

RESOLUTION NO. 40-2011

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH LIGHTGOV, LLC. FOR DISPOSAL OF UNNEEDED, OBSOLETE OR UNFIT PROPERTY

WHEREAS, Revised Code §721.15 authorizes municipalities to dispose of unneeded, obsolete or unfit property through Internet auction, if necessary, by having the municipality adopt, each calendar year, a resolution expressing that intent; and

WHEREAS, the Mayor has recommended to Council the use of LightGov, LLC for Internet auction of unneeded, obsolete or unfit property of the Village of Richfield.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Richfield, Summit County, 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 LightGov, LLC, substantially in accordance with the agreement attached as Exhibit A, for the Internet auction of unneeded, obsolete or unfit property of the Village of Richfield and for reverse auction/e-procurement services. LightGov, LLC is located at 100 DeBartolo Place, Suite 315, Boardman, Ohio 44512.

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

PASSED: June 21, 2011

Bobbie Caschira
President of Council

[Signature]
Mayor

Dated: 6/21/11

ATTEST:

[Signature]
Clerk of Council

EXHIBIT A

LIGHTGOV, LLC CONTRACT

This Contract is entered into on _____, 2011 between the Village of Richfield, Ohio ("Client") and LightGov, LLC. ("LightGov"), with an office at 100 DeBartolo Place, Suite 315, Boardman, OH 44512.

I. TERM

This Contract will be effective for three (3) years from _____, 2011 and shall expire on _____, 2014 unless otherwise terminated or extended by formal amendment.

II. SCOPE OF SERVICE

LightGov will perform online reverse and forward auction services as well as provide RFP and Classified listings to the Client Government in conjunction with the Summit County Mayor's Association, subject to terms and conditions set forth in this Contract and the attached exhibits (such exhibits are deemed to be a part of this Contract as fully as if set forth herein), LightGov agrees to perform the (Consulting, Online Surplus Property Network and eProcurement/Reverse Auction) services as described in Exhibit A and B.

III. PAYMENT

The Client Government will be billed on a monthly basis by LightGov according to the following rate structure:

Classifieds - No Charge

This is the internal posting feature. List items internally to other SCMA sponsored Entities. There is no cost to use this feature.

RFPs - No Charge

This is a central web based location for listing Request for Proposals, Quotes, or Information (RFPs, RFQs, RFIs). There is no cost to use this feature.

Procurement/Reverse Auctions - 1.25% with a maximum charge of \$1,000.00 per item, intended as a pass through charge to the winning vendor as further described in Exhibit B.

Surplus Auctions - Commission of 6% of surplus sales revenue on items as noted in Exhibit B.

Payment Terms and Conditions are further described in Exhibit B.

IV. DUPLICATE BILLING

LightGov warrants that claims made to Client for payment for services provided shall be for actual services rendered to eligible individuals and do not duplicate claims made by LightGov to other sources of public funds for the same service.

V. AVAILABILITY AND RETENTION OF RECORDS

All records relating to the service provided and supporting documentation for invoices submitted to Client by LightGov shall be retained and made available by LightGov for audit by, the State of Ohio (including, but not limited to, ODHS, the Auditor of the State of Ohio, Inspector General or duly appointed law enforcement officials) and agencies of the United States government for a minimum of three (3) years after payment under this Contract. If an audit is initiated during this time period, LightGov shall retain such records until the audit is concluded and all issues resolved.

VI. CONFLICT OF INTEREST

This Contract in no way precludes, prevents, or restricts LightGov from obtaining and working under an additional contractual arrangement(s) with other parties aside from, assuming that the contractual work in no way impedes LightGov's ability to perform the services required under this Contract. LightGov warrants that at the time of entering into this Contract, it has no interest in nor shall it acquire any interest, direct or indirect, in any Contract, which will impede its ability to perform the services under this Contract.

LightGov further agrees that there is no financial interest involved on the part of any officers or employees of the Client involved in the development of the specifications or the negotiation of this Contract. LightGov has no knowledge of any situation, which would be a conflict of interest. It is understood that a conflict of interest occurs when an employee will gain financially or receive personal favors as a result of the signing or implementation of this Contract.

LightGov will report the discovery of any potential conflict of interest to Client. Should a conflict of interest be discovered during the term of this Contract, Client may exercise any right under the Contract including termination of the Contract.

VII. ASSIGNMENTS

The parties expressly agree that this Contract shall not be assigned by LightGov without the prior written approval of Client. LightGov may not subcontract any of the services agreed to in this Contract without Client's express written consent.

All subcontracts are subject to the same terms, conditions, and covenants contained within this Contract. LightGov is responsible for making direct payment to all subcontractors for any and all services provided by such contractor.

VIII. GOVERNING LAW

This Contract and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of Ohio.

IX. INTEGRATION AND MODIFICATION

This instrument embodies the entire Contract of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or contracts, either written or oral, between the parties to this Contract. Also, this Contract shall not be modified in any manner except by an instrument, in writing, executed by the parties to this Contract.

X. SEVERABILITY

If any term or provision of this Contract or the application thereof to any person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Contract or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Contract shall be valid and enforced to the fullest extent permitted by law.

XI. TERMINATION

Client may terminate this Contract 60 days prior to the anniversary date of the Contract for the subsequent year(s) remaining on the Contract.

If Client terminates this Contract it shall not be responsible for any payment for services not performed.

XII. COMPLIANCE

LightGov certifies that LightGov and all subcontractors who provide direct or indirect services under this Contract will comply with all requirements of federal laws and regulations, applicable OMB circulars, state statutes, and Ohio Administrative Code rules in the conduct of work hereunder. LightGov accepts full responsibility for payment of any and all unemployment compensation premiums, all income tax deductions, pension deductions, and any and all other taxes or payroll deductions required for the performance of the work by LightGov's full time employees.

XIII. NON-DISCRIMINATION

LightGov certifies it is an equal opportunity employer and shall remain in compliance with state and federal civil rights and nondiscrimination laws and regulations including but not limited to Title VI, and Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Age Discrimination Act of 1975, the Age Discrimination in Employment Act, as amended, and the Ohio Civil Rights Law.

During the performance of this Contract, LightGov will not discriminate against any employee, Contract worker, or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, ancestry, disability, Vietnam-era veteran status, age, political belief or place of birth. LightGov will take affirmative action to ensure that during employment, all employees are treated without regard to race, color, religion, sex, sexual orientation, national origin, ancestry, disability, Vietnam-era veteran status, age, political belief or place of birth. These provisions apply also to contract workers. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. LightGov agrees to post in conspicuous places, available to employees and applicants for employment, notices stating LightGov complies with all applicable federal and state non-discrimination laws.

LightGov, or any person claiming through LightGov, agrees not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything relating to this Contract, or in reference to any contractors or subcontractors of said LightGov.

XIV. INDEMNIFICATION

LightGov agrees to protect, defend, indemnify and hold Client and its officers, employees, agents free and harmless from and against any and all losses, penalties, damages, settlements, costs or liabilities of every kind and character arising out of or in connection with any acts or omissions of LightGov, negligent or otherwise, and its employees officers, agents, or independent contractors.

XV. RELATIONSHIP

Nothing in this Contract is intended to, or shall be deemed to constitute a partnership, association or joint venture with LightGov. LightGov shall at all time have the status of an independent contractor without the right or authority to impose tort, contractual or any other liability on or its officers.

XVI. DISCLOSURE

LightGov hereby covenants that it has disclosed any information that it possesses about any business relationship or financial interest that said LightGov has with a county employee, employee's business, or any business relationship or financial interest that a county employee has with LightGov or in LightGov's business.

XVII. INSURANCE

LightGov agrees to maintain at all times during the life of this Contract liability and worker's compensation insurance with a responsible company licensed to do business in the state of Ohio.

XVIII. CONFIDENTIALITY

LightGov agrees to comply with all federal and state laws applicable to and/or concerning the confidentiality of consumer of Client. LightGov understands that any access to the identities of any Client consumers shall only be as necessary for the purpose of performing its responsibilities under this Contract. LightGov agrees that the use or disclosure of information concerning Client consumers for any purpose not directly related to the administration of this Contract is prohibited.

XIX. AUDIT RESPONSIBILITY

LightGov agrees to accept responsibility for receiving, replying to and/or complying with any audit exception by appropriate federal, state or local audit directly related to the provision of this Contract.

LightGov agrees to repay Client the full amount of payment received for duplicate billings, erroneous billings, or false or deceptive claims. LightGov recognizes and agrees Client may withhold any money due and recover through any appropriate method any money erroneously paid under this Contract if evidence exists of less than full compliance with this Contract.

XX. WARRANTY

LightGov warrants that its services and/or goods shall be performed and/or provided in a professional and work like manner in accordance with applicable professional standards.

LightGov creates no warranties expressed or implied for itself or the Client from the posting and sale of surplus property. All property is sold "As Is" with the buyer responsible for any pick-up or delivery.

XXI. AVAILABILITY OF FUNDS

This Contract is conditioned upon the availability of federal, state, or local funds, which are appropriated or allocated for payment of this Contract. If funds are not allocated and available for the continuance of the function performed by LightGov hereunder, the products or services directly involved in the performance of that function may be terminated by Client at the end of the period for which funds are available. Client will notify LightGov at the earliest possible time of any products or services, which will or may be affected by a shortage of funds. No penalty shall accrue to Client in the event this provision is exercised, and shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.

XXII. FORCE MAJEURE

If by reason of force majeure, the parties are unable in whole or in part to act in accordance with this Contract, the parties shall not be deemed in default during the continuance of such inability provided, however, that LightGov shall only be entitled to the benefit of this paragraph for fourteen (14) days if the event of force majeure does not affect property or employees which are necessary to LightGov's ability to perform.

The term "Force Majeure" as used herein shall mean without limitation: acts of God; strikes or lockout; acts of public enemies; insurrections; riots; epidemics; lightening; earthquakes; fire; storms; flood; washouts; droughts; arrests; restraint or government and people; civil disturbances; and explosions.

LightGov shall, however, remedy with all reasonable dispatch any such cause to the extent within its reasonable control, which prevents LightGov from carrying out its obligations contained herein.

XXIII. LEGAL ACTION

Any legal action brought pursuant to the Contract will be filed in the courts located in Lake County Ohio and Ohio law will apply.

XXIV. CHILD SUPPORT ENFORCEMENT

LightGov agrees to cooperate with, ODHS and any other Child Support Enforcement Agency in ensuring that LightGov's employees meet child support obligations established under state law. Further, by executing this Contract, LightGov certifies present and future compliance with any order for the withholding of support, which is issued pursuant to sections 3113.21 and 3113.214 of the Ohio Revised Code.

XXV. PUBLIC RECORDS

This Contract is a matter of public record under the laws of the State of Ohio. LightGov agrees to make copies of this Contract promptly available to any requesting party.

XXVI. DRUG-FREE WORKPLACE

LightGov certifies and affirms that LightGov will comply with all applicable state and federal laws regarding a drug-free workplace. LightGov will make a good faith effort to ensure that all employees performing duties or responsibilities under this Contract, while working on state, county or private property, will not purchase, transfer, use or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

XXVII. PUBLIC ASSISTANCE WORK PROGRAM PARTICIPANTS

Pursuant to Chapter 5107 of the Ohio Revised Code and Prevention, Retention, and Contingency Program established under Chapter 5108 of the Revised Code, LightGov agrees to not discriminate in hiring and promoting against applicants for and participants for the Ohio Works Program. LightGov also agrees to include such provision in any such Contract, subcontract, grant or procedure with any other party, which will be providing services, whether directly or indirectly, to consumers.

XXVIII. MEDIA RELATIONS, PUBLIC INFORMATION, AND OUTREACH

Although information about and generated under this Contract may fall within the public domain, LightGov will not release information about or related to this Contract to the general public or media verbally, in writing, or by any electronic means without prior approval from Client, unless LightGov is required to release requested information by law. Client reserves the right to announce to the general public and media: award of the Contract, Contract terms and conditions, scope of work under the Contract, deliverables and results obtained under the Contract, impact of Contract activities, and assessment of LightGov's performance under the Contract. Except where approval has been granted in advance, LightGov will not seek to publicize and will not respond to unsolicited media queries requesting: announcement of Contract award, Contract terms and conditions, Contract scope of work, government-furnished documents may provide to LightGov to fulfill the Contract scope of work, deliverables required under the Contract, results obtained under the Contract, and impact of Contract activities. If contacted by the media about this Contract, LightGov agrees to notify the Client in lieu of responding immediately to media queries. Nothing in this section is meant to restrict LightGov from using Contract information and results to market to specific clients or prospects.

XXIX. AMENDMENTS

All amendments shall be in writing and executed by both parties. All amendments and changes shall be dated and become part of the original Contract.

XXX. WAIVER

Any waiver by either party of any provision or condition of this Contract shall not be construed or deemed to be a waiver of any other provision or condition of this Contract, nor a waiver of a subsequent breach of the same provision or condition.

Exhibit A

LightGov Implementation & Technology Services

Implementation Services

Implement LightGov Technology Solution

LightGov will provide Client Government with the necessary legislative language to implement Online Surplus Property Network and eProcurement System.

LightGov's eGovernment Solutions can be accessed from any computer that has Internet connection with a browser.

LightGov Technology Services

1. Online Surplus Property Network: LightGov will provide Client Government with use of its Online Surplus Property Network to list surplus property in classified ads and online auctions for the term of this Contract. Historical data must be archived and available either by CD-rom or system access at all times.

- **Receive On-line Help**
Access built in tutorials and step-by-step instructions on each page. Use global "help" button to review help table of contents.
- **Record Keeping**
Sales analysis, full record kept of all bids, bidders, and the winning bids for auctions.
- **Client Registration**
Separate Departments within organizations will have the ability to access the system. This allows various departments to include detailed information about surplus property that is posted.
- **Citizen Registration and Bidding**
Citizens must register in order to bid for surplus property. There is NO cost or fee to place bids online. Citizens can view notes and attachments such as specifications, drawings, spreadsheets, or documents.
- **Open Auctions**
Create new auctions.
Place bids online.

Compare bids and award bids.
Include notes and attachments such as specifications, drawings, spreadsheets, or documents.
View real-time auction status information.

▪ **Online Sealed Bid Auctions**

Client Governments may only view the sealed bids at the date and time set for opening. Client Governments select the winning sealed bid and the bidder is notified electronically that the bid has been awarded.

▪ **Online Classified Advertisements**

Client Government may place items in online classified advertisements to sell/distribute internally or to other SCMA Sponsored Entities. Classified advertisements may be used to fulfill public notice requirements prior to donating such property to nonprofit organizations.

▪ **Payments**

Select flexible payment methods.

Client may also specify that buyers simply pay for the property by appearing at the Client Government' offices with the payment in the form of certified funds.

▪ **Individual Listings for Property**

Citizens may retrieve information about each surplus property item that Client Government have for sale. Citizens may download specification sheets and maintenance information concerning a surplus property item. Citizens may view multiple photographs with respect to a specific item.

2. **eProcurement System:**

LightGov will provide Client Government use of its eProcurement/Reverse Auction system to send electronic RFP/RFQ, hold reverse auctions to procure goods and services, and notify vendors of upcoming RFP/RFQ for a period of three (3) years.

▪ **Receive On-line Help**

Access online help and step-by-step instructions on each page.
Use global "help" button to review help table of contents.

▪ **Record Keeping**

Sales analysis, full record kept of all bids, bidders, and the winning bids for all auctions.
Vendors may be emailed a record of bidders and the amounts bid, after selection of winning bidder.

- **Online Sealed Bid Auctions**

Client Government may only view the sealed bids at the date and time set for opening.

Client Government select the winning sealed bid and the bidder is notified electronically that the bid has been awarded.

- **Online RFPs**

Client Government may allow vendors to download RFPs and allow vendors to submit their sealed bids via traditional methods. e.g., mailing a sealed bid via the U.S. Postal Service.

3. LightGov Technical Assistance:

LightGov will provide unlimited phone and Internet assistance on an "As Needed" basis. Telephone assistance is to be available from 8:00 A.M. EST until 5:00 P.M. EST Monday thru Friday except legal holidays.

Exhibit B

Terms and Conditions

1. Classifieds - No Charge
2. RFPs - No Charge
3. Procurement/Reverse Auctions - 1.25% of winning bid with a maximum charge of \$1,000.00 per item intended as a pass through charge to the winning vendor. In order to treat this as a pass through charge to the winning vendor, the Client Government must include the following in the terms of any Reverse Auction:

By participating in this auction, the winning bidder is responsible to pay a 1.25% system usage fee (not to exceed \$1,000) based on the final bid amount.

4. Surplus Auctions – Client Government will pay LightGov a commission of 6% of surplus sales revenue on items up to \$1,000.00 payable within 30 days of billing. No fee is payable for zero cost transfers of items or lots to other SCMA Sponsored Entities or charities.
5. Client can terminate this Contract by providing written notice sixty (60) days prior to the payment anniversary date of each year of the Contract.
6. Client can renew this Contract for terms and conditions agreed upon between the two parties.

XXXI. SIGNATURES

LightGov hereby acknowledges that the original copy of this Contract must be signed and returned by LightGov within 14 days of receipt of said Contract for signature or this Contract may be canceled and voided.

The terms of this Contract are hereby agreed to by both parties, as shown by the signatures of representatives of each.

In witness whereof, the parties have hereunto set their hands on this _____ day of _____, 2014

LightGov, LLC:

By: _____

Title: _____

Village of Richfield:

By: _____

Title: _____