

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A PROPERTY LEASE IMPROVEMENT REIMBURSEMENT GRANT AGREEMENT WITH RICHFIELD PROFESSIONAL PROPERTIES, LLC, AND DECLARING AN EMERGENCY.

WHEREAS, the Village continues to pursue new and efficient economic development strategies that are fiscally responsible, support the creation of new jobs, and grow the Village's economic tax base; and

WHEREAS, Richfield Professional Properties, LLC (hereinafter the "Company") has indicated that it is interested in participating in the economic development programs and incentives offered by the Village; and

WHEREAS, the Company is the owner of certain real property (PPN: 50-01223) located at 3380 Brecksville Road, Richfield, Ohio 44286 ("Property"); and

WHEREAS, the Company intends to improve the Property by making certain property improvements in order to lease approximately 5,000 square feet of office space in the Property to the Defense Contract Audit Agency ("DCAA"), an agency of the United States Department of Defense; and

WHEREAS, the lease agreement between Company and the DCAA will result in the relocation of approximately thirty-two (32) full-time employees, with an estimated payroll of \$2.75 million dollars, to the Village; and

WHEREAS, the incentive authorized by this Agreement is necessary in order to make the lease agreement between Company and the DCAA competitive and the lease agreement and relocation of the thirty-two (32) full time employees and estimated payroll \$2.75 million dollars to the Village would not be possible without this incentive; and

WHEREAS, the Company will provide the Village with a list of such property improvements; and

WHEREAS, the property improvements and the accompanying relocation of DCAA jobs are economically sound, will increase employment opportunities, and will strengthen Richfield's economy; and

WHEREAS, the Village desires to provide local incentives to the Company for the property lease improvements to the Property; and

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

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

SECTION 1. The Mayor and the Finance Director are hereby authorized and directed to enter into a Property Lease Improvements Reimbursement Grant Agreement with Richfield Professional Properties, LLC, substantially in accordance with the Agreement attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary to create new job opportunities in the Village; wherefore, provided this Ordinance receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 11-4-2020




President of Council



Mayor

Dated: 11/10/2020

ATTEST:


Clerk of Council

EXHIBIT A - ORD. 94-2020

PROPERTY LEASE IMPROVEMENTS REIMBURSEMENT GRANT AGREEMENT

This Agreement is entered into this ___ day of _____, 2020, by and between the **Village of Richfield, Ohio** ("Village" or "Grantor"), an Ohio municipal corporation located 4410 W. Streetsboro Road, Richfield, Ohio 44286, and **Richfield Professional Properties, LLC** ("Grantee"), a corporation located at 5216 Portside Drive, Medina, Ohio 44256. The Village and Grantee may be referred to herein collectively as "Parties."

WHEREAS, the Village of Richfield continues to pursue new and efficient economic development strategies that are fiscally responsible, support the creation of new jobs, and grow the Village's economic tax base; and

WHEREAS, Grantee has indicated that it is interested in participating in the economic development programs and incentives offered by the Village; and

WHEREAS, Grantee is the owner of certain real property (PPN: 50-01223) located at 3380 Brecksville Road, Richfield, Ohio 44286 ("Property"); and

WHEREAS, Grantee intends to lease approximately 5,000 square feet of office space in the Property to the Defense Contract Audit Agency ("DCAA"), an agency of the United States Department of Defense; and

WHEREAS, Grantee intends to improve the Property by making certain improvements that are necessary to finalize the proposed lease agreement with the DCAA; and

WHEREAS, the lease agreement between Grantee and the DCAA will result in the relocation of approximately thirty-two (32) full-time employees, with an estimated payroll of \$2.75 million dollars, to the Village; and

WHEREAS, the incentive authorized by this Agreement is necessary in order to make the lease agreement between Grantee and the DCAA competitive and the lease agreement and relocation of the thirty-two (32) full time employees and estimated payroll \$2.75 million dollars to the Village would not be possible without this incentive; and

WHEREAS, Grantee will provide the Village with a list of the anticipated improvements to the Property ("Property Lease Improvements List") and

WHEREAS, the Council of the Village of Richfield adopted Ordinance No. 94 - 2020, on November 4, 2020, authorizing the Mayor to enter into this Grant Agreement with Grantee; and

WHEREAS, the Village desires to provide financial assistance to Grantee in accordance with the terms and conditions of Ordinance No. 94 - 2020 and this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, the Parties, intending to be legally bound, agree as follows:

ARTICLE I – GRANT DESCRIPTION

The property improvement reimbursement grant is intended to encourage and support economic development and job creation within the Village. Pursuant to this grant agreement, the Village will reimburse expenses incurred by Grantee in performing certain improvements to the property upon the occurrence of the following required conditions:

- 1) The submission by Grantee of the Property Improvement List;
- 2) The receipt by the Village of documentation that (1) all of the qualifying improvements identified in the Property Improvements List, attached hereto as Exhibit A, have been completed to the satisfaction of the Village and in accordance with all applicable building and/or zoning codes and (2) incurring of the expense for which the reimbursement is requested, as further described in Article III of this Agreement;
- 3) Occupancy of the property by DCAA; and
- 4) The filing by DCAA of the Business Information Form and Reconciliation of Village Income Tax Withheld Form and any other documentation required by the Village's Director of Finance.

The reimbursement grant shall be paid by the Village within 45 days of after all of the conditions set forth in Article I(1)-(4).

The maximum reimbursement available under this Property Lease Improvements Reimbursement Grant Agreement shall be Fifty Thousand Dollars (\$50,000.00).

ARTICLE II - GRANT FUNDS AND TERM OF AGREEMENT

Grant Funds hereunder will be paid from Village non-tax revenue. Village non-tax revenue, for purposes of this Agreement, is defined as all monies of the Village which are not monies raised by taxation, to the extent available for the purpose of making the annual payments required hereunder, including, but not limited to the following: (a) grants from the United States of America and the State of Ohio; (b) payments in lieu of taxes now or hereafter authorized by State of Ohio statute to the extent not pledged to pay debt charges on Village indebtedness; (c) fines and forfeitures which are deposited in the Village's General Fund; (d) fees deposited in the Village's General Fund for services provided and from properly imposed licenses and permits; (e) investment earnings on the Village's General Fund; (f) proceeds from the sale of assets which are deposited in the Village's General Fund; (g) gifts and donations; and (h) rental payments which are deposited in the Village's General Fund.

The term of this Agreement, unless terminated sooner in accordance with Article VI of this Agreement, shall be five (5) years.

ARTICLE III – OBLIGATIONS OF GRANTEE

Grantee acknowledges and agrees that receipt of Grant Funds is conditioned upon compliance with all provisions of this Agreement including the following:

- 1) Grantee shall comply with all laws and regulations of the Village of Richfield and the State of Ohio. Grantee agrees to reimburse the Village the full \$50,000 Leasehold Improvement Grant Funds received in the event that Grantee fails to secure zoning/building permits for any projects requiring permits. The Village shall provide thirty (30) days written notice of their intent to seek reimbursement setting forth the reasons why the Village is demanding reimbursement of the grant funds;
- 2) Grantee shall not owe any delinquent taxes to the State of Ohio or any other political subdivision of the State of Ohio;
- 3) Grantee agrees that only those projects and improvements that appear on the Improvements List attached hereto as Exhibit "A" are eligible for reimbursement and agrees to provide the Village with a written request for reimbursement detailing the improvement completed, invoices and receipts for improvement work, and such other reasonable information as the Finance Director may request in writing;
- 4) Grantee agrees that the Improvements List, at the request of the Grantee and subject to the Village's sole discretion, may be modified and that any such modification shall be documented by an amendment to this Agreement;
- 5) Grantee agrees to notify the Finance Director, in writing, when work on the projects described in the Improvements List begins;
- 6) Grantee agrees to permit the Village access to the Subject Property to inspect any work that Grantee may perform that appears on the Leasehold Improvements List;
- 7) Grantee agrees that prior to submitting a request for reimbursement, the Village must approve the work or project and such approval will be based upon compliance with all applicable Village building, planning, and zoning regulations and consistency with the Improvements List;
- 8) Grantee agrees to indemnify and hold the Village harmless for any claims, including any prevailing wage claims, that may be filed regarding this Agreement;

- 9) Grantee agrees to reimburse the Village for any Leasehold Improvement Grant Funds received in the event that the DCAA either moves from the Village of Richfield or discontinues operations within five (5) years from the execution of this Agreement as follows:
- Year 1: 100% of grant received
 - Year 2: 75% of grant received
 - Year 3: 50% of grant received
 - Year 4: 25% of grant received
 - Year 5 and beyond: 0% of grant received; and
- 10) Grantee agrees to reimburse the Village for any Leasehold Improvement Grant Funds received in the event that Grantee fails to meet its obligations under this Agreement.

ARTICLE IV – PUBLIC RECORDS

Grantee acknowledges and understands that the Village is a public office and required to comply with the Ohio Public Records Act (Ohio Revised Code Section 149.43). If a public records request is made for any information related to this Agreement, the Village, to the extent permitted by law, will notify Grantee of the request prior to making the document available for inspection or copying and Grantee shall notify the Village if it believes that any specific document or portion of a document submitted to the Village in accordance with this Agreement is exempt from the Ohio Public Records Act. The notification shall be in writing and indicate the specific document or portion of a document that Grantee believes is exempt from disclosure. The notification shall include the legal basis for the claimed exemption, including the applicable statutory reference and any additional information necessary to make a determination of exemption. The Village will consider the written notification in making its own independent determination of whether a specific document or portion of a document is exempt from the disclosure requirements of Ohio Revised Code Section 149.43.

ARTICLE V – DEFAULT BY GRANTEE AND AGREEMENT TO PROVIDE INFORMATION TO THE VILLAGE

Failure of Grantee to perform or comply with any other provision or provisions of this Agreement shall, at the Village's sole option, be cause for termination of this Agreement in accordance with Article VI of this Agreement.

By executing this Agreement, Grantee agrees to provide the Village's Law Director and/or Finance Director, at any time during the term of this Agreement, with any information that may be necessary to determine compliance with this Agreement. Failure to do so, within such reasonable period of time as the Village may establish and notify Grantee of in writing, shall be considered a material violation of this Agreement and cause for immediate termination of this Agreement.

ARTICLE VI - TERMINATION

If, as determined by the Village, Grantee fails to satisfactorily perform any of its obligations under this Agreement and to cure such failure following notice and reasonable opportunity to cure provided by the Village, or if Grantee is in violation of any provision of this Agreement, or upon just cause, the Village may:

- 1) Terminate this Agreement after providing Grantee with written notice of its failure to satisfactorily perform or comply with any requirement of this Agreement.
- 2) Upon material violation of any provision or provisions of this Agreement, immediately terminate this Agreement.

ARTICLE VII – MISCELLANEOUS

- 1) Entire Agreement: This Agreement represents the entire and integrated agreement between the Village and Grantee related to the subject of reimbursement of certain leasehold improvement expenses and supersedes all prior negotiations, representations or agreements, either written or oral regarding same. The Parties acknowledge the existence of a separate Job Creation Incentive Grant Agreement, which makes no provision for reimbursement of leasehold improvement expenses.
- 2) Modification of Agreement: It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by both Parties in accordance with the laws of the State of Ohio.
- 3) Multiple Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.
- 4) Assignment of Agreement: Grantee shall not assign, delegate, or subcontract any portion of the services or any of its rights or duties without the prior, express, written approval of the Village.
- 5) Forbearance Not a Waiver: No act of forbearance or failure to insist on the prompt performance by Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by the Village of any of its rights hereunder.
- 6) Grantee Status: recounts The Village and Grantee acknowledge and agree that Grantee is not an agent or employee of the Village. Nothing in this Agreement shall be construed to constitute a relationship between the Village and Grantee as a partnership, association, or joint venture.

- 7) Paragraph Headings: The section and subsection headings contained herein are solely for convenience and are of no legal significance.
- 8) Choice of Law/Forum: This Agreement shall be deemed made and entered into in the State of Ohio and shall be governed by and construed in accordance with the laws of Ohio. Any controversy or claim, whether based upon Agreement, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whether between the parties, or of either of the parties' employees, agents or affiliated businesses, will be resolved in the appropriate court in Summit County, Ohio.
- 9) Notices: All notices required hereunder must be in writing and shall be delivered to the addresses set forth below:

The Village:

Contact Name: Mike Wheeler, Mayor
Street: 4410 W. Streetsboro Road
City/State/Zip: Richfield, Ohio 44286
Phone (day): (330) 659-9201, Ext. 222
E-mail: mwheeler@richfieldvillageohio.org

With a copy to:

Alejandro V. Cortes, Esq.
Director of Law
Village of Richfield
c/o Walter | Haverfield LLP
1301 E. 9th Street, Suite 3500
Cleveland, Ohio 44114
Email: acortes@walterhav.com

Grantee:

Contact Name: Joe Lawlor
Street: 5216 Portside Drive,
City/State/Zip: Medina, Ohio 44256
Phone (day): (330) 289-1775
E-mail: jlawlor@foundations.com

Any notice or communication shall be deemed effectively given (a) on the date of delivery, if delivered by hand or (b) on the date mailed if sent by overnight express delivery or U.S. Mail.

- A. Severability: If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the _____ day of _____, 2020.

VILLAGE OF RICHFIELD

**RICHFIELD PROFESSIONAL
PROPERTIES**

BY: _____
Michael Wheeler, Mayor

BY: _____

(Printed Name and Title)

BY: _____
Sandy Turk, Finance Director

Approved as to form:

Alejandro V. Cortes
Director of Law

EXHIBIT "A"
LEASEHOLD IMPROVEMENTS LIST