantor's effective administration of this grant and its financial incentive programs, generally. If Grantee fails to submit any Annual Report and such breach continues uncured for more than thirty (30) days, Grantor may recover, and Grantee shall pay, as liquidated damages for the breach, an amount equal to \$500 for each month or part of a month the Annual Report is past due.

8. Records Maintenance and Access.

(a) **Maintenance of Records.** Grantee shall establish and maintain for at least three (3) years after the Expiration Date or any earlier termination date its records regarding this Agreement, the Grant Funds and the Project, including, but not limited to, financial reports, job creation and retention statistics, and all other information pertaining to Grantee's performance of its obligations under this Agreement. If any audit, dispute or litigation is then pending, however, Grantee shall maintain such records as may be relevant to such matter until it is finally resolved.

(b) **Inspection and Copying.** At any time during normal business hours and upon not less than twenty-four (24) hours prior written notice, Grantee shall make available to Grantor, its agents or other appropriate State agencies or officials all books and records regarding this Agreement, the Grant Funds and the Project which are in the possession or control of Grantee, including, but not limited to, records evidencing employment at the Project site. Grantor, its agents and other appropriate State agencies and officials may review, audit and make copies of such books and records, and any such inspection of books and records will be undertaken in such a manner as not to interfere unreasonably with the normal business operations of Grantee. Grantee shall, at its own cost and expense, segregate records to be made available for inspection pursuant to this Section 8(b) from Grantee's other records of operation.

9. Adherence to State and Federal Laws and Regulations.

(a) **General.** Grantee shall comply with all applicable federal, state, and local laws in the performance of Grantee's obligations under this Agreement, the completion of the Project and the operation of the Project as long as Grantee has any obligation to Grantor under this Agreement. Without limiting the generality of such obligation, Grantee shall pay or cause to be paid all unemployment compensation, insurance premiums, workers' compensation premiums, income tax withholding, social security withhold, and any and all other taxes or payroll deductions required for all employees engaged by Grantee in connection with the Project, and Grantee shall comply with all applicable environmental, zoning, planning and building laws and regulations.

(b) **Ethics.** In accordance with Executive Order 2011-03K, Grantee, by its signature on this document, certifies: (1) it has reviewed and understands Executive Order 2011-03K, (2) has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, Ohio Revised Code §§ 102.01 *et seq.*, §§ 2921.01, 2921.42, 2921.421 and 2921.43, and §§ 3517.13(I) and (J), and (3) will take no action inconsistent with those laws and the order, as any of them may be amended or supplemented from time to time. Grantee understands that failure to comply with the Ohio ethics and conflict of interest laws, is in itself, grounds for termination of this Agreement and the grant of funds made pursuant to this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

(c) **Conflict of Interest.** No personnel of Grantee, contractor of Grantee or personnel of any such contractor, and no public official who exercises any functions or responsibilities in connection with the review or approval of any work completed under this Agreement, shall, prior to the completion of such work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his or her functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Any such person who, prior to or after the execution of this Agreement, acquires any personal interest, involuntarily or voluntarily, shall immediately disclose his interest to Grantor in writing. Thereafter, such person shall not participate in any action affecting the work under this Agreement unless Grantor determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

(d) **Outstanding Liabilities.** Grantee represents and warrants to Grantor that Grantee does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State of Ohio; (2) any moneys to the State

of Ohio or a state agency for the administration or enforcement of any environmental laws of the State of Ohio; and (3) any other moneys to the State of Ohio, a state agency or a political subdivision of the State of Ohio that are past due, whether or not the amounts owed are being contested in a court of law.

(e) Falsification of Information. Grantee represents and warrants to Grantor that Grantee has made no false statements to Grantor or any of its employees or agents in the process of obtaining the award of Grant Funds. Grantee acknowledges that any person who knowingly makes a false statement to obtain an award of financial assistance may be required under Ohio Revised Code § 9.66(C) to repay such financial assistance and shall be ineligible for any future economic development assistance from the State of Ohio, any state agency or a political subdivision. In addition, any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code § 2921.13(F)(1).

(f) Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization. If applicable, Grantee must certify compliance with Ohio Revised Code § 2909.33.

(g) Prevailing Wage. Construction of public improvements with public funds is subject to the prevailing wage requirements of Ohio Revised Code Chapter 4115. Construction projects undertaken with financial assistance provided by the State of Ohio under certain provisions of the Ohio Revised Code are also subject to the prevailing wage requirements of Ohio Revised Code Chapter 4115 to the extent provided in Sections 4115.032 and various program-specific statutes such as Section 122.0818, among others. The Ohio Department of Commerce, Division of Industrial Compliance and Labor, Bureau of Wage and Hour, makes all determinations about the application of prevailing wage requirements. Grantee shall comply, and shall cause its contractors and subcontractors to comply, with all prevailing wage requirements applicable to the Project. Grantee shall designate or cause to be designated an individual who shall perform the duties and responsibilities required by law of a prevailing wage coordinator for the Project.

(h) Public Records. Grantee acknowledges that this Agreement and other records in the possession or control of Grantee regarding the Project are public records under Ohio Revised Code § 149.43 and are open to public inspection unless a legal exemption applies. Grantee's non-public financial information may be exempt from disclosure under a trade secret exception to the public records law.

10. Default and Remedies.

(a) Default. Grantee shall be in default of this Agreement if Grantee fails to perform any of its obligations under this Agreement and such failure to perform continues uncured for more than thirty (30) days after written notice (a "Default Notice") from Grantor. During the thirty-day cure period, Grantee shall incur only those obligations or expenditures pre-approved by Grantor that are necessary to enable Grantee to continue its operations and achieve compliance with the terms and conditions of this Agreement. Grantee shall also be in default of this Agreement if Grantee is in default of any other agreement between Grantor and/or the Director of Grantor and Grantee and such default continues beyond any applicable period of cure or grace.

(b) Remedies. Following a default by Grantee, Grantor may exercise one or more of the following remedies:

(i) Discontinue Disbursements. If the Grant Funds have not been fully disbursed, Grantor may terminate any and all of Grantor's obligations under this Agreement, including the obligation to make further disbursements of Grant Funds.

(ii) Demand Repayment of Grant Funds or Liquidated Damages. Under the circumstances described in Section 3 of this Agreement, demand repayment of Grant Funds improperly expended and under the

circumstances described in Sections 5 and 7 of this Agreement, demand liquidated damages as provided in Sections 5(c) and 7(c), respectively. Grantee shall not be required to refund Grant Funds or pay liquidated damages in an amount that exceeds the Grant Funds awarded.

(iii) Other Legal Remedies. Pursue any other legal or equitable remedies Grantor may have under this Agreement or applicable law.

(c) Remedies Cumulative. No remedy provided to Grantor under this agreement or otherwise by law or in equity is exclusive of any other available remedy. No delay or omission by Grantor in exercising any right or power accruing upon any default shall impair any such right or power or be construed as a waiver, and each such right or power may be exercised from time to time as often as may be deemed by Grantor to be expedient.

(d) Effects of Termination. Within sixty (60) days after termination of this Agreement following any default, Grantee shall provide Grantor with a final report setting forth the number of full-time jobs created and/or retained by Grantee from the Effective Date through the termination, the total expenditure of the Grant Funds by Grantee and the status of the Project at the time of termination. The final report shall be signed and certified in the same manner as the reports required by Section 7 of this Agreement. This reporting obligation shall survive the termination of the Agreement.

(e) Grantor's Expenses. Grantee shall reimburse Grantor for all expenses, including, without limitation, reasonable attorneys' fees, in connection with the enforcement of this Agreement.

11. Liability. Grantee shall maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person, damage to property (including property of Grantor) caused by the negligent acts or omissions, or negligent conduct of the Grantee, to the extent permitted by law, in connection with the activities of this Agreement. Furthermore, each party to this Agreement agrees to be liable for the negligent acts or negligent omissions by or through itself, its employees, agents and subcontractors. Each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this Agreement shall impute or transfer any such liability from one to the other.

12. Certification of Funds. None of the rights, duties and obligations of the parties under this Agreement shall be binding on either party until all statutory provisions of the Ohio Revised Code including, without limitation, Section 126.07, have been complied with, and until such time as all funds have been made available and are forthcoming from the appropriate state agencies.

13. Notice. Any notice or report required or permitted to be given under this Agreement shall be deemed to have been sufficiently given for all purposes if mailed by first class certified or registered mail or sent by commercial delivery to the following addresses of the parties or to such other address as either party may hereafter furnish by written notice to the other party.

If to Grantor:

Ohio Department of Development
77 South High Street, 28th Floor
P.O. Box 1001
Columbus, Ohio 43216-1001
ATTN: Director, Strategic Business Investment Division
FAX No.: (614) 644-1789

If to Grantee:

Village of Richfield
4410 Streetsboro Road
Richfield, Ohio 45286
ATTN: Ralph Waszak
FAX No.: (330) 659-4906

14. Miscellaneous.

- (a) **Governing Law.** This Agreement shall be governed by the laws of the State of Ohio as to all matters including, but not limited to, its validity, construction, effect and performance.
- (b) **Forum and Venue.** Grantee irrevocably submits to the non-exclusive jurisdiction of any federal or state court sitting in Columbus, Ohio, in any action or proceeding arising out of or related to this Agreement, Grantee agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, and Grantee irrevocably waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum. Nothing in this Agreement shall limit the right of Grantor to bring any action or proceedings against Grantee in the courts of any other jurisdiction. Any actions or proceedings by Grantee against Grantor or the State of Ohio involving, directly or indirectly, any matter in any way arising out of or related to this Agreement shall be brought only in a court in Columbus, Ohio.
- (c) **Entire Agreement.** This Agreement, including its exhibits and documents incorporated into it by reference, constitutes the entire agreement and understanding of the parties with respect to its subject matter. Any prior written or verbal agreement, understanding or representation between the parties or any of their respective officers, agents, or employees is superseded and no such prior agreement, understanding or representation shall be deemed to affect or modify any of the terms or conditions of this Agreement.
- (d) **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.
- (e) **Amendments.** This Agreement may not be amended or modified except upon such terms as both parties may agree in a writing executed by authorized representatives of each party.
- (f) **Forbearance Not a Waiver.** No act of forbearance or failure to insist on the prompt performance by Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by Grantor of any of its rights under this Agreement or applicable law.
- (g) **Pronouns.** The use of any gender pronoun shall be deemed to include the other gender, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.
- (h) **Headings.** Section headings contained in this Agreement are inserted for convenience only and shall not be used in construing this Agreement.
- (i) **Assignment.** Neither this Agreement nor any rights, duties, or obligations of Grantee pursuant to this Agreement shall be assigned by Grantee without the prior express written consent of Grantor, which shall not be unreasonably withheld. Any purported assignment not made in accordance with this paragraph shall be void.
- (j) **Binding Effect.** Each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of Grantee, its successors and permitted assigns.
- (k) **Survival.** Any provision of this Agreement which, by its nature, is intended to survive the expiration or other termination of this Agreement, including, without limitation, any indemnification obligation, shall so survive and shall benefit the parties and their respective successors and permitted assigns.

Signature: Each of the parties has caused this Grant Agreement to be executed by its authorized representatives as of the dates set forth below their respective signatures effective as of the Effective Date:

Grantee:

Village of Richfield

Grantor:

**State of Ohio
Department of Development**

James A. Leftwich
Director
Ohio Department of Development

By: _____

Printed Name: _____

Title: _____

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT I TO GRANT AGREEMENT

Scope of Work and Project Budget

EXHIBIT I**SCOPE OF WORK****Village of Richfield
Village of Richfield, OH (Summit County)**

On March 28, 2011, Controlling Board approved the Ohio Department of Development's request to release \$40,000 from fund 4W00, line item 195629, Roadwork Development Grant, for fiscal year 2011, to the Village of Richfield for costs associated with the completion of public roadwork improvements in support of Newark Corporation's expansion project in the Village of Richfield, Summit County.

As a result of the project and State assistance provided, Newark Corporation will retain 200 not-at-risk, existing, full-time jobs. Based on the number of not-at-risk, existing, full-time jobs retained, the average cost of Roadwork Development Grant assistance is \$200 per job.

Eligible public roadwork improvement costs at the project site are estimated at approximately \$82,650. The requested \$40,000 in Roadwork Development Grant assistance represents approximately 48.4 percent of eligible project costs. The Village of Richfield has committed to funding the balance of the public roadwork improvement costs.

The project in the Village of Richfield involves the installation of a traffic signal at the intersection of Brecksville Road and Highlander Parkway. The traffic signal installation at the intersection of Highlander Parkway and Brecksville Road is located approximately 1,500 feet south of the intersection of State Route 176 (also known as Broadview Road or Wheatley Road) and Brecksville Road (also known as Cleveland-Massillon Road). Brecksville Road is a major thoroughfare that runs north and south and Highlander Parkway runs west of Brecksville Road, ending in a cul-de-sac.

Because of traffic volume and poor sight lines, the intersection is currently operating at a low level. The 200 newly created jobs of Newark Corporation will further exasperate the unsafe situation. In addition to Newark Corporation, the roadwork project will provide safe ingress and egress of employees of OEConnection, Cisco Systems, and other corporations located on Highlander Parkway.

Budget

<u>Roadwork Improvements</u>	<u>\$82,650</u>
Total Project Costs	\$82,650
 Total Eligible Project Costs	 \$82,650

In accordance with the Financial Assistance Application, State of Ohio incentives will be used for the completion of public roadwork improvements.

ADDENDUM TO GRANT AGREEMENT

Provisions Implementing Executive Order 2010-09S Banning the Expenditure of Public Funds on Offshore Services

This Addendum is made effective as of the date of that certain Grant Agreement between the undersigned Grantee and the Ohio Department of Development, as Grantor (the "Agreement"). The following terms and conditions are incorporated in the Agreement as if fully re-written directly in the Agreement. This Addendum supersedes any conflicting or inconsistent terms of the Agreement.

I. EXECUTIVE ORDER REQUIREMENTS

Grantee affirms that it has read and understands Executive Order 2010-09S issued by Ohio Governor Ted Strickland, that it shall abide by those requirements in the performance of the Agreement, and that it shall perform no services required to implement the project or program subject to the Agreement outside of the United States for which grant funds will be used to pay or reimburse the cost of such services or for which the cost of such services will be counted as match or cost share specifically required as a condition to the disbursement of the grant funds. For purposes of this Addendum and the Agreement in which its terms are incorporated, "services under the Agreement" and "services performed under the Agreement" means services required to implement the grant-supported project or program and for which grant funds will be used to pay or reimburse the cost of such services or for which the cost of such services will be counted as match or cost share specifically required as a condition to the disbursement of the grant funds. The Executive Order is provided as an attachment to this Addendum and also is available at the following website: (<http://www.governor.ohio.gov/Default.aspx?tabid=1495>).

Grantee also affirms, understands, and agrees to immediately notify Grantor of any change or shift in the location(s) of services performed under the Agreement by Grantee or its subgrantees or contractors, and no services performed under the Agreement shall be changed or shifted to a location(s) outside of the United States.

II. TERMINATION, SANCTION, DAMAGES

If Grantee or any of its subgrantees or contractors perform services under the Agreement outside of the United States, the performance of such services shall be treated as a material breach of the Agreement. Grantor is not obligated to pay and shall not pay for such services. If Grantee or any of its subgrantees or contractors perform any such services, Grantee shall immediately return to Grantor all grant funds disbursed as payment or reimbursement for those services or on the basis of the cost of such services having been counted as match or cost share specifically required as a condition for disbursement of grant funds.

Grantor may, at any time after the breach, terminate the Agreement, upon written notice to Grantee. Grantor may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Agreement. If Grantor determines that actual and direct damages are uncertain or difficult to ascertain, Grantor in its sole discretion may recover a payment of liquidated damages in the amount of twenty-five percent (25%) of the value of the Agreement (not to exceed the amount of grant funds disbursed prior to any termination of the Agreement).

Grantor, in its sole discretion, may provide written notice to Grantee of a breach and permit Grantee to cure the breach. Such cure period shall be no longer than 21 calendar days. Notwithstanding Grantor permitting a period of time to cure the breach or Grantee's cure of the breach, Grantor does not waive any of its rights and remedies provided Grantor in the Agreement, including, but not limited to, recovery of

grant funds paid for services Grantee, its subgrantees or contractors performed outside of the United States, costs associated with corrective action, or liquidated damages.

III. ASSIGNMENT / DELEGATION

Grantee shall not assign any of its rights, nor delegate any of its duties and responsibilities under the Agreement without prior written consent of Grantor. Any assignment or delegation not consented to may be deemed void by Grantor.

Agreement Subject Matter:	ECDD 11-301
Agreement Effective Date:	3/28/2011

GRANTEE:
Village of Richfield

GRANTOR: **State of Ohio**
Department of Development

Mark D. Kvamme, Director

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

STANDARD AFFIRMATION AND DISCLOSURE FORM FOR GRANTS

EXECUTIVE ORDER 2010-09S

Banning the Expenditure of Public Funds on Offshore Services

APPLICANT/GRANTEE AFFIRMATION AND DISCLOSURE

By the signature affixed to this Affirmation and Disclosure, the grant applicant or Grantee identified below affirms, understands and will abide by the requirements of Executive Order 2010-09S issued by Ohio Governor Ted Strickland. The Executive Order is attached and is available at the following website: (<http://www.governor.ohio.gov/Default.aspx?tabid=1495>).

The grant applicant or Grantee, as the case may be, acknowledges that for purposes of the Executive Order grant funding provided to support a project or program of the applicant/Grantee is equivalent to a purchase of services by the State; "services" in the context of a grant means services that implement the project or program of the applicant/Grantee to the extent that such services are paid for or reimbursed with grant funds provided by the State or with match or cost share specifically required by the State as a condition to disbursement of the grant funds; investments by the Grantee in the project or program from non-State sources of funding other than amounts claimed as specifically required match or cost share are not subject to the Executive Order; the Grantee is equivalent to a "contractor," as that term is used in the Executive Order; and subgrantees, if any, and contractors of the Grantee are equivalent to "subcontractors," as that term is used in the Executive Order.

The applicant/Grantee affirms that the applicant/Grantee and any of its contractors and subgrantees shall perform no services outside of the United States to implement the grant-supported project or program which will be paid for or reimbursed with grant funds or which will be counted as match or cost share specifically required as a condition to disbursement of the grant funds.

The applicant/Grantee shall provide all the name(s) and location(s) where services will be performed in the spaces provided below or by attachment. Failure to provide this information as part of the response will deem an applicant not responsive and no further consideration will be given to the applicant's grant proposal. If the applicant/Grantee will not be using subgrantees or contractors, indicate "Not Applicable" in the appropriate spaces. If the applicant/Grantee will not be storing, accessing, testing, maintaining or backing-up state data, indicate "Not Applicable" in item 3.

1. Principal location of business of applicant/Grantee:

(Address)

(City, State, Zip)

Name/Principal location of business of subgrantee(s) and contractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by applicant/Grantee:

(Address)

(City, State, Zip)

Name/Location where services will be performed by subgrantee(s) and contractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by applicant/Grantee:

(Address)

(Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subgrantees and contractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

4. Location where services to be performed will be changed or shifted by applicant/Grantee:

(Address)

(Address, City, State, Zip)

Name/Location(s) where services will be changed or shifted to be performed by subgrantee(s) and contractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

RFP/Award:

Applicant:

Signature of

Authorized

Representative:

Name:

Title:

Date:



TED STRICKLAND
GOVERNOR
STATE OF OHIO

Executive Order 2010-09S

Banning the Expenditure of Public Funds for Offshore Services


- 1. Ohio's Economic Vitality Necessitates Constant Vigilance in State Job Creation Efforts.** State officials and employees must at all times remain passionately focused on initiatives that will create and retain jobs in the United States in general and in Ohio, in particular, and must do so especially during Ohio's continuing efforts to recover from the recent global recession.
- 2. No Public Funds Should be Spent on Services Provided Offshore.** Allowing public funds to pay for offshore services undermines economic development objectives and any such offshore services carry unacceptable quality and security risks.
 - a. The Purchase of Offshore Services with Public Funds Undermines Economic Development and Other Job Creation and Retention Objectives.** The expenditure of public funds for services provided offshore deprives Ohioans and other Americans critical employment opportunities. It also undermines efforts to attract businesses to Ohio and retain them in Ohio, initiatives in which the State has invested heavily.
 - b. The Purchase of Offshore Services Has Unacceptable Business Consequences.** The use of offshore service providers could pose unacceptable data security, and thus privacy and identity theft risks. There are pervasive service delivery problems with offshore providers, including dissatisfaction with the quality of their services and with the fact that services are being provided offshore. It is difficult and expensive to detect illegal activity and contract violations and to pursue legal recourse for poor performance or data security

violations. The State's use of offshore service providers ill-serves the people of Ohio who are the primary consumers of the services provided by the State.

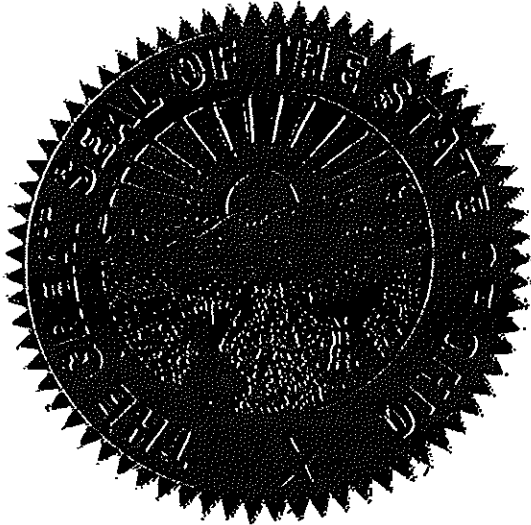
3. **Ohio's Policy Has Been -- and Must Continue To Be -- That Public Funds Should Not Be Spent on Services Provided Offshore.** Throughout my Administration, procurement procedures have been in place that restrict the purchase of offshore services. Despite these requirements, federal stimulus funds were recently used to purchase services from a domestic company which ultimately provided some of those services offshore. This incident was unacceptable and has caused me, through this Order, to redouble my commitment to ensure that public funds are not expended for offshore services.
4. **Additional Steps Will Ensure that Public Funds Are Not Spent on Services Provided Offshore.** In order to ensure that the State of Ohio makes no expenditures for services provided offshore, I hereby order the following:
 - a. No Cabinet Agency, Board or Commission (Executive Agency) shall enter into any contract which uses any funds within its control to purchase services which will be provided outside the United States. This Order applies to all funds in the custody of an Executive Agency, be they from state, federal, philanthropic or private sources. It applies to all purchases of service made directly by an Executive Agency and services provided by sub-contractors of those providing services purchased by an Executive Agency.
 - b. This Executive Order will be personally provided, by the Director, Chair or other chief executive official of each Executive Agency, to the Chief Procurement Officer or other individual at that entity responsible for contracts for services.
 - c. The Department of Administrative Services, through Ohio's Chief Procurement Officer (OCPO), shall have in place, by August 31, 2010, procedures to ensure all of the following:
 - i. All agency procurement officers, or the person with equivalent duties at each Executive Agency (APOs), have standard language in all Executive Agency contracts which:
 - (a) Reflect this Order's prohibition on the purchase of offshore services.
 - (b) Require service providers or prospective service providers to:

- (i) Affirm that they understand and will abide by the requirements of this Order.
 - (ii) Disclose the location(s) where all services will be performed by any contractor or subcontractor.
 - (iii) Disclose the locations(s) where any state data associated with any of the services they are providing, or seek to provide, will be accessed, tested, maintained, backed-up or stored.
 - (iv) Disclose any shift in the location of any services being provided by the contractor or any subcontractor.
 - (v) Disclose the principal location of business for the contractor and all subcontractors who are supplying services to the state under the proposed contract.
- ii. All APOs are ensuring that all quotations, statements of work, and other such proposals for services affirm this Order's prohibition on the purchase of offshore services and include all of this Order's disclosure requirements.
- (a) Any such proposal for services lacking the affirmation and disclosure requirements of this Order will not be considered.
 - (b) Any such proposal where the performance of services is proposed to be provided at a location outside the United States by the contractor or any sub-contractor, will not be considered.
- iii. All procurement manuals, directives, policies, and procedures reflect the requirements of this Order.
- iv. All APOs have adequate training which addresses the terms of this Order.
5. **Exceptions.** Nothing in this Order is intended to contradict any state or federal law. In addition, this Order does not apply to:
- a. Services necessary to support the efforts of the Department of Development Global Markets Division to attract jobs and business to the State of Ohio, including incidental services for the support of trade missions, payment of international staff, and services necessary for the operation of international offices.
 - b. Academic, instructional, educational, research or other services necessary to support the international missions of Ohio's public colleges and universities.

6. I signed this Executive Order on August 6, 2010 in Columbus, Ohio and it will not expire unless rescinded.



Ted Strickland, Governor



ATTEST:

Jennifer Brunner, Secretary of State