

ORDINANCE NO. 51-2016

Offered by: All of Council

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A JOB RETENTION AND JOB CREATION INCOME TAX INCENTIVE GRANT AGREEMENT WITH OECONNECTION, LLC AND DECLARING AN EMERGENCY.

WHEREAS, Richfield has encouraged the creation and retention of job opportunities throughout the Village; and

WHEREAS, the Company has proposed to continue its current operations currently located in a 51,172 square foot office building at 4205 Highlander Parkway in the Village of Richfield and to enter into a new 11-year, 9 month lease that includes a 18,631 square foot expansion to the existing building (the "Project"); and

WHEREAS, the Project will allow the Company to retain, in the Village, employment of approximately 245 full-time employees with a current approximate payroll of \$18,244,515 and to create an additional 50 to 75 full-time jobs by year end 2021 with an estimated new payroll of approximately \$3,716,000 annually by year end 2021; and

WHEREAS, the Project is economically sound, will increase employment opportunities and will strengthen the economy of Richfield; and

WHEREAS, Richfield wishes to provide local incentives for the economic development of the Project; and

WHEREAS, Richfield wishes to act under its full Home Rule powers as granted by Article XVIII, Section 3 of the Ohio Constitution, as well as its economic development powers granted under Ohio Constitution Article VIII, Section 13 and Article VIII, Section 2(p).

NOW, THEREFORE, BE IT ORDAINED 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 a Job Retention and Job Creation Income Tax Incentive Grant Agreement with OEConnection, LLC, substantially in accordance with the draft Agreement attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. This Ordinance 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 the retention of and creation of new job opportunities in the Village; wherefore, provided this Ordinance receives the affirmative vote of two-thirds of the members of Council

elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 8/16/16

Ron Davis Swaz
President of Council

Bebbie Bestera
Mayor

Dated: 8/16/16

ATTEST:

Carolyn E. Sullivan
Clerk of Council

JOB RETENTION AND CREATION INCENTIVE GRANT AGREEMENT

This Agreement is made and entered into on this ___ day of August, 2016 (“Effective Date”) by and between the VILLAGE OF RICHFIELD, OHIO, a municipal corporation, with its main offices located at 4410 West Streetsboro Road, P.O. Box 387, Richfield, Ohio 44286 (hereinafter referred to as “Village”), and OECONNECTION LLC, a Delaware limited liability company, with its Ohio offices located at 4205 Highlander Parkway, Richfield, Ohio 44286 (hereinafter referred to as “Company”).

WITNESSETH:

WHEREAS, the Village has determined that it is in the best interest of its residents to encourage the creation and retention of job opportunities throughout the Village; and

WHEREAS, the Company has proposed to continue its current operations currently located in a 51,172 square foot office building at 4205 Highlander Parkway in the Village of Richfield and to enter into a new 11-year, 9 month lease that includes a 18,631 square foot expansion to the existing building (the “Project”); and

WHEREAS, the Project will allow the Company to retain, in the Village, employment of approximately 245 full-time employees with a current approximate payroll of \$18,244,515 and to create an additional 50 to 75 full-time jobs by year end 2021 with an estimated new additional payroll of approximately \$3,716,000 by year-end 2021; and

WHEREAS, based upon the application of and certain documentation presented to the Village by the Company, the Project is economically sound and will strengthen the economy of the Village; and

WHEREAS, the Village has investigated the application and documentation of the Company and recommended that Village Council approve certain incentives to the Company on the basis that the Company is qualified by financial responsibility and business experience to create employment opportunities in the Village and further support the economic climate of the Village; and

WHEREAS, the Village wishes to act under its full Home Rule powers as granted by Article XVIII, Section 3 of the Ohio Constitution, as well as its economic development powers granted under Ohio Constitution Article VIII, Section 13 and Article VIII, Section 2(p); and

WHEREAS, the Village, having the appropriate authority, is desirous of providing the Company with incentives available for the development of the Project based upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Description of the Project.

A. The Company shall lease approximately 70,000 square feet of existing and newly constructed office space at 4205 Highlander Parkway, Richfield, Ohio to house its expanded operations and associated office facilities.

2. Job Creation.

A. The Company shall create at the Project by December 31, 2021, the equivalent of at least 50 new full-time (“F/T”) job opportunities (“New Jobs”). The full-time job opportunities stated in this paragraph and in subsequent sections of this Agreement do not include the existing 245 F/T jobs at its current operations in the Village, which will be retained.

1) The Company’s schedule for hiring the new F/T employees is as follows:

<u>Year</u>	<u>Number of New Jobs Each Year in Village</u>
No later than December 31, 2017	10 F/T
No later than December 31, 2018	10 F/T
No later than December 31, 2019	10 F/T
No later than December 31, 2020	10 F/T
No later than December 31, 2021	10 F/T

B. The job creation period shall begin on July 1, 2016 and all New Jobs shall be in place by December 31, 2021.

C. Pursuant to the Company’s representations, the increase in the number of New Jobs to the Village will result in approximately \$3,716,000 of additional annual payroll in the Village when the maximum employment level is achieved, which does not include the \$18,244,515 of current payroll being paid to existing employees in the Village.

3. Job Retention.

A. The Company shall retain the equivalent of the existing 245 F/T jobs (“Existing Jobs”) in the Village.

B. The job retention period shall begin on January 1, 2017 and shall conclude five (5) years thereafter on December 31, 2021, subject to Section 5(A) below.

C. Pursuant to the Company’s representations, the Company will retain the Existing Jobs in the Village and will maintain \$417,489 of annual payroll taxes being paid to the Village.

4. Issuance of Grant.

A. The Village authorizes an incentive grant based upon the creation of payroll from New Jobs in the Village, according to the schedules in Section 2(A)(1) above and below (the “Job Creation Grant”). Said Job Creation Grant will not be paid on existing payroll.

<u>Years</u>	<u>Amount of Job Creation Grant as a Percentage of Payroll Taxes on New Jobs to the Village</u>
1-5	15%

B. For purposes of calculating the amount of the Job Creation Grant, the payroll upon which the Job Creation Grant is based shall not exceed 150% of the maximum new payroll projected in Section 2(C) above. Accordingly, the maximum payroll upon which the Job Creation Grant may be based shall not exceed \$5,574,000.

C. The Village authorizes a one-time job retention incentive grant of \$175,000 payable over a three-year period as shown below (the “Job Retention Grant”), subject to Section 4(E).

<u>Years</u>	<u>Amount of Job Retention Grant Paid Per Year</u>
1	\$100,000
2	\$ 50,000
3	\$ 25,000

D. Job Creation Grant payments on the payroll of New Jobs shall be made according to the parameters below:

1)

<u>Year</u>	<u>Minimum New Employment to Receive Grant (75% projected)</u>	<u>Minimum New Payroll to Receive Full Grant (90% projected)</u>	<u>Minimum Payroll to Receive Any Grant (75% projected)</u>	<u>Maximum Eligible New Payroll (150% of maximum projected in final yr. of grant)</u>
1	8	\$669,420	\$557,850	\$1,115,700
2	8	\$669,420	\$557,850	\$1,115,700
3	8	\$669,420	\$557,850	\$1,115,700
4	8	\$669,420	\$557,850	\$1,115,700
5	8	\$669,420	\$557,850	\$1,115,700

- 2) If the Company does not achieve at least 90% of the minimum payroll projections, the Company will receive reduced incentives according to the schedule below:

<u>% of Payroll Projection Achieved</u>	<u>Amount of Job Creation Grant as a Percentage of New Payroll Taxes to Village</u>
90-100%	15%
80-89%	10%
75-79%	5%

- (3) If the Company fails to meet 75% of minimum payroll in any given year, the Job Creation Grant shall not be awarded for that year.

- E. Job Retention Grant payments shall be made so long as the Company maintains at a minimum the equivalent of 245 full-time jobs and Eighteen Million Two Hundred Forty-Four Thousand Five Hundred Fifteen Dollars (\$18,244,515.00) in annual payroll in the Village in each year of this Agreement. If the Company fails to maintain the minimum number of Existing Jobs and annual payroll in any given year, then neither the Job Retention Grant nor the Job Creation Grant shall be awarded for that year.

5. Grant Payments.

A. Initial Grant Payment.

- (1) Year 1 projections must be met by January 1, 2018. The initial grant payment shall be made by April 15, 2018, provided that the Company files its Reconciliation of Return of Income Tax Withheld Form 17 by February 28, 2018 and meets the eligibility requirements in this Agreement.
- (2) If the Project start or occupancy of the Project is delayed, Year 1 may be extended to the following year and the Year 1 projections deadline adjusted accordingly and all subsequent deadlines may be extended by one (1) year, but only upon written request by the Company to the Village Mayor and provided that the extension is approved by the Mayor (which approval shall not be unreasonably withheld) with notice to the Village Administration and Village Council.
- (3) If the Project or occupancy of the Project begins in the third or fourth quarter of the year and the Company is not able to meet its Year 1 projections by December 31st of that year, Year 1 will be considered the first full year of occupancy, and the first grant payment will occur in the year following the first full year of the Project or occupancy of the Project.

- B. Timing of Annual Grant Payments. Annual grant payments shall be made by April 15th, provided that the Company files its Reconciliation of Village Income

Tax Withheld Form S-W3 by February 28th of said year. If the Company requests an extension for filing of its S-W3 form, the Village will make the grant payment within three months of the extended filing date. It is the responsibility of the Company to advise the Director of Finance of the filing extension.

6. Payment of Taxes and Filing Reports and Returns. The Company shall pay such real and tangible personal property taxes as are charged against such property in the Village and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, all incentives granted under this Agreement are terminated beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.
7. Information for Annual Review. The Company shall timely provide to the Village any information reasonably required by the Village to evaluate the Company's compliance with this Agreement.
8. Maintenance of Grant. The Village shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain the incentives granted under this Agreement including, without limitation, joining in the execution of all documentation and providing necessary information to maintain the incentives granted hereunder.
9. Certification as to Payment of Taxes. The Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which the Company is liable under Chapters 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code, or, if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, and further certifies that it has not filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has not been filed against the Company. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.
10. Non-Discrimination Hiring. By executing this Agreement, the Company is committed to following non-discriminatory hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.
11. Transfer and Assignment. This Agreement is not transferable or assignable without the express, written approval of Village Council. The Village acknowledges that it would be unreasonable to withhold such consent in the event of a proposed transfer or assignment to any parent, subsidiary or affiliate of the Company or to any third party so long as with respect to all or any of such proposed transfers or assignments, the proposed transferee or assignee adequately and sufficiently demonstrates to the Village, to the Village's reasonable satisfaction, its financial ability, business experience and intentions to continue its operations in the Village in a manner similar to that of the Company in all

pertinent respects and the proposed transferee and assignee acknowledges and consents, in writing, to the assignment of this Agreement.

12. Termination or Modification of Incentives.

- A. The Agreement shall terminate on the expiration of six (6) years from the Effective Date of this Agreement.
- B. If the Project does not proceed to full completion as specified in Section 5(A)(1) of the Agreement or within the approved one year extension period as specified in Section 5(A)(2), the Village may terminate the Agreement upon recommendation of Village Council.
- C. If the Company fails to submit required information and/or reports as set forth in Section 6 above, the Village, after thirty (30) days notice of said default and failure to cure, may terminate or modify this Agreement and deny or modify future grants heretofore granted from the date of the Company's breach or default.

In the case as provided in this Subsection C, the Village's termination or modification of this Agreement may be instituted only if the Company fails to cure any breach of any term of this Agreement as determined by the Village within thirty (30) days of receiving written notice of such failure from the Village or, if cure of the breach cannot be completed within thirty (30) days, if the Company has not made a good faith start of the cure, and/or not diligently pursued the same.

- D. The Village may terminate or modify this Agreement and may also require the repayment of the full amount of grant payments awarded under this Agreement, upon the occurrence of any of the following:
 - 1) The Village determines that the Company's certification as to delinquent taxes required by this Agreement is fraudulent or if the Company becomes delinquent in any taxes during the term of this Agreement; or
 - 2) The Company vacates the Project and moves substantially all of its operations out of Village or terminates its operations in the Village altogether during a six (6) year period beginning on the Effective Date of this Agreement.

The Village may, absent any legislative action, resolution or court ordered mandate to the contrary, collect any and all grant payments awarded under this Agreement, and the Company shall pay directly to the Village or its authorized agent any and all grant payments awarded under this Agreement due on the date the Company vacates the Project and moves substantially all of its operations out of the Village or terminates its operations in the Village altogether during the six (6) year period beginning on the Effective Date of this Agreement; or within ten

(10) days from the date the Company is notified by Village that any tax certification is fraudulent or tax payments are delinquent.

E. The Company or its successor entity shall promptly notify the Village if any of the following events occur:

- (i) If control of the Company or substantially all of its assets located at the Project site is obtained by another entity or entities; or
- (ii) If the Company merges with another entity or entities; or
- (iii) If the Company substantially restructures itself through an acquisition or divestiture or otherwise;

and if any of these events affects the ability of the Company or its successor entity to substantially perform the obligations of the Company under this Agreement and to meet the employment and payroll projections set forth herein. "Control of the Company" for the purposes of this subsection means that persons and/or entities owning a majority of the financial interest in the Company on the date of this Agreement cease to own such or cease to be shareholders of the corporation that is the Company.

F. Each provision for modification or termination hereunder shall not affect the Company's obligations or the Village's rights under any other provision of this Agreement.

13. Any notices, statements, acknowledgements, consent approvals, certificates, or requests required to be given on behalf of either party shall be made in writing addressed as follows:

If to the Village to:

Village of Richfield
4410 West Streetsboro Road
P.O. Box 387
Richfield, Ohio 44286
Attention: Mayor

With a copy to:

Law Director – Village of Richfield
c/o Walter Haverfield LLP
The Tower at Erieview
1301 East Ninth Street, Suite 3500
Cleveland, Ohio 44114-1821
Attention: William R. Hanna

If to the Company to: OEConnection, LLC
4205 Highlander Drive
Richfield, Ohio 44286
Attn: Chief Administrative Officer

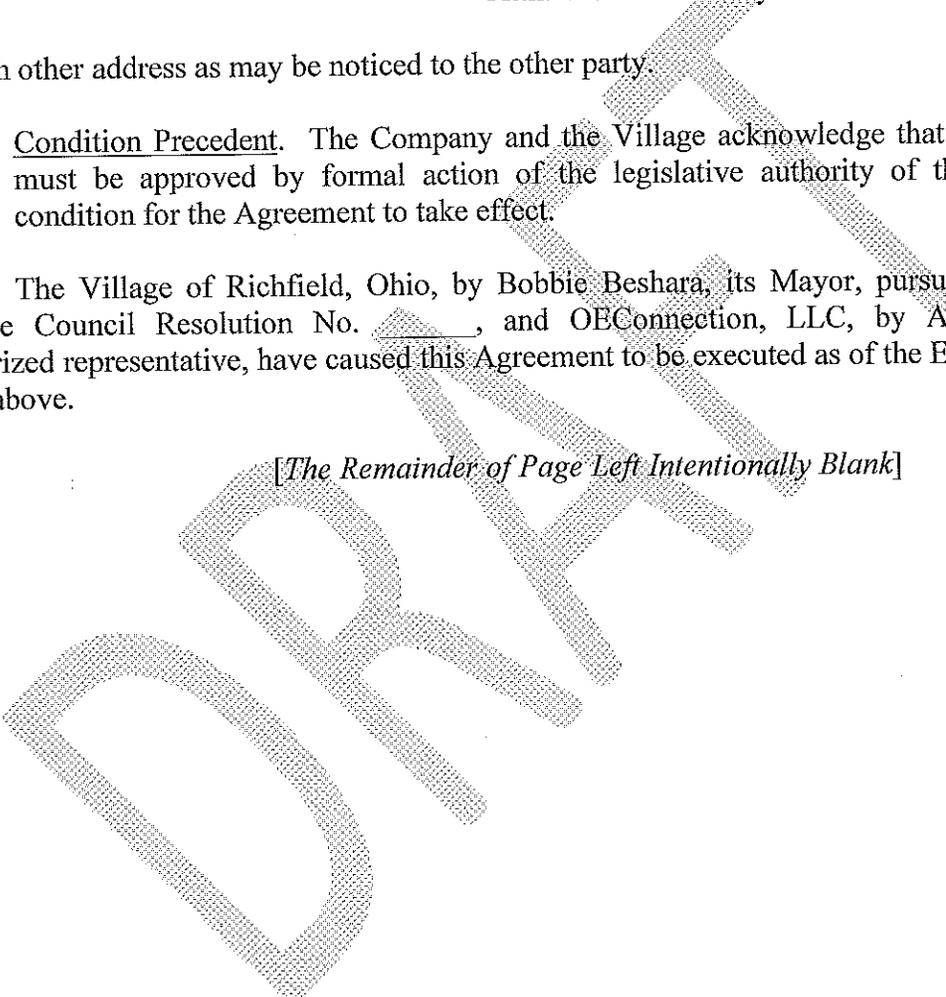
With Copy to: Critchfield, Critchfield & Johnston, Ltd.
4996 Foote Road
Medina, Ohio 44256
Attn: Robert C. Berry

or such other address as may be noticed to the other party.

- 14. Condition Precedent. The Company and the Village acknowledge that this Agreement must be approved by formal action of the legislative authority of the Village as a condition for the Agreement to take effect.

The Village of Richfield, Ohio, by Bobbie Beshara, its Mayor, pursuant to Richfield Village Council Resolution No. _____, and OEConnection, LLC, by Amy French, its authorized representative, have caused this Agreement to be executed as of the Effective Date set forth above.

[The Remainder of Page Left Intentionally Blank]



VILLAGE OF RICHFIELD, OHIO

By: _____
Bobbie Beshara, Mayor

And: _____
Sandy Turk, Finance Director

OECONNECTION LLC

By: _____

Title: EVP & CAO

The legal form and correctness of this Agreement is approved.

LAW DIRECTOR- VILLAGE OF RICHFIELD

By: _____
William R. Hanna

Date: _____

CERTIFICATE OF DIRECTOR OF FINANCE

The undersigned fiscal officer of the Village hereby certifies that the moneys required to meet the obligations of the Village during the year 2017 under this Agreement have been lawfully appropriated by the Council of the Village for such purposes and are in the treasury of the Village or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances.

Director of Finance, Sandy Turk

Date

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