

ORDINANCE NO. 62-2006

Offered by All of Council

AN ORDINANCE AUTHORIZING THE VILLAGE OF RICHFIELD, OHIO TO BECOME A MEMBER OF, ADOPTING THE CODE OF REGULATIONS OF, AND DIRECTING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO THE MEMBERSHIP AGREEMENT, THE MASTER SERVICES AND CONSULTING AGREEMENT, AND THE MASTER PRODUCTS AGREEMENT WITH, THE NORTHEAST OHIO SOURCING OFFICE, AND DECLARING AN EMERGENCY.

BE IT ORDAINED by the Council of the Village of Richfield, Summit County, State of Ohio, that:

SECTION 1 Findings and Determinations. This Council finds and determines the following matters:

- (a) Certain municipal corporations and other political subdivision located in Ashtabula, Columbiana, Cuyahoga, Geauga, Lake, Lorain, Mahoning, Medina, Portage, Stark, Summit, Trumbull and Wayne Counties, Ohio, as members (“Members”), have formed The Northeast Ohio Sourcing Office, an Ohio nonprofit corporation organized as a regional council of governments under Chapter 167, Ohio Revised Code (“NEOSO”).
- (b) NEOSO was organized for the purposes of (i) providing consulting and management to its Members, (ii) developing and implementing certain sound business practices and processes as shared services to be made available to the Members, and (iii) developing and operating as a collective purchasing and service organization to enable its Members to obtain competitive terms from vendors and service providers by utilizing the combined purchasing power of all of NEOSO’s Members thereby systematically creating leverage for the Members.
- (c) In order to participate in NEOSO, a political subdivision must become a Member by (i) executing the Membership Agreement with NEOSO, a copy of which is attached as Exhibit A, and (ii) satisfying the qualifications and conditions of, and adopting, NEOSO’s Code of Regulations, a copy of which is attached as Exhibit B.
- (d) In order to purchase services made available by NEOSO from service providers, the Membership Agreement requires NEOSO and the Member to enter into a Master Services and Consulting Agreement, a copy of which is attached as Exhibit C, setting forth the terms and conditions under which the services will be provided for the political subdivision.
- (e) In order to purchase products made available by NEOSO from vendors, the Membership Agreement requires NEOSO and the Member to enter into a Master Products Agreement, a copy of which is attached as Exhibit

D, setting forth the terms and conditions under which the political subdivision may acquire products. The Membership Agreement, the Master Services and Consulting Agreement, and the Master Products Agreement are collectively referred to as the “Agreements.”

- (f) The acquisition of products and services for the Village is a burden of the Village, and the collective procurement of products and services by NEOSO on behalf of its Members lessens the Village’ burdens.
- (g) The Village’s collective purchase of products and services as a Member of NEOSO will conserve and protect the Village’s funds.
- (h) It is in the best interests of the Village and its citizens for the Village to become a Member of NEOSO and to enter into the Agreements necessary to participate in the collective purchasing and service programs.
- (i) All formal actions of this Council concerning and relating to the enactment of this Ordinance were taken in open meetings of this Council and all deliberations of this Council or any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with Section 121.22, Revised Code.

SECTION 2. Authorization of Village to Become Member. This Council authorizes the Village to become a Member of NEOSO, and authorizes and directs the Mayor and the Finance Director to enter into the Membership Agreement.

SECTION 3. Adoption of Code of Regulations. This Council approves and ratifies the Code of Regulations, as amended from time to time, as the Code of Regulations of NEOSO.

SECTION 4. Adoption of Master Services and Consulting Agreement. This Council authorizes and approves, and directs the Mayor and the Finance Director to enter into, the Master Services and Consulting Agreement, as amended from time to time, with NEOSO. This Council directs the Mayor to consider and notify Council of all available contracts under which it is economically advantageous for the Village to acquire services.

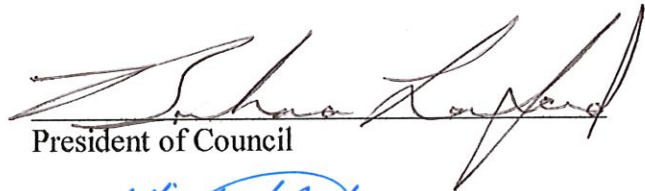
SECTION 5. Adoption of Master Products Agreement. This Council authorizes and approves, and directs the Mayor and the Finance Director to enter into, the Master Products Agreement, as amended from time to time, with NEOSO. This Council directs the Mayor to consider and notify Council of all available contracts under which it is economically advantageous for the City to acquire products.

SECTION 6. Statement of Emergency. Council declares this Ordinance to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the citizens of the Village of Richfield, Ohio, and for the further reason that the Village’s membership in NEOSO must be immediately

effective in order that the collective purchasing opportunities may be available to the Village at the earliest possible time.

SECTION 7. Provided this Ordinance receives the affirmative vote of two-thirds of the members elected or appointed to Council, it will take effect and be in force immediately upon its passage and approval by the Mayor, otherwise, it will take effect and be in force at the earliest time allowed by law.

PASSED: 10/3/06



President of Council



Mayor

Dated: _____

ATTEST:



Clerk of Council

THE NORTHEAST OHIO SOURCING OFFICE MEMBERSHIP AGREEMENT

This MEMBERSHIP AGREEMENT ("Agreement") dated as of November 2, 2006 ("Effective Date"), is made between The Northeast Ohio Sourcing Office, an Ohio nonprofit corporation organized as a regional council of governments under Chapter 167 of the Ohio Revised Code ("NEOSO"), and The Village of Richfield (the "Governmental Entity"). Capitalized terms have the meanings given them in the attached Appendix 1.

Recitals

- A. NEOSO was organized, in part, for the purposes of (i) providing consulting and management to its members ("Members"), (ii) developing and implementing certain sound business practices and processes as shared services to be made available to the Members, and (iii) developing and operating as a collective purchasing and service organization to enable its Members to obtain competitive terms from vendors and service providers by utilizing the combined purchasing power of all of NEOSO's Members thereby systematically creating leverage for the Members.
- B. The Governmental Entity, as a condition of becoming a Member of NEOSO, is required to execute this Agreement and the documents incorporated herein by reference.
- C. NEOSO is willing to admit the Governmental Entity as a Member and to permit it to participate in the Offerings made available through NEOSO, subject to the terms and conditions set forth in this Agreement.

The parties agree as follows:

Article I Membership

Section 1.1. Designation as Member. Subject to the terms and conditions set forth in this Agreement, NEOSO desires to have the Governmental Entity become a Member eligible to participate in the Offerings and utilize NEOSO's services.

Section 1.2. Acceptance by the Governmental Entity. The Governmental Entity agrees to be a Member of NEOSO on the terms and subject to the conditions set forth in this Agreement and those incorporated herein and made a part hereof, and agrees to be subject to all the obligations of a Member in accordance with this Agreement, and the Articles of Incorporation and Code of Regulations of NEOSO.

Section 1.3. NEOSO's Offerings. NEOSO and its agents will use their best efforts to identify opportunities for shared services, provide management consulting, and pursue and negotiate preferential terms to leverage the collective purchasing power of the Members to secure the optimal pricing for goods and services that are or might be used by the Governmental



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Entity. The Governmental Entity may make recommendations to NEOSO of potential offerings which it desires to be available and the names of vendors with whom it would like NEOSO to establish relationships. NEOSO will inform the Governmental Entity of the availability of each Offering for consideration from time to time. The terms of an Offering made available to the Governmental Entity through NEOSO will continue only while the Governmental Entity is in compliance with this Agreement and is a Member of NEOSO.

Section 1.4. Master Agreements.

- (a) Master Services and Consulting Agreement. To facilitate the purchase of Services from a Vendor in accordance with this Agreement, NEOSO and the Governmental Entity must enter into a Master Services and Consulting Agreement setting forth the terms and conditions under which the Services will be provided for the Governmental Entity.
- (b) Master Products Agreement. To facilitate the purchase of Products from any Vendor in accordance with this Agreement, NEOSO and the Governmental Entity must enter into a Master Products Agreement setting forth the terms and conditions under which the Products, and any related services, will be made available to the Governmental Entity.

Article II The Governmental Entity

Section 2.1. Governmental Entity Representations. The Governmental Entity makes the following representations:

- (a) It is a political subdivision, duly organized and validly existing under the laws of Ohio.
- (b) It has performed all acts required of it as a condition to signing and delivering this Agreement.
- (c) It is not in violation of any laws of Ohio, to an extent that would impair its ability to carry out its obligations under this Agreement.
- (d) It has the power to enter into and perform its obligations under this Agreement.
- (e) The individual signing below on behalf of the Governmental Entity is an Authorized Representative.

Section 2.2. Annual Membership Dues. The Governmental Entity agrees to pay annual membership dues (“Annual Dues”) in accordance with NEOSO’s Code of Regulations and its Schedule of Dues. The Schedule of Dues in effect from time to time must be approved by NEOSO’s Board of Directors and made available to all Members. The amount of Annual Dues



is subject to change, in accordance with NEOSO's Code of Regulations, upon the approval of NEOSO's Board of Directors.

Section 2.3. Competitive Bidding and Procurement.

- (a) **Authorization.** The Governmental Entity authorizes NEOSO to engage in competitive bidding on its behalf for Offerings to be presented by NEOSO under this Agreement and under any Available Contract.
- (b) **Notice.** The Governmental Entity must provide NEOSO, as of the Effective Date, a copy of its applicable competitive bidding procedures and procurement requirements. The Governmental Entity must provide notice to NEOSO in the manner provided in Section 6.7 of any subsequent changes in its competitive bidding and/or procurement procedures as may be required by (i) any ordinance or resolution of the Governmental Entity, (ii) any statutory change under the Ohio Revised Code or under any federal law, or (iii) any required judicial change under applicable case law.

Section 2.4. Compensation.

- (a) **Forms of Compensation.** In return the services rendered by NEOSO regarding any requested Offering or for any other benefits received, the Governmental Entity agrees to pay NEOSO compensation, which may be in the any of the following forms:
 - (i) Flat or percentage fees.
 - (ii) Fees calculated as a percentage of cost savings or value achieved.
 - (iii) Retention of certain rebates.
 - (iv) As mutually agreed by NEOSO and the Governmental Entity.
- (b) **Payment Terms.** For each particular Offering authorized in an Available Contract and acquired by the Governmental Entity under this Agreement, the specific Offering Addendum will describe in detail the amount of compensation, the manner of calculating compensation, the timing of payment, and any other material payment terms.
- (c) **No Right of Offset.** The obligations of the Governmental Entity under this Agreement or any agreement incorporated herein by reference are independent of any other obligations the Governmental Entity may have under any other contract or agreement with NEOSO. The Governmental Entity will not exercise any right of offset in connection with the terms and conditions of this Agreement or any other contract or agreement with NEOSO.



Section 2.5. Authorization for Direct Payments (ACH Debits).

- (a) **Authorization.** To effectuate any payment due under this Agreement, the Governmental Entity will for each Offering authorize the payee, as defined in the Offering Addendum, to initiate debit entries to the account set forth on the Offering Addendum and to debit the same to that account. The authorization to initiate debit entries will remain in full force and effect until the Governmental Entity provides written notification of termination of this authorization in sufficient time and in a manner so as to afford the payee as defined in the Offering Addendum a reasonable opportunity to act on it.
- (b) **Delayed Payments.** The Governmental Entity acknowledges (i) that the debit entries may cause an overdraft of the account which may result in the bank's refusal to honor items drawn on the account until adequate deposits are made to the account, and (ii) that the payee as defined in the Offering Addendum is under no duty or obligation to initiate any debit entry for any purpose. If a debit is not made because the particular account does not have a sufficient available balance, or otherwise, the Governmental Entity's payment may be late or past due.

Section 2.6. Confidentiality. All data supplied to NEOSO by the Governmental Entity and the terms of all agreements between NEOSO and the Governmental Entity will be deemed to be publicly available information and not subject to any obligation of confidentiality unless otherwise marked as confidential in writing. If data provided to NEOSO by the Governmental Entity is designated as confidential in writing, NEOSO will not disclose the data unless it subsequently becomes available to the public or as required by law, regulation or court or other governmental order.

Section 2.7. Use of Intellectual Property. The Governmental Entity has been advised and understands that NEOSO may lease or purchase certain intellectual property, including but not limited to trade names, service marks, patents, copyrights and trademarks (the "Intellectual Property"). The Governmental Entity will have the right to use any such Intellectual Property, only in accordance with, and subject to, any limitations, standards, terms and conditions as may be established by NEOSO from time to time and furnished in writing by NEOSO to the Governmental Entity. NEOSO retains the right to prescribe the type and content of any materials that make use of any Intellectual Property.

Section 2.8. Member Information. Upon the request of NEOSO, the Governmental Entity will supply information to NEOSO which NEOSO reasonably determines will assist it in providing the Offerings contemplated by this Agreement.



Article III NEOSO

Section 3.1. NEOSO Representations.

- (a) It is a nonprofit corporation duly incorporated and in good standing under the laws of Ohio, and is organized as a regional council of governments under Chapter 167 of the Ohio Revised Code.
- (b) It has performed all acts required of it as a condition to signing and delivering this Agreement.
- (c) It is not in violation of any laws of Ohio to an extent that would impair its ability to carry out its obligations under this Agreement.
- (d) It has the power to enter into and perform its obligations under this Agreement.
- (e) Its board of directors has duly authorized the signing, delivery, and performance of this Agreement.
- (f) The individual signing below on behalf of NEOSO is an Authorized Representative.

Section 3.2. Membership Lists. NEOSO will maintain a master list of all Members of NEOSO, which will be updated on a regular basis.

Section 3.3. Competitive Bidding Procurement Process.

- (a) Development of Procurement Process. NEOSO will act in good faith to develop and implement a procurement process that reflects (i) the collective guidelines of its Members' procurement processes and requirements and (ii) statutory procurement processes and requirements. NEOSO and the Governmental Entity acknowledge the likelihood that the procurement processes of the Members, individually, may be in conflict with one another or vary from one another.
- (b) Publication of Procurement Process. NEOSO will publish and provide to its Members a copy of the procurement process utilized for each Available Contract.

Section 3.4. Audit.

- (a) Record Retention. During the term of this Agreement and for a period of two years from the termination of this Agreement, NEOSO must keep full and accurate books of account and copies of all documents and other material relating to this Agreement at its principal office.



- (b) Inspection of Books and Records. The Governmental Entity, through its duly authorized agents and representatives, has each of the following rights:
 - (i) The right, upon reasonable prior notice, to audit the books, documents, and other materials maintained by NEOSO.
 - (ii) The right, during ordinary business hours, to access and inspect the books, documents, and other materials maintained by NEOSO.
 - (iii) The right to make copies of the books, documents, and other materials.

Section 3.5. Rules and Regulations. NEOSO will promulgate rules and regulations which will govern the use and operation of NEOSO's Offerings. Upon execution of this Agreement, the Governmental Entity hereby agrees to abide by and follow all rules and regulations of NEOSO.

Article IV Term and Termination

Section 4.1. Term. This Agreement will be effective as of the Effective Date and will remain in effect unless and until terminated as provided herein.

Section 4.2. Termination.

- (a) This Agreement may be terminated by written notice delivered by the terminating party to the other party in any of the following circumstances:
 - (i) The Governmental Entity's withdrawal as a member of NEOSO in accordance with NEOSO's Code of Regulations.
 - (ii) Termination of the Governmental Entity's membership in NEOSO as provided under the Governmental Entity's Enacting Legislation.
 - (iii) By either party, with cause.
- (b) For purposes of this Section 4.2, "with cause" means any of the following:
 - (i) Failure of the other party to observe or perform any of its agreements or covenants under this Agreement which remains unremedied for a period of 30 days after written notice of the failure has been given to the other party.
 - (ii) The entry of a decree or order by a court or agency or supervisory authority having jurisdiction for the appointment of a conservator, receiver, or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings with



respect to the other party, or for the winding up or liquidation of its affairs, and the continuance of any such decree or order in effect for a period of 30 consecutive days.

- (iii) The consent by the other party to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to the other party or of or relating to substantially all of its property; or the other party shall admit in writing its inability to pay its debts generally as they become due, file a petition to take advantage of any applicable insolvency or reorganization statute, make an assignment for the benefit of its creditors, or voluntarily suspend payment of its obligations.

Section 4.3. Effect of Termination. All obligations of the parties which arise prior to the termination of this Agreement under any Master Agreement, will remain in effect notwithstanding the termination. Upon termination of this Agreement, the Governmental Entity must promptly return to NEOSO all written materials, manuals, forms and other similar materials received from NEOSO.

Article V Dispute Resolution

Section 5.1. Dispute Resolution by Parties. Before NEOSO or the Governmental Entity may assert a claim for breach of this Agreement or any Offering Addendum in litigation, mediation, or arbitration, NEOSO or the Governmental Entity must notify the other party of the nature of the dispute and the relief which the first party seeks.

- (a) **Resolution by Parties.** In the event of a dispute between the parties relating to this Agreement or any Offering Addendum, the parties, through their representatives, will attempt to resolve the dispute for a period of at least 30 days.
- (b) **Resolution by Parties' Executive Officers.** If the parties are unable to resolve their dispute in the manner provided in Section 5.1(a), either party may submit the matter for resolution to the Authorized Representative of the Governmental Entity and to NEOSO's Board of Directors.



Section 5.2. Dispute Resolution by Mediation. If the parties are still unable to resolve their dispute within 30 days after submission of the dispute to the Governmental Entity's Authorized Representative and NEOSO's Board of Directors as provided under Section 5.1(b), either party may submit the dispute to mediation by a neutral mediator mutually agreed upon by the parties. The Governmental Entity and NEOSO will have 30 days to engage a mediator to negotiate a settlement of the dispute. If the dispute is not settled within the 30-day period, or if the mediator declares an impasse prior to the end of the 30-day period, NEOSO's or the Governmental Entity's obligation to mediate the dispute is terminated.

Section 5.3. Resolution by Arbitration. If the parties cannot resolve their dispute after mediation as provided under Section 5.2, it will be resolved by arbitration conducted in Cuyahoga County, Ohio, in accordance with the rules of the American Arbitration Association then existing, so long that discovery as provided for under the Ohio Rules of Civil Procedure is available to all parties to the arbitration. The parties must mutually agree on a single arbitrator to hear the dispute. If the parties cannot agree on an arbitrator, each party must choose an arbitrator and the chosen arbitrators must choose a third arbitrator, and the third arbitrator will hear the dispute. The parties and the arbitrator will agree on the scope of discovery permitted with respect to the dispute and the arbitration. The costs of the mediator and arbitrator will be borne equally by the parties. This agreement to arbitrate is specifically enforceable and the arbitration award is final and judgment may be entered upon it in any court having jurisdiction over the subject matter of the dispute.

Article VI General Provisions

Section 6.1. Entire Agreement. This Agreement, including the Offering Addenda contemplated hereby and the attached appendices and exhibits, constitutes the entire agreement between the parties with respect to the subject matter hereof and thereof and supersedes all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter hereof and thereof. The parties agree that to the extent the terms of this Agreement conflict with the terms of any other agreements between the parties, the terms of this Agreement will supersede the conflicting terms of the other agreements. No representation, inducement, promise, understanding, condition, warranty course of dealing or usage of trade not set forth in this Agreement has been made or relied upon by any party to this Agreement and will not be binding upon any party. This Agreement is not intended to confer upon any person other than the parties any rights or remedies hereunder.

Section 6.2. Amendment. Except as otherwise expressly set forth in this Agreement, no supplement, modification or amendment of this Agreement will be binding unless executed in writing by NEOSO and the Governmental Entity.

Section 6.3. Assignment. A party may not assign its rights or delegate its duties under this Agreement to any other person without the consent of the other party. Nothing in this Agreement will prevent NEOSO from subcontracting for services provided to the Governmental Entity.



Section 6.4. Effect on Successors. This Agreement will be binding upon, enforceable by, and inure to the benefit of the parties and their permitted successors and assigns. This Agreement is expressly not intended for the benefit of any creditor of NEOSO or any other Person. Except and only to the extent provided by applicable statute, no creditor or third party has any rights under this Agreement.

Section 6.5. Waiver.

- (a) Any provision of this Agreement or any Offering Addendum may only be waived if the waiver is in writing and signed by the party against whom the waiver is to be effective.
- (b) No failure or delay by any party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- (c) The rights and remedies provided in this Agreement will be cumulative and not exclusive of any rights or remedies provided by law.

Section 6.6. Enforceability; Severability. The invalidity or unenforceability of any term or provision of this Agreement will not, unless otherwise specified, affect the validity or enforceability of any other term or provision. If the affected term or provision is material and its invalidity or unenforceability results in a substantial economic detriment to a party, the parties will negotiate in good faith a resolution which to the maximum extent feasible preserves to each party the rights and benefits contemplated hereunder.

Section 6.7. Notices. Any notice, request, demand, claim, or other communication ("Notice") under this Agreement must be in writing and will be deemed duly given (a) when delivered personally to the recipient, (b) upon delivery by reputable overnight courier service (charges prepaid), (c) upon transmission if sent to the recipient by facsimile transmission or electronic mail, if immediately confirmed by telephone or electronic means or (d) upon delivery or refusal of delivery by certified or registered mail, return receipt requested, and addressed to the intended recipient as set forth below:



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If to NEOSO:

5422 East 96th Street
Suite 150
Cleveland, Ohio 44125
Phone: 216.581.6200
Fax: 216.581.6213

and

Buckingham, Doolittle and Burroughs, LLP
Attn: Terry W. Vincent
1375 E. 9th Street, Suite 1700
Cleveland, OH 44114
Phone: 216.615.7326
Fax: 330.252.5326
Email: TVincent@bdbl.com

If to the Governmental Entity:

Office of the Mayor
Village of Richfield
4400 Smeadows Road
Richfield, OH 44286

A party may change its address for purposes of this Section 6.7 by giving written notice to the other party in the above specified manner.

Section 6.8. Governing Law. This Agreement will be governed by and construed, interpreted and enforced pursuant to the laws of the State of Ohio.

Section 6.9. Counterparts; Headings. For the convenience of the parties, this Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same document. All headings and captions in this Agreement are inserted for convenience of reference only and will not affect its meaning or interpretation.

Section 6.10. Charter and Code of Regulations. This Agreement is subject to, and hereby incorporates by reference, all the applicable provisions contained in NEOSO's Articles of Incorporation and Code of Regulations now or hereafter in effect. By execution of this Agreement, the Governmental Entity acknowledges that it has received a copy of NEOSO's Code of Regulations.

Section 6.11. Disclaimer. Notwithstanding anything in this Agreement to the contrary, in no event will either party be liable to any other party for any consequential, incidental, special,



indirect, or punitive damages arising under this Agreement whether or not the party knows or should have known of the possibility of the damages.

Section 6.12. Membership Agreements. The Governmental Entity understands and agrees that NEOSO may exempt any Member from any provision of a membership agreement, and nothing contained in this Agreement will require NEOSO to deal with other Members of NEOSO solely on the terms or conditions set forth in this Agreement. NEOSO will not be responsible or liable for any loss or damage suffered by the Governmental Entity arising or resulting from the failure of any Member to comply with the terms of its agreement with NEOSO.

Section 6.13. Good Faith and Fair Dealing. In entering into this Agreement, the parties acknowledge and agree that all aspects of the relationship among the parties contemplated by this Agreement, including the performance of all obligations under this Agreement, will be governed by the fundamental principle of good faith and fair dealing. No party will take or omit to take any action which unreasonably impairs the ability of any other party to perform its obligations under this Agreement.

Section 6.14. Further Documents. The parties agree that they and their successors and assigns will execute any and all instruments, releases, assignments and consents which may reasonably be required of them in order to carry out the requirements of this Agreement. Notwithstanding expiration or termination of this Agreement, each party must take any and all further actions as are necessary to fulfill its existing obligations, which by their terms require performance after expiration or termination of this Agreement.

Section 6.15. Data Ownership; Confidentiality.

- (a) **Data Ownership.** Upon receipt by NEOSO of any data, NEOSO will be deemed to own the data and may use it or compile it in any manner which it sees fit, consistent with its purpose as set forth in its Code of Regulations.
- (b) **Confidentiality.** All data supplied to NEOSO by the Governmental Entity will be deemed to be publicly available information and not subject to any obligation of confidentiality unless otherwise marked as confidential in writing. If data provided to NEOSO by the Governmental Entity is designated as confidential, NEOSO must not disclose the data unless it subsequently becomes available to the public or as required by law, regulation, or court or other governmental order.

Section 6.16. Required Insurance.

- (a) **Errors and Omission Liability Insurance.** NEOSO must obtain and maintain during the term of this Agreement, and for three years following expiration or termination of this Agreement, at its own expense, errors and omission liability insurance providing protection (at a minimum, in the amount of \$1,000,000 per occurrence/\$3,000,000 annual aggregate) applicable to any claims, liabilities, damages, costs, or expenses arising out of its performance under this Agreement and any Offering Addendum. This insurance must include coverage of the



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Governmental Entity.

- (b) General Liability and Property Insurance; Workers Compensation Coverage. NEOSO must also obtain and maintain during the term of this Agreement and any Offering Addendum, general liability insurance, property insurance, and workers' compensation coverage in the amounts as are in accordance with industry norms for a similarly situated business.

Section 6.17. Force Majeure. In no event will either party be liable for any delay or failure to perform its obligations hereunder where the delay or failure is due to an act of God, fires, natural calamities, wars, acts or orders of government, labor disputes or other events beyond their reasonable control.

Section 6.18. Gender; Singular and Plural. Unless the context otherwise clearly requires, references to the masculine form include the feminine and neuter form, references to the plural include the singular, and references to the singular include the plural.

IN WITNESS WHEREOF, the Governmental Entity and NEOSO have each caused this Agreement to be executed after due authorization as of the Effective Date.



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IN WITNESS WHEREOF, the Governmental Entity and NEOSO have each caused this Agreement to be executed after due authorization as of the Effective Date.

NEOSO:

The Northeast Ohio Sourcing Office

Signature

Date

Printed Name

Title

GOVERNMENTAL ENTITY:

Village of Richfield
Entity Name

11/2/06
Date

Michael R. Lyons
Signature

Michael R. Lyons
Printed Name

Mayor
Title

Authorized by Ordinance No.: 62-2006



Appendix 1

The term "Agreement" means this Membership Agreement entered into as of the Effective Date between NEOSO and the Governmental Entity.

The term "Annual Dues" means the amount of annual membership dues payable by each Member as provided for in NEOSO's Code of Regulations and as set forth on NEOSO's Schedule of Dues, each as amended from time to time.

The term "Authorized Representative" means a person authorized to bind the indicated party to the terms of this Agreement. As to NEOSO, this means that person or persons designated for this purpose by the its Board of Directors from time to time. As to the Governmental Entity, this means the Mayor.

The term "Available Contract" means each contract negotiated by NEOSO under which NEOSO may present Offerings to its Members.

The term "Enacting Legislation" means Ordinance No. 62-2006 adopted on October 3, 2006 authorizing the Governmental Entity to become a Member of NEOSO.

The term "Entity" means any limited liability company, corporation, business association, partnership, joint venture, business or real estate investment trust, or organization whether or not for profit.

The term "Master Products Agreement" means a Master Agreement, including all related addenda, between NEOSO and the Governmental Entity setting forth the terms and conditions under which the Governmental Entity may purchase, and vendors will provide, Products as specified under this Agreement and any Available Contracts incorporated herein.

The term "Master Agreements" means the Master Services and Consulting Agreement and the Master Products Agreement.

The term "Master Services and Consulting Agreement" means a Master Agreement, including all related addendums, between NEOSO and the Governmental Entity setting forth the terms and conditions under which the Governmental Entity may purchase, and vendors will provide, Services as specified in under this Agreement and any Available Contracts incorporated herein.

The term "Member" means any political subdivision which (i) satisfies the qualifications and conditions of NEOSO's Code of Regulations to become a member of NEOSO, (ii) has executed a membership agreement with NEOSO, and (iii) is in compliance with all of its obligations to NEOSO under this Agreement and under NEOSO's Code of Regulations.



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The term "Offering" means any of the following as provided by NEOSO to its Members under this Agreement: (i) consulting and management services, (ii) certain sound business practices and processes developed and implemented as shared services, and (iii) collective purchases and services negotiated under Available Contracts.

The term "Offering Addendum" means any addendum to a Master Agreement under which the Governmental Entity purchases Offerings in accordance with the terms of an Available Contract.

The term "Person" means an individual, nominee, trust, or Entity whether acting on its own or in a representative capacity.

The term "Products" means goods and products made available from vendors to NEOSO, as the same may be changed from time to time.

The term "Schedule of Dues" means the schedule of annual membership dues payable by each Member as authorized by NEOSO's Code of Regulations and adopted by its Board of Directors.

The term "Services" means services made available from service providers to NEOSO, as the same may be changed from time to time.

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MASTER PRODUCTS AGREEMENT

This Master Products Agreement ("Agreement") is entered into as of November 2, 2006 ("Effective Date") between The Northeast Ohio Sourcing Office, an Ohio nonprofit corporation organized as a regional council of governments under Chapter 167 of the Ohio Revised Code ("NEOSO"), and The Village of Richfield (the "Governmental Entity"). Capitalized terms not otherwise defined in the body of this Agreement have the meanings assigned to them in the attached Appendix 1.

Recitals

- A. NEOSO was organized, in part, for the purposes of (i) providing consulting and management to its Members, (ii) developing and implementing certain business processes to be shared among the Members, and (iii) developing and operating as a collective purchasing and service organization to enable its Members to obtain products and related services ("Products") from various Vendors at competitive terms by utilizing the combined purchasing power of all of NEOSO's Members.
- B. NEOSO and the Governmental Entity entered into a Membership Agreement dated November 2, 2006 (the "Membership Agreement"), under which the Governmental Entity became a Member of NEOSO.
- C. In order to purchase Products under any Available Contract, Section 1.4(b) of the Membership Agreement permits the Governmental Entity to purchase Products from any Vendor and requires the parties to enter into a Master Products Agreement setting forth the terms and conditions under which the Products will be made available to the Governmental Entity.
- D. The parties have decided to enter into this Agreement to govern the acquisition of Products by the Governmental Entity through Available Contracts.

The parties agree as follows:

Article I Scope

Section 1.1. Scope. This Agreement provides the terms and conditions under which NEOSO will contract to make Products available to the Governmental Entity.

Section 1.2. Vendor Status. Unless otherwise specified in an Offering Addendum, Products available under each Offering Addendum will be provided by a Vendor. Any Offering Addendum for Products will be entered into between NEOSO and the Governmental Entity and will be acknowledged by the Vendor. Each Offering Addendum will include terms and conditions specific to the particular Available Contract under which the Offering Addendum is authorized and entered into.



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Section 1.3. Incorporation of Attachments. The terms and conditions of the following appendix and exhibits are hereby incorporated into and made a part of this Agreement.

- (a) Appendix 1: Definitions
- (b) Each executed Offering Addendum will constitute a single exhibit, which may also include:
 - (i) Product List: a list of Products available through the Available Contract.
 - (ii) Delivery Terms.
 - (iii) Installation Terms.

Section 1.4. Incorporation of Terms of Membership Agreement. The terms and conditions of the Membership Agreement are hereby incorporated and made a part of this Agreement.

Article II NEOSO

Section 2.1. NEOSO Representations. NEOSO makes the following representations:

- (a) It is a nonprofit corporation duly incorporated and in good standing under the laws of Ohio, and is organized as a regional council of governments under Chapter 167 of the Ohio Revised Code.
- (b) It has performed all acts required of it as a condition to signing and delivering this Agreement.
- (c) It is not in violation of any laws of Ohio to an extent that would impair its ability to carry out its obligations under this Agreement.
- (d) It has the power to enter into and perform its obligations under this Agreement.
- (e) Its board of directors has duly authorized the signing, delivery, and performance of this Agreement.
- (f) The individual signing below on behalf of NEOSO is an Authorized Representative.

Section 2.2. Procurement and Negotiation of Available Contracts. NEOSO will procure, negotiate and enter into Available Contracts with Vendors to provide Products to the Members as provided in Article IV. NEOSO will notify the Government Entity of each Available Contract.



Section 2.3. Performance of Related Staffing or Assistance.

- (a) **Requirement to Provide Related Staffing or Assistance.** NEOSO will provide the Governmental Entity any staffing or assistance related to an Offering Addendum as mutually agreed upon by the Governmental Entity and NEOSO and as set forth on each Offering Addendum. NEOSO will comply with all laws, rules and regulations applicable to its performance of these services under (i) this Agreement, (ii) the Membership Agreement, and (iii) each Offering Addendum.
- (b) **Manner of Provision of Related Staffing or Assistance.** NEOSO will provide related staffing or assistance to the Governmental Entity under this Agreement and under any Offering Addendum in accordance with its Code of Regulations.

Section 2.4. Vendor Compensation. NEOSO has no liability to pay any compensation to any Vendor for Products provided to the Governmental Entity under any Available Contract.

Article III The Governmental Entity

Section 3.1. Governmental Entity Representations. The Governmental Entity makes the following representations:

- (a) It is a political subdivision, duly organized and validly existing under the laws of Ohio.
- (b) It has performed all acts required of it as a condition to signing and delivering this Agreement.
- (c) It is not in violation of any laws of Ohio to an extent that would impair its ability to carry out its obligations under this Agreement.
- (d) It has the power to enter into and perform its obligations under this Agreement.
- (e) Its Council has duly authorized the signing, delivery, and performance of this Agreement.
- (f) The individual signing below on behalf of the Governmental Entity is an Authorized Representative.

Section 3.2. Process for Acquiring Products.

- (a) **Procurement and Negotiation of Available Contracts.** The Governmental Entity authorizes and directs NEOSO to procure and negotiate Available Contracts with Vendors to make Products available to the Members.



- (b) Offering Addendum Requirement. To purchase any Product under this Agreement and in accordance with the terms and conditions of any Available Contract, the Governmental Entity and NEOSO must enter into an Offering Addendum, a copy of which will be attached as an Exhibit. The Vendor must then acknowledge each signed Offering Addendum. An Offering Addendum is not binding until it is signed by an Authorized Representative of each of NEOSO and the Governmental Entity and is acknowledged by the Vendor. The Offering Addendum will form a part of this Agreement for all purposes.
- (c) Offering Addendum Contents. If applicable, the Offering Addendum will set forth in detail the terms and conditions under which the Product is available to the Governmental Entity, including but not limited to each of the following:
- (i) The Available Contract number.
 - (ii) Any delivery terms including (A) the Governmental Entity Site at which the Product is to be delivered, (B) a schedule of any agreed or estimated delivery dates and any committed deadlines, and (C) the agreed shipment terms.
 - (iii) Any staffing, roles or responsibilities which may be required of each party.
 - (iv) The amount or method of calculation of compensation due from the Governmental Entity to the Vendor for the Product and the agreed payment terms.
 - (v) The amount or method of calculation of compensation due from the Governmental Entity to NEOSO under the Available Contract and the agreed payment terms.
 - (vi) A clear definition of the process by which the Governmental Entity will approve payments for Products and authorization, upon such approval, by the Governmental Entity for direct debit payment of (A) compensation due to the Vendor for the Product, (B) compensation due to NEOSO for the procurement of the Product under the Available Contract, and (C) the account and routing numbers of the Governmental Entity to be debited for these payments.
 - (vii) The terms of any required installation.
 - (viii) The term of the Offering Addendum.
 - (ix) Any other special provisions necessary for the acquisition of any Product by the Governmental Entity.



Section 3.3. Payment of Compensation.

- (a) To NEOSO. The Governmental Entity agrees to provide compensation to NEOSO for its services rendered in procuring any Available Contract, including the following as applicable:
- (i) Identifying and selecting Products to pursue.
 - (ii) Developing the terms, conditions and requirements of each Available Contract.
 - (iii) Determining how to procure selected Products.
 - (iv) Implementing and managing the procurement of the Products.
 - (v) Selecting appropriate Vendors.
 - (vi) Negotiation of each Available Contract.
 - (vii) Managing Vendors to ensure that the designated terms and conditions of each Available Contract are fulfilled.
- (b) To the Vendor. The Governmental Entity agrees to provide compensation to each Vendor for its provision of Products under any Available Contract and as provided in the related Offering Addendum.
- (c) Compensation Arrangement. The payment of the compensation by the Governmental Entity to NEOSO or to the Vendor referred to in Sections 3.3(a) and (b) may be made in any of the following manners:
- (i) Separate payments to each of NEOSO and the Vendor of their respective amounts due.
 - (ii) Payment to NEOSO of the total amount due to each of the Vendor and NEOSO, a portion of which will be forwarded by NEOSO to the Vendor.
 - (iii) Any other arrangement as provided in an Available Contract.

Article IV Available Contracts

Section 4.1. Procurement. NEOSO, acting as the Members' agent, will procure and manage Available Contracts with Vendors to provide Products to the Members. NEOSO is solely responsible for investigating and identifying the Product offerings that will be made available to the Members.



Section 4.2. Procurement Process.

- (a) **Development of Procurement Process.** NEOSO will act in good faith to develop and implement a procurement process that reflects (i) the collective guidelines of its Members' procurement processes and requirements and (ii) statutory procurement processes and requirements. NEOSO and the Governmental Entity acknowledge the likelihood that the procurement processes of the Members, individually, may be in conflict with one another or vary from one another.
- (b) **Publication of Procurement Process.** NEOSO will publish and provide to its Members a copy of the procurement process utilized for each Available Contract.

Section 4.3. Notice. NEOSO will notify the Governmental Entity of each Available Contract and its terms and conditions.

Article V Term

Section 5.1. Term of Agreement. Unless earlier terminated in accordance with Section 5.4, the initial term of this Agreement will be for a period of 24 months (the "Term"). Unless either party provides notice of non-renewal, this Agreement will automatically renew in accordance with Section 5.2.

Section 5.2. Automatic Renewal. This Agreement will automatically renew for successive one year terms upon expiration of each then current Term, unless one party provides the other written notice of termination at least 60 days before the end of the then current Term. In that event, the Agreement Term includes the renewal term. During each renewal term, all of the terms and conditions of this Agreement will remain in effect.

Section 5.3. Early Termination. Either party has the right to terminate this Agreement in the event of any of the following:

- (a) The other party ceases to exist.
- (b) The institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against the other party under the United States Bankruptcy Code or other applicable law, if such proceedings have not been dismissed or discharged within 30 days after they are instituted.
- (c) The other party's insolvency or making or an assignment for the benefit of creditors or an appointment of a receiver for all or substantially all of the other party's assets.
- (d) A material breach by the other party of this Agreement that is not cured within 30 days after the breaching party's receipt of written notice from the non-breaching party with respect thereto.



- (e) The party provides the other party 60 days written notice of termination and, in the case of the Governmental Entity, either (i) withdraws as a member of NEOSO in the manner provided in NEOSO's Code of Regulations or (ii) terminates its membership in NEOSO as provided under the Governmental Entity's Authorizing Legislation.

Section 5.4. Term of Product Addendum. Notwithstanding anything to the contrary in this Agreement, as to any particular requested Product under a Product Addendum, the duration of the Product Addendum (and the terms of this Agreement as it relates to that Product) will be set forth in the applicable Product Addendum and will remain in force even if the duration of the Product Addendum extends beyond the Term of this Agreement. All obligations of the parties which arise prior to the termination of this Agreement under any Product Addendum will remain in effect notwithstanding the termination.

Article VI Installation of Products

Section 6.1. Installation Terms. The following terms apply for each Product requiring installation under any Available Contract:

- (a) **Required Installation.** The Offering Addendum must set forth the specific terms and conditions necessary for the completion of the installation services as provided under the particular Available Contract under which the Offering Addendum is entered into.
- (b) **Performance of Installation by Vendor.** Unless otherwise specified in an Offering Addendum, persons performing installation services under each Offering Addendum will be provided by a Vendor of NEOSO.
- (c) **Supporting Staff.** The Governmental Entity agrees to provide necessary access or supporting staff to enable any Vendor engaged under any Offering Addendum and any related Available Contract to perform the requested installation services in a timely manner.

Section 6.2. Limitation of Liability.

- (a) NEOSO offers no warranty and assumes no liability for the fitness or adequacy of the premises (or the utilities available at the premises) in which any Product is to be installed, used, or stored. NEOSO has no liability for any loss, damage, or claim arising out of the condition of the premises (or utilities).
- (b) The Governmental Entity is responsible for obtaining any and all government approvals and complying with all government regulations required for the purchase, installation, and use of each Product.



Section 6.3. Exclusive Installation Terms. NEOSO has not authorized any employee or agent to offer any installation terms other than those appearing in this Article VI.

Article VII Shipment of Products

Section 7.1. Shipment Terms.

- (a) Shipment of Products to the Governmental Entity. For each requested Product, the Offering Addendum will set forth all agreed provisions relating to shipment and delivery of Products.
- (b) Shipment of Returned Products. The Offering Addendum will set forth any requirements for the return by the Governmental Entity of any Product as provided in the related Available Contract.
- (c) Exclusive Shipping Terms. NEOSO has not authorized any employee or agent to offer any shipping or delivery terms other than those in this Article VII.

Section 7.2. Freight Claims. For any Offering Addendum, the Governmental Entity agrees to comply with any requirements provided in the related Available Contract for examination of the contents of each shipment and for filing any freight claims.

Article VIII Miscellaneous

Section 8.1. Interpretation of Agreement.

- (a) Course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary practice or interpretation in matters involving the sale, delivery, installation, use, or service of any Product, or similar or dissimilar equipment, goods, or services, will not serve as references in interpreting the terms and conditions of this Agreement.
- (b) No representation, inducement, promise, understanding, condition, warranty course of dealing or usage of trade not set forth in this Agreement has been made or relied upon by any party to this Agreement and will not be binding upon any party. This Agreement is not intended to confer upon any Person other than the parties any rights or remedies hereunder.

Section 8.2. Survival. The provisions of Sections 1.4, 2.4, 3.1, 3.3, 5.4, and 6.2 will survive termination of this Agreement.



Section 8.3. Warranty Disclaimer; Limitation of Liability.

- (a) **Warranty Disclaimer.** NEOSO will have no liability or responsibility to the Governmental Entity for (i) the failure of acquired Products to be delivered or delivered in a timely manner, or (ii) the availability to the Governmental Entity of warranties (including any Warranty of Merchantability or Fitness for a Particular Purpose) pertaining to its acquisition of Products. NEOSO's full and entire contractual obligations to acquire Products for the Governmental Entity to Customer are described in this Agreement. NEOSO has not authorized any employee or agent to offer any warranties. NEOSO neither assumes (nor has authorized any Person to assume for it) any other warranty or liability in connection with any acquired Product.
- (b) **Limitation of Liability.** In no event will NEOSO be liable for any consequential, incidental, special, indirect, or punitive damages with respect to any Product acquired under this Agreement or any Offering Addendum or its sale, delivery, installation, maintenance, operation, performance, or use, including without limitation, loss of use, damage to associated equipment or to facilities, costs of capital, or the cost of substitute products, services, or facilities, costs of replacement power, or any similar and dissimilar losses, costs, or damages, whether arising from breach of the terms in this Agreement, negligence, indemnity, or other tort.
- (c) **Shipment of Products.** NEOSO has no liability for shipment or freight costs, insurance costs, or risk of loss for (i) any Product purchased by the Governmental Entity under any Available Contract, or (ii) any Product returned by the Governmental Entity to any Vendor.
- (d) **Freight Claims.** NEOSO has no liability for any freight claims arising from the shipment of any Products.

Section 8.4. Independent Contractor.

- (a) In its acquisition and delivery of any Products under this Agreement or any Offering Addendum, NEOSO is acting as an independent contractor and, except as set forth on any applicable Offering Addendum, will be solely responsible for payment of its personnel, suppliers and subcontractors and the payment of all applicable taxes and insurance with respect thereto.
- (b) Neither party will have the power to bind the other or incur obligations on the other's behalf without the other party's prior written consent.



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IN WITNESS WHEREOF, the Governmental Entity and NEOSO have each caused this Agreement to be executed after due authorization as of the Effective Date.

NEOSO:

The Northeast Ohio Sourcing Office

Signature

Date

Printed Name

Title

GOVERNMENTAL ENTITY:

Village of Richfield

Entity Name

11/2/06

Date

Michael Lyons

Signature

Michael E. Lyons

Printed Name

Mayor

Title

Authorized by Ordinance No.: *62-2006*



Appendix 1

Definitions

The term "Agreement" means this Master Products Agreement entered into as of the Effective Date between NEOSO and the Governmental Entity.

The term "Authorized Representative" means a person authorized to bind the indicated party to the terms of this Agreement. As to NEOSO, this means that person or persons designated for this purpose by its Board of Directors from time to time. As to the Governmental Entity, this means Joe Meyer.

The term "Authorizing Legislation" means (i) Ordinance No. 62-2066 adopted by the Governmental Entity on 10-3, 2006 authorizing the Governmental Entity to become a Member of NEOSO and authorizing the signing, delivery, and performance of this Agreement, and (ii) any ordinance or resolution of the Governmental Entity authorizing the signing, delivery, and performance of any Offering Addendum.

The term "Available Contract" means each contract negotiated by NEOSO under which its Members may acquire Products.

The term "Entity" means any limited liability company, corporation, business association, partnership, joint venture, business or real estate investment trust, or organization whether or not for profit.

The term "Governmental Entity Site" means any site owned or leased by, or otherwise under the responsibility of, or designated by, the Governmental Entity at which Products are to be delivered for the Governmental Entity under an Offering Addendum.

The term "Member" means each political subdivision that is a member of NEOSO by (i) adopting the Authorizing Legislation, (ii) satisfying the qualifications and conditions of NEOSO's Code of Regulations, (iii) executing a membership agreement with NEOSO, and (iv) remaining compliant with all of its obligations to NEOSO under the membership agreement and under NEOSO's Code of Regulations.

The term "Offering Addendum" means an addendum to the Agreement providing the Products to be acquired by the Governmental Entity and delivered to a Governmental Entity Site.

The term "Person" means an individual, nominee, trust, or Entity whether acting on its own or in a representative capacity.

The term "Products" means products and related services made available from Vendors to the Governmental Entity, as the same may be changed from time to time.



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The term "Vendor" means an independent contractor, including its employees, agents and representatives, that provides Products to, and any related installation services for, the Governmental Entity under any Offering Addendum and in accordance with the terms and conditions of the related Available Contract.

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CODE OF REGULATIONS

OF

THE NORTHEAST OHIO SOURCING OFFICE



CODE OF REGULATIONS
OF
THE NORTHEAST OHIO SOURCING OFFICE

SECTION 1
DEFINITIONS

Unless the context indicates otherwise, all of the capitalized words in this Code of Regulations have the meanings set forth in the Appendix or other provision of this Agreement.

SECTION 2
GENERAL

2.1 Name. This Corporation will be known as THE NORTHEAST OHIO SOURCING OFFICE (the “Corporation”).

2.2 Creation. The Corporation is established as a regional council of governments under Chapter 167 of the Ohio Revised Code. The Corporation was created to serve any Unit of Government located within the Region that may desire to become a Member.

2.3 Purposes. The Corporation will have such purposes as are now, or may hereafter be, set forth in its Articles of Incorporation, as amended.

2.4 Authority. The Corporation will have such powers, express and implied, as are now, or may hereafter be, granted by Chapter 167 of the Ohio Revised Code, the Nonprofit Corporation Law of the State of Ohio, and its Articles of Incorporation and this Code of Regulations, each as amended.

2.5 Governing Document. This Code of Regulations is binding upon all Members of the Corporation and is the official document to be used in delineating and describing the Corporation’s functions, duties, procedures and areas of operation.

SECTION 3
OFFICES

3.1 Offices. The principal office of the Corporation will be in the County of Cuyahoga, or at any other place as the Board of Directors may from time to time appoint or as the activities of the Corporation may require.

3.2 Initial Office. The initial office of the Corporation will be 5422 East 96th Street, Suite 150, Cleveland, Ohio 44125.



SECTION 4 OPERATIONS OF THE CORPORATION

4.1 Operations. Except as otherwise provided by any law, the Corporation may, without limitation, initiate, participate or engage in, undertake, or conduct any of the following:

- (a) Serve as a neutral convener through which each Member may leverage its resources to enhance the quality of life of its citizens.
- (b) Study area governmental problems common to two or more Members as deemed appropriate, including but not limited to matters affecting health, safety, welfare, education, economic conditions, and regional development.
- (c) Identify opportunities and make recommendations for review and action to the Members and other public agencies that perform functions within the region.
- (d) Proactively locate and secure alternative resources, financing and funding models to address those matters of import to Members.
- (e) Promote the Members' joint interests in the region through select periodic investment in the Region.
- (f) Promote cooperative arrangements, plans, programs and contracts for, and coordinate action among, the Members or other governmental agencies and private persons, corporations or agencies.
- (g) Promote cooperative arrangements and coordinate action (i) among the Members, and (ii) between the Members and other agencies of local or state governments, whether or not within Ohio, and the federal government.
- (h) Perform planning directly by personnel of the Corporation, or under contracts between the Corporation and other public or private planning agencies.
- (i) Identify and promote procurement and sourcing approaches that reduce Members' costs relative to the same.
- (j) Acquire viable and reasonable commodities and services in accordance with the local, state and federal laws governing each Member.
- (k) Employ any staff and contract for the services of any consultants and experts as deemed necessary and appropriate to the Members.
- (l) Purchase, lease or otherwise provide for supplies, materials, equipment and facilities as deemed necessary and appropriate.
- (m) Accept money, real property, personal property, services of personnel, use of equipment, and office space, and other necessary services from the Members.
- (n) Accept funds, grants, gifts, and services from the governments of the United States or its agencies, from Ohio or its departments, agencies, instrumentalities, or from political subdivisions or from any other governmental unit whether participating in the Corporation or not, and from private and civic sources.



- (o) Establish a Schedule of Dues to aid in financing the expenses and operations of the Corporation.
- (p) Review, evaluate, comment upon, and make recommendations, relative to the planning and programming, and the location, financing, and scheduling of public facility projects within the Region and affecting the development of the area.
- (q) Act as an areawide agency to perform comprehensive planning for the programming, locating, financing, and scheduling of public facility projects within the Region and affecting the development of the area and for other proposed land development or uses, which projects or uses have public metropolitan wide or interjurisdictional significance.
- (r) Act as an agency for coordinating, based on metropolitan wide comprehensive planning and programming, local public policies, and activities affecting the development of the region or area.
- (s) To the extent permitted by law, permit non-Members, including any Unit of Government and any other private person, corporation, or agency, to participate in any of the activities of the Corporation as the Corporation may see fit.
- (t) By appropriate action of the governing bodies of the Members, perform such other functions and duties as are performed or capable of performance by the Members and necessary or desirable for dealing with problems of mutual concern and opportunities of mutual interest to the Members.

4.2 Limitations.

- (a) The operations of the Corporation may not override, displace or conflict with any legal obligation or statutory power of any Member including, without limitation, that of any other municipal, county, regional or other body under which a Member must act.
- (b) The authority granted to the Corporation may not displace any existing municipal, regional, or other planning commission or planning agency in the exercise of its statutory powers.
- (c) In the event of a conflict between this Code of Regulations and any ordinance, statute, regulation, or other law that compels or obligates a Member in any manner whatsoever, this Code of Regulations will be subordinate to that ordinance, statute, regulation or other law.

SECTION 5 GENERAL ASSEMBLY OF MEMBERS

5.1 Membership.

- (a) Any Unit of Government located within the Region may become a Member of the Corporation upon its completion of each of the following:



- (i) Satisfying the qualifications and conditions of the Corporation's Code of Regulations.
 - (ii) Receiving a majority vote of the quorum present at a Regular Meeting or a Special Meeting of the General Assembly called for the purpose of admitting the Unit of Government.
 - (iii) Adopting a Resolution of Cooperation.
 - (iv) Executing a membership agreement with the Corporation.
- (b) To the extent that laws of a particular state permit the establishment of a regional council of governments, any Unit of Government located outside of the Region will be deemed a Member of the Corporation upon its completion of each of the following:
- (i) Providing a written or oral demonstration of its interest in joining the Corporation and its willingness to comply with the terms of this Code of Regulations.
 - (ii) Receiving a majority vote of the quorum present at a Regular Meeting or a Special Meeting of the General Assembly called for the purpose of admitting the Unit of Government.
 - (iii) Adopting a Resolution of Cooperation.
 - (iv) Executing a membership agreement with the Corporation.

5.2 Appointment by Member of Representative. Each Member will be represented by its Representative. Any and all acts of each Member provided for in this Code of Regulations must be performed by the Member's Representative or its Alternative Representative as applicable.

(a) **Representative.**

- (i) **Appointment.** The elected chief executive of each Member will appoint one person to represent his or her Unit of Government on the General Assembly (a "Representative"), and the elected chief executive may appoint himself or herself to act as the Member's Representative. In any case in which a Member does not have an elected chief executive, the Member's governing body will appoint its Representative, and the appointed Representative may be a participant of the governing body. In no event may any person serve as a Representative to more than one Member.



(ii) Service. In the event a Representative (A) resigns, (B) is defeated or removed in his or her capacity with his or her respective Member, (C) dies, (D) is incapacitated, or (E) fails or refuses to carry out his or her duties as a Representative, as determined by two-thirds or more of the Members at a Special Meeting of the General Assembly called for this purpose, that Member's Representative will be replaced by an Alternative Replacement in accordance with Section 5.2(b)(i).

(b) Alternate Representative.

(i) Appointment. Each Member may appoint one alternate to its respective Representative ("Alternative Representative") in that manner provided in Section 5.2(a) for the appointment of a Representative. Any Alternative Representative will be authorized to act in place of the Representative in the event of the Representative's absence at any Regular or Special Meeting of the General Assembly and to cast such votes as the Representative could have cast if present.

(ii) Service. Any Alternative Representative will serve as a Member's Representative until such time as a new Representative may be appointed in accordance with Section 5.2(a)(i).

5.3 Duties of Members. The Members will have each of the following duties:

- (a) Consider the requests for admission of any Unit of Government located outside of the Region.
- (b) Elect the Board of Directors.
- (c) Any other duties as prescribed by Chapter 167 of the Ohio Revised Code, the Articles of Incorporation, the Nonprofit Law of the State of Ohio, or this Code of Regulations.

5.4 Regular Meeting. The Regular Meetings of the General Assembly for the election of Directors, the consideration of financial statements and other reports, and the transaction of such other business as may properly be brought before the meeting, will be held on the second Wednesday of each July. Upon due notice there may also be considered and acted upon at a Regular Meeting any matter which could properly be considered and acted upon at a Special Meeting, in which case and for which purpose the Regular Meeting will also be considered as, and will be, a Special Meeting. Any Regular Meeting may only be rescheduled or cancelled by action of the Board of Directors, with Notice to all Members provided by the Secretary at least 10 days prior to the date of the Regular Meeting. In the event that the Regular Meeting is not held, or if Directors are not elected thereat, a Special Meeting may be called and held for that purpose.

5.5 Special Meeting. Special Meetings of the General Assembly may be held on any business day when called by any person or persons who may be authorized by law to do so, including one-fourth of the Members of the Corporation, or any four Directors, whether



Representative Directors or Outside Directors. The Special Meeting will be held on that date specified in the request therefor or any other date upon which the Members and that party requesting the meeting may agree. Any request for a Special Meeting must: (i) be made in writing, (ii) be delivered to the Board of Directors by mail, hand delivery or email, (iii) be deemed delivered when mailed, delivered or electronically sent, (iv) provide a date, time and place for the Special Meeting, and (v) specify the purpose or purposes for the Special Meeting.

5.6 Location of Meetings. Any meeting of the General Assembly may be held at such place within or without the State of Ohio as may be designated in the notice of the meeting. Meetings may be held in person and through any communications equipment if all persons participating in the meeting can hear each other.

5.7 Notice. Written notice ("Notice") of the time, place and purposes of any meeting of the General Assembly must be given to each Member entitled thereto not less than seven (7) days nor more than sixty (60) days before the date fixed for the meeting and as prescribed by law. The Notice must be given either by personal delivery or mailed to each Member entitled to notice of or to vote at the meeting. If the Notice is mailed, it must be directed, postage prepaid, to the Members at their respective addresses as they appear upon the records of the Corporation, and notice will be deemed to have been given on the day mailed. If any meeting is adjourned to another time or place, no notice as to the adjourned meeting need be given other than by announcement at the meeting at which the adjournment is taken. No business will be transacted at any adjourned meeting except as might have been lawfully transacted at the meeting at which the adjournment was taken.

5.8 Waiver of Notice. Notice of any meeting may be waived in writing by any Member either before or after any meeting of the General Assembly, or by attendance at the meeting without protest prior to the commencement thereof.

5.9 Members Entitled to Notice of and to Vote at Meetings. If a record date is not fixed, the record date for the determination of Members entitled to notice of or to vote at any meeting of the General Assembly will be the close of business on the twentieth day prior to the date of the meeting and only Members of record at the record date will be entitled to notice of and to vote at the meeting. The record date will continue to be the record date for all adjournments of the meeting unless a new record date is fixed and notice thereof and of the date of the adjourned meeting be given to all Members entitled to Notice in accordance with the new record date so fixed.

5.10 Quorum. At any meeting of General Assembly, the presence of a majority of the Members of the Corporation, whether present in person or by proxy, will constitute a quorum for the meeting. The Members present in person or by proxy, whether or not a quorum be present, may adjourn the meeting from time to time without notice other than by announcement at the meeting.

5.11 Voting. Except as provided by statute, in the Articles of Incorporation, or in this Code of Regulations, every Member entitled to vote will be entitled to cast one vote on each proposal submitted to the meeting. At any meeting at which a quorum is present, all questions



and business which may come before the meeting will be determined by a majority of votes cast except when a greater proportion is required by law, the Articles of Incorporation, or this Code of Regulations.

5.12 Proxies. A person who is entitled to attend a meeting of the General Assembly, to vote thereat, or to execute consents, waivers and releases, may be represented at the meeting or vote thereat, and execute consents, waivers, and releases, and exercise any of his rights by proxy or proxies appointed by a writing signed by the person, or by his duly authorized attorney, as provided by the laws of the State of Ohio.

- (a) A telegram, cablegram, wireless message or photograph appearing to have been transmitted by a Member or a photograph, photo static or equivalent reproduction of a writing appointing a proxy or proxies will be a sufficient writing.
- (b) No appointment of a proxy will be valid after the expiration of eleven (11) months after it is made, unless the writing specified the date on which it is to expire or the length of time it is to continue in force.

5.13 Action of Members without a Meeting. Any action which may be taken at a meeting of the General Assembly may be taken without a meeting if authorized by a writing or writings signed by all of the Members who would be entitled to Notice of a meeting for that purpose, which writing or writings must be filed or entered upon the records of the Corporation.

5.14 Agenda. At any time prior to a Regular or Special Meeting, but more than fourteen (14) days before the scheduled Regular or Special Meeting, any Member or Director may submit a request for an agenda item(s) to the Board of Directors. Ten (10) days prior to the scheduled Regular or Special Meeting, the Board of Directors must forward the agenda of the Regular or Special Meeting, including the requests for an agenda item submitted by any Member or Director, to all Members.

SECTION 6 **INTERIM BOARD OF DIRECTORS**

6.1 Appointment. The Interim Board of Directors will be comprised of Representative Directors and Outside Directors that will be appointed by the incorporator of the Corporation as follows:

- (a) **Representative Directors.** The incorporator will appoint two Representative Directors and each will be either an employee, contractor or elected official of a Member, except that no Member may have more than one Representative Director.
- (b) **Outside Directors.** The incorporator will appoint one Outside Director, who may be any individual other than a Representative Director.



6.2 Term. The Interim Board of Directors will serve in this capacity until there are at least five Members and until the time as the General Assembly convenes a meeting, whether a Regular Meeting or a Special Meeting, to elect the Board of Directors in accordance with Section 7.

6.3 Duties. The Interim Board of Directors will have the duties and responsibilities assigned to the Officers of the Board of Directors.

SECTION 7 BOARD OF DIRECTORS

7.1 General Powers. The Board of Directors is responsible for overseeing the Corporation's business objectives and responsibilities and any other obligations as may be delegated to the Board of Directors by the General Assembly. All of the business, power, authority and affairs of the Corporation will be exercised, conducted, managed and controlled by the Board of Directors, except where the law, the Articles of Incorporation, or this Code of Regulations requires action to be authorized or taken by the General Assembly.

7.2 Reporting Requirement. The President, or his or her designee, will report to the General Assembly on those items delegated to the Board of Directors and address any questions the General Assembly may have relative to the same at each (i) Regular Meeting of the General Assembly and (ii) Special Meeting of the General Assembly called for such a purpose.

7.3 Delegation of Duties. The Board may hire an entity or person to manage the day-to-day operations of the Corporation.

7.4 Director Bylaws. For their own government the Directors may adopt bylaws not inconsistent with the Articles of Incorporation of the Corporation and this Code of Regulations.

7.5 Limitation Clause. Subject to the provisions of Chapter 167 of the Ohio Revised Code, the Ohio Nonprofit Corporation Law, the Articles of Incorporation and this Code of Regulations, the Directors are authorized and empowered to do and perform every act and thing whatsoever which they deem necessary, expedient or advisable to carry out the purposes of this Corporation.

7.6 Number, Election Membership and Tenure.

- (a) Number. There will be nine initial Directors. The number of Directors may be fixed or changed at a meeting of the General Assembly called for the purpose of electing Directors at which a quorum is present, by the affirmative vote of a majority of the Members entitled to vote on the proposal, but at no time will the number of Directors drop below three nor increase beyond nine. The number of Directors elected will be deemed to be the number of Directors fixed unless otherwise fixed by resolution adopted at the meeting at which the Directors are elected.



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- (b) Election. Upon at least five Members joining the Corporation, the Board of Directors will be elected and will replace the Interim Board of Directors at the first Annual Meeting of the General Assembly, or if not so elected, at a Special Meeting of the General Assembly held for that purpose. At any meeting of the General Assembly at which Directors are to be elected, only persons nominated as candidates will be eligible for election. Where there are more than two persons nominated for one directorship, the nominee with the greatest number votes will be elected, even if the number of votes is less than a majority. Directors need not be Members of the Corporation.
- (c) Membership. The Board of Directors will be comprised of “Representative Directors” and “Outside Directors” that will be elected as follows:
 - (i) Representative Directors. The General Assembly will elect four Representative Directors, each of which must be an employee, a contractor, or an elected official of a Member, except that no Member may have more than one Representative Director.
 - (ii) Outside Directors. The General Assembly will elect five Outside Directors, each of which may be any individual other than a Representative Director.
- (d) Term.
 - (i) Initial Term. The General Assembly will elect the initial Board of Directors to serve the following terms:
 - (A) Two (1) Representative Directors and one (2) Outside Director to serve a one-year term.
 - (B) Two (1) Representative Directors and one (2) Outside Director to serve a two-year term.
 - (C) One (2) Representative Director and two (1) Outside Directors to a three-year term.
 - (ii) Subsequent Terms. At the Annual Meeting of each subsequent year, the Representative Directors and Outside Directors then elected will each serve for a three year term and, except for Directors elected to fill a vacancy in office pursuant to Section 7.19 below, each Director will hold office until the next Annual Meeting of the General Assembly and until his successor has been elected and qualified or until his earlier resignation, removal from office, or death.
 - (iii) Term Limits. Any Director may succeed himself or herself. However, no individual Director may serve as a Director for more than six years. In the



event an individual Director completes his or her sixth year of membership in the Board of Directors before his or her current term is completed, that Director will be deemed to have resigned his or her position upon completion of his or her sixth year of membership. A replacement Representative will be elected according to the terms of Section 5.2(b)(i).

7.7 Annual Meeting. The Annual Meeting of the Board of Directors, commencing with the 2006 meeting, will be held on the second Wednesday of July each year, or on such other date as designated by the President or the Directors. The purpose of the Annual Meeting will be to transact such business as may come before the meeting. The Annual Meeting will be held at the place and time specified in the Notice of the meeting required by Section 7.11 below.

7.8 Regular Meeting. A Regular Meeting of the Board of Directors will be held immediately following the adjournment of the Regular Meeting of the General Assembly or a Special Meeting of the General Assembly at which Directors are elected. The holding of the meeting of the General Assembly will constitute notice of the Directors' meeting and the meeting may be held without further notice. Other Regular Meetings may be held on such days and at such times and places as may be fixed by the Board. The Board may elect not to set Regular Meetings in a given year.

7.9 Special Meetings. Special Meetings of the Board of Directors may be called by the President or by any two Directors at such times and places as the person or persons calling the meeting specifies in the notice of the meeting required by Section 7.11 below.

7.10 Location of Meeting. Meetings of the Directors may be held at any place within or without the State of Ohio as specified in the notice of the meeting. Meetings may be held in person and through any communications equipment if all persons participating in the meeting can hear each other.

7.11 Notice. The following provisions will govern notice:

- (a) Written notice of the time and place of each regular or special meeting of the Directors (other than the regular meeting of Directors following the adjournment of the annual meeting of the General Assembly or following any special meeting of the General Assembly at which Directors are elected) will be given to each Director either by personal delivery or by mail, facsimile telecopy, telegram, or electronic mail at least 3 days before the meeting.
- (b) Except in the case of a special meeting, the notice need not specify the purpose of the meeting.
- (c) Notice of adjournment of a meeting need not be given if the time and place to which it is adjourned are fixed and announced at the meeting.



- (d) If the notice is mailed, it will be deemed to be delivered when deposited in the United States Mail so addressed with postage thereon prepaid.
- (e) If notice is given by telegram, facsimile telecopy or electronic mail, the notice will be deemed to be delivered when the telegram or facsimile telecopy is delivered to the receiving facility or when the electronic mail is transmitted to the addressee.
- (f) Any member of the Board of Directors may waive in writing notice of any meeting. The attendance of a Director at a meeting (including attendance by means of participation through any communications equipment as above provided) without protest prior to the commencement thereof will constitute a waiver of notice of the meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

7.12 Voting. Each member of the Board of Directors will be entitled to one vote.

7.13 Quorum. A majority of the elected and acting Directors is necessary, in person and/or through any communications equipment, to constitute a quorum for a meeting of the Directors, except that a majority of the remaining Directors in office constitutes a quorum for filling a vacancy in the Board. With respect to all acts, questions and business which may come before any meeting, the act of a majority of the Directors present at a meeting at which a quorum is present is the act of the Board, unless the vote of a greater number is required by the Articles of Incorporation, Code of Regulations or Bylaws. If a quorum is not present, a majority of the Directors present may adjourn and reconvene the meeting from time to time without further notice.

7.14 Action By Unanimous Written Consent. Any action which may be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors of the Corporation entitled to vote. Any such writing will be filed with, or entered upon, the records of the Corporation.

7.15 Procedure. The President will preside at the meetings of the Board of Directors.

7.16 Compensation; Expenses. Directors as such will not receive any compensation for their services; but nothing contained in this Code of Regulations will be construed to preclude any Director from serving the Corporation in any other capacity and receiving reasonable compensation therefor. Each Director will be entitled to reimbursement for out-of-pocket expenses reasonably incurred in connection with his or her performance of Director duties.

7.17 Resignation. Any Director of the Corporation may resign at any time, either by oral tender of resignation at any meeting of the Board of Directors or by giving written notice thereof to any incumbent corporate Officer other than an Officer who is also the resigning Director of the Corporation. The resignation will take effect at the time specified therefor and,



unless otherwise specified with respect thereto, the acceptance of the resignation will not be necessary to make it effective.

7.18 Removal. A Director may be removed, with or without cause, at a meeting called expressly for that purpose, by a vote of a majority of the Directors in office.

7.19 Vacancies. Any vacancy occurring in the Board of Directors will be filled by the unanimous consent of the remaining Directors. A Director elected to fill a vacancy occurring in the Board of Directors will be elected for the unexpired term of his predecessor in office.

SECTION 8 **COMMITTEES**

8.1 Committees.

- (a) **Appointment.** The Board of Directors may from time to time establish and appoint temporary or special Committees which in its discretion it deems necessary or desirable, which Committees will consist of no fewer than three Directors. The election or appointment of an officer for a given term, or a general provision in the Articles of Incorporation, Code of Regulations, or Bylaws with respect to term of office, will not be deemed to create contract rights.
- (b) **Scope of Authority.** The Committees may carry out any activities within the scope of the Corporation's authority in order to facilitate intergovernmental cooperation or coordination between Members or for any other lawful purpose. Any Committee may represent, or be formed for a purpose concerning, fewer than all Units of Governments participating in the Corporation.
- (c) **Committee Action.** Unless otherwise provided by the Board of Directors, a majority of the members of any Committee appointed by the Board of Directors under this Section 8 will constitute a quorum at any meeting thereof and the act of a majority of the members present at a meeting at which a quorum is present will be the act of the Committee. Action may be taken by any Committee without a meeting by a writing signed by all its members. Any Committee will prescribe its own rules for calling and holding meetings and its method of procedure, subject to any rules prescribed by the Board of Directors, and must keep a written record of all action taken by it.

8.2 Executive Committee. The Directors, in their discretion, may create from their membership and define the powers and duties of an Executive Committee. During the intervals between meetings of the Board of Directors, the Executive Committee will possess and may exercise all of the powers of the Board of Directors in the management and control of the business of the Corporation to the extent permitted by law. All action taken by the Executive Committee will be reported to the Board of Directors at its first meeting thereafter.



SECTION 9 **OFFICERS**

9.1 **Officers.** The officers of the Board of Directors (the “Officers”) will consist of a President, Treasurer and a Secretary, and, if desired, one or more Vice-Presidents, and such other Officers and assistant officers as may be deemed necessary, each of whom may be designated by such other titles as may be provided in the Articles of Incorporation, this Code of Regulations, the Bylaws of the Board of Directors or a Resolution of the Directors. Unless the Articles of Incorporation or this Code of Regulations otherwise provide, an officer need not be a Director. Any two or more offices (except for the offices of President and Vice-President) may be held by the same person, but no Officer will execute, acknowledge or verify any instrument in more than one capacity if the instrument is required to be executed, acknowledged or verified by two or more Officers. The Officers, as between themselves and the Corporation, have such authority and must perform such duties as are customarily incident to their respective offices as set forth in this **Section 9**, and as may be specified from time to time by the Board of Directors, regardless of whether the authority and duties are customarily incident to the office. In the absence of any Officer of the Corporation, or for any other reason the Board of Directors may deem sufficient, the Board of Directors may delegate for the time being, the powers or duties of the Officer, or any of them, to any other Officer or to any Director. The Board of Directors may from time to time delegate to any Officer authority to appoint and remove subordinate Officers and to prescribe their authority and duties.

9.2 **Election.** The Officers will be elected as follows:

- (a) The Corporation will have no Officers before the time that it has at least five Members.
- (b) At that time when the Corporation has five or more Members, unless otherwise provided by the Board of Directors, the Officers will be elected annually by the Board of Directors at the Annual Meeting of the Board of Directors.
- (c) To the extent deemed necessary, the Initial Board of Directors will elect its Officers by majority vote.

9.3 **Term of Office.** Each Officer will hold office until his or her successor has been duly elected and accepted office or until his or death, resignation or removal (in the manner provided below).

9.4 **Removal.** Any Officer elected by the Board of Directors may be removed, with or without cause, by the majority action of the Board of Directors, but such removal will be without prejudice to the contract rights, if any, of the person so removed.

9.5 **Vacancies.** A vacancy in office because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.



9.6 President. The following provisions will govern the office of President:

- (a) The President will be elected from among the Directors of the Corporation, will oversee those activities, functions and matters specifically prescribed by the Board of Directors and will preside at all meetings of the Board of Directors.
- (b) The President may sign, with the Secretary or any other Officer of the Corporation authorized by the Board of Directors, any deeds, mortgages, bonds, contracts or other instruments which have been authorized to be executed, except in cases where the signing and the executions thereof would be expressly delegated by the Board of Directors or by this Code of Regulations or by statute to some other officer or agent of the Corporation; and in general, the President will perform such other duties as may be prescribed by the Board of Directors from time to time.

9.7 Vice-President. One or more Vice-Presidents may be elected from among the Directors, and, in the absence of the President, the Vice-Presidents (in the order of their election) will perform the duties of President when the office of President is vacant or the President is unable or unavailable to act and will have any other duties as may be designated by the Board of Directors.

9.8 Treasurer. The following provisions will govern the office of Treasurer:

- (a) Subject to the direction of the President, the Treasurer will have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipts for moneys due and payable to the Corporation from any source whatsoever; deposit all such moneys in the name of the Corporation in the banks, trust companies or other depositories as will be selected in accordance with the provisions of this Code of Regulations; and in general perform all the duties incident to the office of Treasurer and the other duties as from time to time may be assigned to him or her by the President or by the Board of Directors.
- (b) If required by the Board of Directors, the Treasurer will give a bond for the faithful discharge of the Treasurer's duties in the sum and with the surety as the Board of Directors determines.

9.9 Secretary. The following provisions will govern the office of Secretary:

- (a) Subject to the direction of the President, the Secretary will prepare an agenda for and keep the minutes of any meetings of the Board of Directors in one or more books provided for that purpose; assure that minutes of all meetings of any committees are prepared and filed with the records of the Corporation; assure that all notices are given in accordance with the provision of this Code of Regulations or as required by law; be custodian of the Corporation's records; and in general perform all duties incident to the office of Secretary and such other duties as from



time to time may be assigned to the Secretary by the President or the Board of Directors.

- (b) In the absence of any Vice-Presidents, the Secretary will preside at all meetings of the Board of Directors, prepare or designate another to prepare any correspondence sent on behalf of the Board of Directors, and perform the duties of the President when the office of President is vacant, or the President is unable or unavailable to act.
- (c) The Secretary is not required to be a Member.

9.10 Compensation. The compensation of the Officers, if any, will be fixed by resolution of the Board of Directors, unless this determination is delegated by the Board to another Officer or Officers, but no such resolution will create any contractual right to the continuation of such compensation for any period of time.

SECTION 10 **EMPLOYEES & INDEPENDENT CONTRACTORS**

10.1 Executive Director. In its discretion, the Board of Directors may appoint an employee or an independent contractor to perform the functions of the Executive Director to serve as the chief administrative officer of the Corporation. This individual will report directly to the Board of Directors, will oversee the fiscal administration of the Corporation and will provide overall leadership to the Corporation. The Board of Directors will fix the compensation and other terms of engagement for the Executive Director.

10.2 Other Employees. The Board of Directors may establish such other positions of employment as it deems desirable from time to time and will fix the salaries and other terms of employment for such positions.

10.3 Other Independent Contractors. The Board of Directors may engage any other independent contractors as it deems desirable from time to time and will fix the compensation and other terms of engagement for the positions.

SECTION 11 **AGENTS AND REPRESENTATIVES**

The Board of Directors may appoint such agents and representatives of the Corporation with such powers and to perform such acts and duties on behalf of the Corporation as the Board of Directors may see fit, so far as may be consistent with the Articles of Incorporation and this Code of Regulations, to the extent authorized or permitted by law.



SECTION 12 LIMITATION OF LIABILITY IN DAMAGES AND INDEMNITY

12.1 Limitation of Liability in Damages of a Director. Other than in connection with an action or suit in which the only liability asserted against a Director is for voting for or assenting to a statutorily proscribed asset distribution or loan, a Director of the Corporation will be liable in damages for any action he takes or fails to take as a Director only if it is proved by clear and convincing evidence in a court of competent jurisdiction that his action or failure to act involved an act or omission either undertaken with deliberate intent to cause injury to the Corporation or undertaken with reckless disregard for the best interests of the Corporation.

12.2 Indemnification.

- (a) To the fullest extent permitted by law and subject to the provisions of Section 12.2(b), the Corporation will defend, indemnify and save harmless each person, and the heirs, legal representatives, executors and administrators of such person, who is, or was, a Director, Member, Officer, employee, agent, or independent contractor of this Corporation or who is, or was, serving at the request of this Corporation and for the benefit of this Corporation in any of the foregoing capacities for another corporation, domestic or foreign, nonprofit or for profit, partnership, joint venture, trust or other enterprise (all of the previously enumerated positions will be referred to as "Covered Positions," and the person so serving will be referred to as a "Covered Person"), against all costs and expenses (including, but not limited to, attorneys' fees and disbursements, judgments, fines, penalties and amounts paid in settlement) actually and reasonably incurred by the Covered Person or imposed upon the Covered Person:
- (i) In connection with or arising out of any claim, action, suit, proceeding or investigation (or any issue or matter therein), whether civil, criminal, administrative, investigative, or whatever nature, to which the Covered Person is made or threatened to be made a party or in which the Covered Person is necessarily involved by reason of the fact that the Covered Person is, or was, serving in any one or more of the Covered Positions; and
- (ii) In connection with any negotiations or settlement thereof, or appeal therein.
- (b) The provisions of Section 12.2(a) will not be effective unless the Covered Person:
- (i) Is determined to have acted in good faith;
- (ii) Is determined to have acted in a manner the Covered Person reasonably believed to be in or not opposed to the best interests of any such corporation or enterprise; and



- (iii) Is determined in any matter the subject of a criminal action, suit or proceeding, to have had no reasonable cause to believe that the Covered Person's conduct was unlawful.
- (c) The termination of any action, suit or proceeding, or any issue or matter therein, by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, will not, of itself, create a presumption that the Covered Person did not act in good faith and in a manner which the Covered Person reasonably believed to be in or not opposed to the best interests of any such corporation or enterprise, and with respect to any criminal action or proceeding, that the Covered Person had reasonable cause to believe that the Covered Person's conduct was unlawful.
- (d) Notwithstanding anything contained in this Section 12.2, no indemnification will be made by the Corporation (i) in respect of any action or suit in which liability is asserted against a Director and that liability is pursuant to a statutorily proscribed asset distribution or loan; and (ii) in respect of any claim, suit, issue or matter, by or in the right of this Corporation, as to which a person is, or was, serving in a Covered Position, and it is proved by clear and convincing evidence in a court of competent jurisdiction that the Covered Person's action or failure to act was undertaken with deliberate intent to cause injury to the Corporation or undertaken with reckless disregard for the best interests of the Corporation and that, with respect to any criminal action or proceeding, the Covered Person had reasonable cause to believe the Covered Person's conduct was unlawful unless, and only to the extent that the Court of Common Pleas, or the court in which such action or suit was brought, determines, upon application by the Corporation, and despite the proof and in view of all the circumstances of the case, that such person is fairly and reasonably entitled to indemnity for such expenses as the Court of Common Pleas or such other court deems proper.
- (e) Any indemnification provided for under this Section 12.2, unless ordered by a court as provided in Section 12.2(d), will be made by this Corporation only after a determination that such indemnification of a person who is, or was, serving in a Covered Position is proper because the person has met the standards of conduct stated in Section 12.2(b) above as follows:
 - (i) By a majority vote of a quorum consisting of Directors of this Corporation who were not and are not parties to or threatened with any such action, suit or proceeding; or
 - (ii) If such a quorum of Directors is not obtainable, or if a majority vote of a quorum of disinterested Directors so directs, then in a written opinion by independent legal counsel other than an attorney, or a firm having associated with it an attorney, who has been retained by or who has performed services for this Corporation, or who has been indemnified by the Corporation within the past five years; or



- (iii) By the Court of Common Pleas or the court in which such action, suit or proceeding was brought.
- (f) Any determination made according to methods (i) or (ii) of Section 12.2(e) above will be promptly communicated to any person who threatened or brought an action or suit by or in the right of this Corporation.
- (g) Expenses, including attorneys' fees, incurred with respect to any claim, action, suit, proceeding or investigation (or any issue or matter therein) of the character described in this Section 12.2 may be advanced by this Corporation prior to the final disposition thereof as authorized by the Directors in a specific case upon receipt of an undertaking by or on behalf of a Covered Person: (i) to repay such amount, if it is proved by clear and convincing evidence in a court of competent jurisdiction that the Covered Person's action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the Corporation or undertaken with reckless disregard for the best interests of the Corporation; (ii) to cooperate with the Corporation concerning the action, suit or proceeding; and (iii) where indemnification is granted, to repay any amount to the extent the expenses so advanced exceed the indemnification to which the Covered Person is entitled.
- (h) Such indemnification as provided by this Section 12 will not be deemed exclusive of any other rights to which a person who is, or was, serving in a Covered Position may be entitled under this Corporation's Articles of Incorporation, Code of Regulations, or any agreement, vote of disinterested Directors, or otherwise, both as to action in the person's official capacity and as to action in another capacity while holding such office, and will continue as to a person who has ceased serving in a Covered Position and will inure to the benefit of the heirs, legal representatives, executors and administrators of such person.

12.3 Insurance. This Corporation (a) will purchase and maintain insurance on behalf of any Directors and Officers and (b) may purchase and maintain insurance on behalf of any other Covered Person against any liability asserted against the Covered Person or incurred by the Covered Person in any such capacity, or arising out of the Covered Person's status as such, whether or not this Corporation would have the power to indemnify the Covered Person against such liability under Section 12.2 above or the Ohio Nonprofit Corporation Law.

12.4 No Mandatory Indemnification of Volunteer. Section 1702.12(E)(5) of the Ohio Nonprofit Corporation Law will not apply to the Corporation to the extent that it requires the indemnification of volunteers (as that term is defined in Section 1702.01(N) of the Ohio Nonprofit Corporation Law) other than Directors or Officers of the Corporation or directors or officers of another domestic or foreign nonprofit corporation or corporation for profit, or partnership, joint venture, employee benefit plan, trust or other enterprise serving at the request of the Corporation.



SECTION 13 **CONTRACTS AND BANKING**

13.1 Contracts. The Board of Directors may authorize any one or more Officers or agents to enter into any contract or execute or deliver any instrument in the name of or on behalf of the Corporation, and the authority may be general or confined to special instances.

13.2 Deposits. All funds of the Corporation not otherwise employed will be deposited from time to time to the credit of the Corporation in the banks, trust companies or other depositories as the Board of Directors may select.

13.3 Checks. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation will be signed by such one or more Board Officers or authorized agents of the Corporation and in such manner as from time to time determined by resolution of the Board of Directors.

SECTION 14 **GIFTS AND DISTRIBUTIONS**

14.1 Acceptance of Gifts. The Board of Directors, or a Committee appointed for that purpose, may apply for and accept on behalf of the Corporation any gift, grant, bequest, contribution or devise for the general purposes or any special purpose of the Corporation. Further, the Board of Directors, or a Committee appointed for that purpose, may agree to administer the same in accordance with any conditions that the testator or donor may impose, provided only the purpose of the devise, bequest or gift is within the powers and purposes of the Corporation.

14.2 Distributions. The Board of Directors may make outright contributions, grants and gifts of property, both real and personal, to any program fulfilling any of the purposes of the Corporation as set forth in the Articles of Incorporation, subject to any and all restrictions imposed from time to time upon the grant-making activities of private foundations by the Internal Revenue Code of 1986.

SECTION 15 **ACCOUNTING YEAR AND AUDIT**

15.1 Accounting Year. The fiscal year of the Corporation will begin on the first day of January and end on the last day of December of each year.

15.2 Audit. At the end of each accounting year, the books of the Corporation will be closed, a fiscal audit of the operations, activities and records of the Corporation will be performed, and a financial statement prepared for that year. If directed by the Board of Directors, the financial statement will be reviewed or certified by an independent firm, the partners of which are certified public accountants. A copy of the financial statement will be made part of the permanent records of the Corporation. A copy of the financial statement will be promptly mailed to each Member and Director, in addition to appropriate state and federal



agencies as may be required by law, and will be submitted to the Board of Directors at the Annual Meeting or a Special Meeting.

SECTION 16 **MISCELLANEOUS**

16.1 Books and Records. The Corporation will keep correct and complete books and records and minutes of the proceedings of the Board of Directors and any Committees which have had activities in connection with the Corporation's business.

16.2 Loans to Employees, Officers and Directors Prohibited. No loans will be made by the Corporation to its Officers, Directors or employees.

SECTION 17 **WITHDRAWAL**

17.1 Notice. Any Member may withdraw its participation in the Corporation at any time by duly adopting a resolution to do so and delivering a certified copy thereof, as approved by the Member's governing body, to the Corporation, at least three hundred sixty-five (365) days prior to the actual date of withdrawal, unless a shorter time is required by ordinance of the Member.

17.2 Effective Date. Any withdrawal by a Member will be effective on the day after the indicated date of withdrawal, except that presentation by a Member of a resolution to withdraw will not relieve that Member of its obligations to (a) contribute its pro-rata share of any fees, costs or assessments attributable to its period of participation in the Corporation or (b) complete any ongoing or remaining contractual obligations to which the Member is a party.

SECTION 18 **DISSOLUTION**

18.1 Dissolution of Corporation. The Corporation will be dissolved, and its affairs wound up, only after and upon full compliance with the procedure for dissolution described in this Section 18 has been undertaken by every Member. The withdrawal of a Member will not cause a dissolution of the Corporation. Upon the occurrence of a Dissolution Event, the Corporation must deliver a certificate of dissolution containing the required information to the Secretary of State for filing.

18.2 Notice. The Secretary must notify every Member by certified or registered mail, return receipt requested, at least sixty (60) days before the Special Meeting of the General Assembly at which a motion for dissolution is to be discussed in accordance with the purpose set forth in the notice of the Special Meeting (the "Dissolution Meeting").

18.3 Dissolution Meeting. At the Dissolution Meeting, a motion will be deemed made and seconded so as to move directly to the discussion of dissolving the Corporation. Following this discussion, each Member in attendance will vote. Upon two-thirds or more of all then



current Members voting in favor of dissolving the Corporation, the Corporation will be dissolved.

18.4 Winding Up. At the earliest possible date following the Dissolution Meeting, the Manager must wind up all of the Corporation's affairs and distribute all of the Corporation's property and cash in the following order:

- (a) To creditors, including, to the extent permitted by law, Members who are creditors, in satisfaction of the Corporation's liabilities.
- (b) To each then-former Member in accordance with the following procedure:
 - (i) Each then-former Member will be entitled to, and receive, one share of the net proceeds for each full calendar month that it was a Member of the Corporation (a "Dissolution Share"). The total due to each Member is calculated by dividing its Dissolution Shares by the total number of Dissolution Shares and then multiplying this quotient by the remaining net proceeds.
 - (ii) The net proceeds will originate from the disposal of the assets of the Corporation but only after all debts are paid and to the extent that, for one hundred and twenty (120) continuous days, no creditor brings any claim for the same.
 - (iii) By way of example only, see the Sample Dissolution Chart attached as Exhibit A.

The winding up of the Company will be completed when all debts, liabilities, and obligations of the Corporation have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the Corporation have been distributed to the Members.

SECTION 19 **AMENDMENTS**

This Code of Regulations of the Corporation (and as it may be amended from time to time) may be amended, altered, or repealed at any time and a new Code of Regulations adopted at a meeting held for that purpose by (a) the affirmative vote of three-quarters (¾) of the Members adopted by attending a Regular Meeting or a Special Meeting of the General Assembly held for that purpose; or (b) a writing, executed by two-thirds or more of the Members; provided, however, that if an amendment or addition is adopted by written consent without a meeting of the General Assembly, it will be the duty of the Secretary to enter the amendment or addition in the records of the Corporation, and to mail a copy of the amendment or addition to each Member of record who would be entitled to vote thereon and did not participate in the adoption thereof.



SECTION 20 **CONSISTENCY WITH ARTICLES OF INCORPORATION**

20.1 Consistency with Articles of Incorporation. If any provision of this Code of Regulations is inconsistent with the Corporation's Articles of Incorporation (as amended from time to time), the Articles of Incorporation (as so amended at the time) will govern.

20.2 Severability. Applicable statutes of the State of Ohio are included in this Code of Regulations and are made a part hereof. If any section, subsection, paragraph, sentence, or phrase of this Code of Regulations is for any reason held to be invalid by a court of competent jurisdiction, the provision will be considered to be severable and the decision will not affect the validity of the remaining portions of this Code of Regulations.

SECTION 21 **SECTION HEADINGS**

The headings contained in this Code of Regulations are for reference purposes only and will not be construed to be part of and shall not affect in any way the meaning or interpretation of this Code of Regulations.



Appendix Definitions

The term “Corporation” means the Northeast Ohio Sourcing Office, an Ohio nonprofit corporation organized as a regional council of governments under Chapter 167 of the Ohio Revised Code.

The term “General Assembly” means the body charged with overseeing the Corporation and comprised of the Representatives.

The term “Member” means each Unit of Government, acting through its Representative, that is a member of the Corporation by (i) satisfying the qualifications and conditions of the Corporation’s Code of Regulations, (ii) executing a membership agreement with the Corporation, and (iii) remaining compliant with all of its obligations to the Corporation under the membership agreement and under the Corporation’s Code of Regulations.

The term “Region” means the geography located within the Ohio Counties of Ashtabula, Columbiana, Cuyahoga, Geauga, Lake, Lorain, Mahoning, Medina, Portage, Stark, Summit, Trumbull and Wayne.

The term “Schedule of Dues” means that list of annual membership fees as adopted by the Board of Directors of the Corporation, as amended from time to time.

The term “Units of Government” means any municipal corporation, township, special district, county, school district, public college, public university, or other political subdivision.

The term “Resolution of Cooperation” means a Unit of Government’s legislation that (i) demonstrates its interest in the Corporation, (ii) authorizes it to become a Member of the Corporation, and (iii) incorporates, by reference or attachment, this Code of Regulations.



Exhibit A

SAMPLE DISSOLUTION CHART

Member	Start Date	Dissolution Date	Number of Dissolution Shares	Total Due
Village A	February 2, 2005	December 1, 2005	10	\$294.12
Township A	February 2, 2005	December 1, 2005	10	\$294.12
City A	June 1, 2005	December 1, 2005	7	\$205.88
Township B	August 12, 2005	December 1, 2005	4	\$117.64
County A	September 15, 2005	December 1, 2005	3	\$88.24
TOTALS			34	\$1000.00



MASTER SERVICES AND CONSULTING AGREEMENT

This Master Services and Consulting Agreement ("Agreement") is entered into as of November 2, 2006 ("Effective Date"), between The Northeast Ohio Sourcing Office, an Ohio nonprofit corporation organized as a regional council of governments under Chapter 167 of the Ohio Revised Code ("NEOSO"), and The Village of Richfield, (the "Governmental Entity"). Capitalized terms not otherwise defined in the body of this Agreement have the meanings assigned to them in the attached Appendix 1.

Recitals

- A. NEOSO was organized, in part, for the purposes of (i) providing consulting and management to its Members, (ii) developing and implementing certain business processes to be shared among the Members, and (iii) developing and operating as a collective purchasing and service organization to enable its Members to obtain services ("Services") from various service providers at competitive terms by utilizing the combined purchasing power of all of NEOSO's Members.
- B. NEOSO and the Governmental Entity entered into a Membership Agreement dated 11-2, 2006 (the "Membership Agreement"), under which the Governmental Entity became a Member of NEOSO.
- C. In order to purchase Services under any Available Contract, Section 1.4(a) of the Membership Agreement permits the Governmental Entity to purchase Services from any Vendor and requires the parties to enter into a Master Services and Consulting Agreement setting forth the terms and conditions under which the Services will be provided for the Governmental Entity.
- D. The parties have decided to enter into this Agreement to govern the Services provided to the Governmental Entity through Available Contracts.

The parties agree as follows:

Article I Nature and Scope of Services

Section 1.1. Scope. This Agreement provides the terms and conditions under which NEOSO will contract to make Services available to the Governmental Entity.

Section 1.2. Vendor Status. Unless otherwise specified in an Offering Addendum, Services available under each Offering Addendum will be performed by a Vendor. Any Offering Addendum for Services will be entered into between NEOSO and the Governmental Entity and will be acknowledged by the Vendor. Each Offering Addendum will include terms and conditions specific to the particular Available Contract under which the Offering Addendum is authorized and entered into.



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Section 1.3. Incorporation of Attachments. The terms and conditions of the following appendix and exhibits are hereby incorporated into and made a part of this Agreement.

- (a) Appendix 1: Definitions
- (b) Each executed Offering Addendum will constitute a single exhibit, which may also include:
 - (i) Project Description.
 - (ii) Completion Schedule.

Section 1.4. Incorporation of Terms of Membership Agreement. The terms and conditions of the Membership Agreement are hereby incorporated into and made a part of this Agreement.

Article II NEOSO

Section 2.1. NEOSO Representations.

- (a) It is a nonprofit corporation duly incorporated and in good standing under the laws of Ohio, and is organized as a regional council of governments under Chapter 167 of the Ohio Revised Code.
- (b) It has performed all acts required of it as a condition to signing and delivering this Agreement.
- (c) It is not in violation of any laws of Ohio to an extent that would impair its ability to carry out its obligations under this Agreement.
- (d) It has the power to enter into and perform its obligations under this Agreement.
- (e) Its board of directors has duly authorized the signing, delivery, and performance of this Agreement.
- (f) The individual signing below on behalf of NEOSO is an Authorized Representative.

Section 2.2. Procurement and Negotiation of Available Contracts. NEOSO will procure, negotiate and enter into Available Contracts with Vendors to provide Services to the Members as provided in Article IV. NEOSO will notify the Governmental Entity of each Available Contract.



Section 2.3. Performance of Related Staffing or Assistance.

- (a) **Requirement to Provide Related Staffing or Assistance.** NEOSO will provide the Governmental Entity any staffing or assistance related to an Offering Addendum as mutually agreed upon by the Governmental Entity and NEOSO and as set forth on each Offering Addendum. NEOSO will comply with all laws, rules and regulations applicable to the performance of these services under (i) this Agreement, (ii) the Membership Agreement, and (iii) each Offering Addendum.
- (b) **Manner of Provision of Related Staffing or Assistance.** NEOSO will provide related staffing or assistance to the Governmental Entity under this Agreement and under any Offering Addendum in accordance with its Code of Regulations.

Section 2.4. Vendor Compensation. NEOSO has no liability to pay any compensation to any Vendor for Services provided to the Governmental Entity under any Available Contract.

Article III The Governmental Entity

Section 3.1. Governmental Entity Representations. The Governmental Entity makes the following representations:

- (a) It is a political subdivision, duly organized and validly existing under the laws of Ohio.
- (b) It has performed all acts required of it as a condition to signing and delivering this Agreement.
- (c) It is not in violation of any laws of Ohio to an extent that would impair its ability to carry out its obligations under this Agreement.
- (d) It has the power to enter into and perform its obligations under this Agreement.
- (e) Its Council has duly authorized the signing, delivery, and performance of this Agreement.
- (f) The individual signing below on behalf of the Governmental Entity is an Authorized Representative.

Section 3.2. Process for Acquiring Services.

- (a) **Procurement and Negotiation of Available Contracts.** The Governmental Entity authorizes and directs NEOSO to procure and negotiate Available Contracts with Vendors to make Services available to the Members.



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- (b) Offering Addendum Requirement. To purchase any Service under this Agreement and in accordance with the terms and conditions of any Available Contract, the Governmental Entity and NEOSO must enter into an Offering Addendum, a copy of which will be attached as an Exhibit. The Vendor must then acknowledge each signed Offering Addendum. An Offering Addendum is not binding until it is signed by an Authorized Representative of each of NEOSO and the Governmental Entity and is acknowledged by the Vendor. The Offering Addendum will form a part of this Agreement for all purposes.
- (c) Offering Addendum Contents. If applicable, the Offering Addendum will set forth in detail the scope, terms and conditions of the Service, including but not limited to each of the following:
- (i) The Available Contract number.
 - (ii) The Governmental Entity Site at which the Service is to be provided.
 - (iii) A schedule of any agreed or estimated completion dates and any committed deadlines.
 - (iv) Any staffing, roles or responsibilities which may be required of each party.
 - (v) The amount or method of calculation of compensation due from the Governmental Entity to the Vendor for the Service and the agreed payment terms.
 - (vi) The amount or method of calculation of compensation due from the Governmental Entity to NEOSO under the Available Contract and the agreed payment terms.
 - (vii) A clear definition of the process by which the Governmental Entity will approve payments for Products and authorization, upon such approval, by the Governmental Entity for direct debit payment of (A) compensation due to the Vendor for the Service, (B) compensation due to NEOSO for the procurement of the Service under the Available Contract, and (C) the account and routing numbers of the Governmental Entity to be debited for these payments.
 - (viii) The term of the Offering Addendum.
 - (ix) Any other special provisions necessary for the rendering of the Service by the Vendor.



Section 3.3. Vendor Performance.

- (a) The Governmental Entity agrees to provide necessary access or supporting staff to enable any Vendor engaged under any Offering Addendum and any related Available Contract to perform the Service in a timely manner.
- (b) NEOSO will monitor the performance of the Vendor under each Offering Addendum. If the Governmental Entity is not satisfied with the performance of any employee, agent, or representative of the Vendor, or any other problem arises, under any Offering Addendum, the Governmental Entity must notify NEOSO of the same. In any such event, NEOSO and the Governmental Entity will pursue the resolution of the matter in accordance with the terms and conditions of the related Available Contract and the Membership Agreement.

Section 3.4. Payment of Compensation.

- (a) To NEOSO. The Governmental Entity agrees to provide compensation to NEOSO for its services rendered in procuring any Available Contract, including the following as applicable:
 - (i) Identifying and selecting particular Services to pursue.
 - (ii) Developing the terms, conditions and requirements of each Available Contract.
 - (iii) Determining how to procure selected Services.
 - (iv) Implementing and managing the procurement of the Services.
 - (v) Selecting appropriate Vendors.
 - (vi) Negotiation of each Available Contract.
 - (vii) Managing Vendors to ensure that the designated terms and conditions of each Available Contract are fulfilled.
- (b) To the Vendor. The Governmental Entity agrees to provide compensation to each Vendor for its provision of Services under any Available Contract and as provided in the related Offering Addendum.
- (c) Compensation Arrangement. The payment of the compensation by the Governmental Entity to NEOSO or to the Vendor referred to in Sections 3.3(a) and (b) may be made in any of the following manners:
 - (i) Separate payments to each of NEOSO and the Vendor of their respective amounts due.



- (ii) Payment to NEOSO of the total amount due to each of the Vendor and NEOSO, a portion of which will be forwarded by NEOSO to the Vendor.
- (iii) Any other arrangement as provided in an Available Contract.

Article IV Available Contracts

Section 4.1. Procurement. NEOSO, acting as the Members' agent, will procure and manage Available Contracts with Vendors to provide Services to the Members. NEOSO is solely responsible for investigating and identifying the Product offerings that will be made available to the Members.

Section 4.2. Procurement Process.

- (a) Development of Procurement Process. NEOSO will act in good faith to develop and implement a procurement process that reflects (i) the collective guidelines of its Members' procurement processes and requirements and (ii) statutory procurement processes and requirements. NEOSO and the Governmental Entity acknowledge the likelihood that the procurement processes of the Members, individually, may be in conflict with one another or vary from on another.
- (b) Publication of Procurement Process. NEOSO will publish and provide to its Members a copy of the procurement process utilized for each Available Contract.

Section 4.3. Notice. NEOSO will notify the Governmental Entity of each Available Contract and its terms and conditions.

Article V Term

Section 5.1. Term of Agreement. Unless earlier terminated in accordance with Section 5.4, the initial term of this Agreement will be for a period of 24 months (the "Term"). Unless either party provides notice of non-renewal, this Agreement will automatically renew in accordance with Section 5.2.

Section 5.2. Automatic Renewal. This Agreement will automatically renew for successive one year terms upon expiration of each then current Term, unless one party provides the other written notice of termination at least 60 days before the end of the then current Term. In that event, the Agreement Term includes the renewal term. During each renewal term, all of the terms and conditions of this Agreement will remain in effect.

Section 5.3. Early Termination. Either party has the right to terminate this Agreement in the event of any of the following:



- (a) The other party ceases to exist.
- (b) The institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against the other party under the United States Bankruptcy Code or other applicable law, if such proceedings have not been dismissed or discharged within 30 days after they are instituted.
- (c) The other party's insolvency or making or an assignment for the benefit of creditors or an appointment of a receiver for all or substantially all of the other party's assets.
- (d) A material breach by the other party of this Agreement that is not cured within 30 days after the breaching party's receipt of written notice from the non-breaching party with respect thereto.
- (e) The party provides the other party 60 days written notice of termination and, in the case of the Governmental Entity, either (i) withdraws as a member of NEOSO in the manner provided in NEOSO's Code of Regulations or (ii) terminates its membership in NEOSO as provided under the Governmental Entity's Authorizing Legislation.

Section 5.4. Term of Service under Offering Addendum. Notwithstanding anything to the contrary in this Agreement, as to any particular requested Service under an Offering Addendum, the duration of the Service (and the terms of this Agreement as it relates to that Service) will be set forth in the applicable Offering Addendum and will remain in force even if the duration of the Service extends beyond the Term of this Agreement. All obligations of the parties which arise prior to the termination of this Agreement under any Offering Addendum will remain in effect notwithstanding the termination.

Article VI Miscellaneous

Section 6.1. Survival. The provisions of Sections 1.4, 2.4, 3.1, 3.4, 5.4, and 6.2 will survive termination of this Agreement.

Section 6.2. Limitation of Liability.

- (a) NEOSO will have no liability or responsibility to the Governmental Entity for (i) the failure of purchased Services to be delivered or delivered in a timely manner, or (ii) the availability to the Governmental Entity of warranties (including any Warranty of Merchantability or Fitness for a Particular Purpose) pertaining to its purchase of Services.
- (b) In no event will NEOSO be liable for any consequential, incidental, special, indirect, or punitive damages with respect to any Service performed under this Agreement or any Offering Addendum, or any similar and dissimilar losses, costs,



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or damages, whether arising from breach of the terms of this Agreement, negligence, indemnity, or other tort.

Section 6.3. Independent Contractor.

- (a) In its performance of any services under this Agreement or any Service Addendum, NEOSO is acting as an independent contractor and, except as set forth on any applicable Service Addendum, will be solely responsible for payment of its personnel, suppliers and subcontractors and the payment of all applicable taxes and insurance with respect thereto.
- (b) Neither party will have the power to bind the other or incur obligations on the other's behalf without the other party's prior written consent.

IN WITNESS WHEREOF, the Governmental Entity and NEOSO have each caused this Agreement to be executed after due authorization as of the Effective Date.

NEOSO:

The Northeast Ohio Sourcing Office

Signature

Date

Printed Name

Title

GOVERNMENTAL ENTITY:

Village of Richfield

Entity Name

4/22/06

Date

Michael K. Lyons

Signature

Michael K. Lyons

Printed Name

Meyor

Title

Authorized by Ordinance No.: 62-2000.



Appendix 1

Definitions

The term "Agreement" means this Master Services and Consulting Agreement entered into as of the Effective Date between NEOSO and the Governmental Entity.

The term "Authorized Representative" means a person authorized to bind the indicated party to the terms of this Agreement. As to NEOSO, this means that person or persons designated for this purpose by its Board of Directors from time to time. As to the Governmental Entity, this means The Mayor.

The term "Authorizing Legislation" means (i) Ordinance No. 62-2006 adopted by the Governmental Entity on 10/3, 2006 authorizing the Governmental Entity to become a Member of NEOSO and authorizing the signing, delivery, and performance of this Agreement, and (ii) any ordinance or resolution of the Governmental Entity authorizing the signing, delivery, and performance of any Service Addendum.

The term "Available Contract" means each contract negotiated by NEOSO under which its Members may purchase Services.

The term "Entity" means any limited liability company, corporation, business association, partnership, joint venture, business or real estate investment trust, or organization whether or not for profit.

The term "Governmental Entity Site" means any site owned or leased by, or otherwise under the responsibility of, or designated by, the Governmental Entity at which Services are to be performed for the Governmental Entity under an Offering Addendum.

The term "Member" means each political subdivision that is a member of NEOSO by (i) adopting the Authorizing Legislation, (ii) satisfying the qualifications and conditions of NEOSO's Code of Regulations, (iii) executing a membership agreement with NEOSO, and (iv) remaining compliant with all of its obligations to NEOSO under the membership agreement and under NEOSO's Code of Regulations.

The term "Offering Addendum" means an addendum to the Agreement which specifies the Services to be provided at a Governmental Entity Site.

The term "Person" means an individual, nominee, trust, or Entity whether acting on its own or in a representative capacity.

The term "Services" means services made available from Vendors to the Governmental Entity, as the same may be changed from time to time.

The term "Vendor" means an independent contractor, including its employees, agents and representatives, that performs Services for the Governmental Entity under any Offering Addendum and in accordance with the terms and conditions of the related Available Contract.

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