

ORDINANCE NO. 19-2015 (Amended)

Offered by: All of Council

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A JOB CREATION GRANT AGREEMENT WITH WINAR CONNECTION, INC. AND ITS AFFILIATE RICHFIELD BROTHERS PROPERTIES, LLC AND DECLARING AN EMERGENCY.

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

WHEREAS, Winar Connection, Inc. or its affiliate Richfield Brothers Properties, LLC, (hereinafter the "Company") is desirous of purchasing approximately 3.5 acres of vacant land and constructing an approximately 30,000 square foot building in the Timberlake Business Park to relocate and expand its current business operations from 3623 Brecksville Road, Richfield, Ohio 44286 and to create employment opportunities (hereinafter sometimes referred to as the "Project") within the boundaries of the Village of Richfield, provided that the appropriate development incentives are available to support the economic viability of said Project; and

WHEREAS, the Project is projected to retain employment opportunities generating approximately \$2,700,000 in annual payroll for approximately 50 full-time employees in Richfield and is projected to add additional full-time employees; and

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

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

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

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

SECTION 1. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into a Job Creation Grant Agreement with Winar Connection, Inc., substantially in accordance with the draft Agreement attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further

reason that it is immediately necessary in order to provide the retention of and creation of new job opportunities in the Village; wherefore, provided this Ordinance receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 4-21-15

Rick Hudak
President of Council

Bobbi Bashara
Mayor

Dated: 4/21/15

ATTEST:

Carol E. Sullivan
Clerk of Council

The seal of the Village of ... is partially visible behind the signature of the Clerk of Council. It features a circular design with text around the perimeter and a central emblem.

JOB CREATION GRANT AGREEMENT

This agreement is made and entered into by and between the VILLAGE OF RICHFIELD, OHIO, a municipal corporation, with its main offices located at 4410 WEST STREETSBORO ROAD, P.O. BOX 387, RICHFIELD, OHIO 44286-0387 (hereinafter referred to as "Richfield") and WINAR CONNECTION, INC., a corporation, qualified to do business in Ohio, with its main offices located at 3623 BRECKSVILLE ROAD, RICHFIELD, OHIO 44286, and its affiliate, RICHFIELD BROTHERS PROPERTIES, LLC, a limited liability company, qualified to do business in Ohio, with its main offices as listed herein (hereinafter referred to as respectively as to the former as "Company", and to the latter as "its affiliate"), and is dated as of _____, 2015 (the "Agreement").

WITNESSETH:

WHEREAS, Richfield has encouraged the maintenance and expansion of job opportunities throughout the Village; and

WHEREAS, the Company or its affiliate, Richfield Brothers Properties, LLC is desirous of purchasing approximately 3.5 acres of vacant land and constructing an approximately 30,000 square foot building in the Timberlake Business Park to relocate and expand its current business operations from 3623 Brecksville Road, Richfield, Ohio 44286 and to create employment opportunities (hereinafter sometimes referred to as the "Project") within the boundaries of the Village of Richfield, provided that the appropriate development incentives are available to support the economic viability of said Project; and

WHEREAS, the Project is projected to include employment opportunities generating approximately \$2,700,000 in annual payroll for approximately 50 full-time employees in Richfield and is projected to add additional full-time employees; and

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

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

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

NOW, THEREFORE, in consideration of the significant investments to be made by the Company within the Village in accordance with the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Description of the Project. The Company or its affiliate shall purchase an approximately 3.5731 acre lot of vacant land and construct an approximately 30,000 square foot building on

property known as Permanent Parcel Number [to be determined], located in the Timberlake Business Park, Richfield, Ohio 44286 to house its operation and associated office facilities.

2. Issuance of Grant.

- A. Richfield hereby grants a Job Creation Grant to the Company based upon existing and the anticipated creation of new payroll from the maintenance and expansion of the Company’s business and associated employment in Richfield, according to the schedule below.

<u>Grant Year</u>	<u>Amount of Grant as a % of Payroll Tax to Richfield</u>
1-5 (January 1, 2016 thru December 31, 2020)	10%
2-8 (January 1, 2017 thru December 31, 2023)	15%

- B. The grant shall be in the form of a rebate of the income tax collected on the final net annual payroll of the Company, as further described herein. For purposes of calculating the amount of the grant for Years 1-5, the annual payroll upon which the grant is based shall be the Company’s final net payroll for 2015, and the Company shall receive, as the grant, a 10% rebate of the income tax collected on that payroll. For purposes of calculating the amount of the grant for Years 2-5, in addition to the 10% rebate of income taxes collected on the final net payroll for 2015, the Company shall receive a rebate of 15% of the income taxes received on the difference between the increased final net annual payroll for the year at issue and the final net payroll for 2015. For Years 6-8, the Company shall receive a rebate of 15% of the income taxes received on the difference between the increased final net annual payroll for the year at issue and the final net payroll for 2015.

For purposes of illustration: If the Company has a final net annual payroll in the amount of \$2,700,000.00 for 2015, the Company shall receive a 10% rebate on the amount of income tax collected on that \$2,700,000.00 payroll in Year 1, pursuant to Section 3 of the Agreement. For Year 2, if the Company has final net annual payroll in the amount of \$3,700,000.00 for 2016, the Company shall receive, pursuant to Section 3 of the Agreement, a 10% rebate on the amount of tax collected on the \$2,700,000.00 and, in addition, a 15% rebate on the income tax collected on the additional \$1,000,000.00 of payroll.

3. Grant Payments.

- A. Initial Grant Payment. The initial grant payment shall be made by April 15, 2016, provided that the Company (i) files its Reconciliation of Return of Income Tax Withheld Form 17 by February 28, 2016 and (ii) meets the eligibility requirements.

- B. Timing of Annual Grant Payments. Annual grant payments shall be made by April 15th, provided that the Company files its Reconciliation of Village Income Tax Withheld Form S-W3 by February 28th of said year, with the last grant payment occurring in calendar year 2023. If the Company requests an extension for filing of its S-W3 form, the Village shall make the grant payment within three months of the extended filing date. It is the responsibility of the Company to directly advise the Mayor and Finance Director of the filing extension.
4. Payment of Taxes and Filing Reports and Returns. The Company or its affiliate shall pay such real and tangible personal property taxes or service payments in lieu of taxes as are charged against such property and shall file all tax reports and returns as required by law. If the Company or its affiliate fails to pay such taxes or file such returns and reports, all incentives granted under this agreement are terminated beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.
5. Information for Annual Review. The Company shall timely provide to the Village any information reasonably required by the Village to evaluate the Company's compliance with the Agreement.
6. Maintenance of Grant.
- A. Richfield shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain incentives granted under this Agreement including, without limitation, joining in the execution of all documentation and providing necessary information to maintain the incentives granted hereunder.
- B. The Company shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain incentives granted under this Agreement including, without limitation, joining in the execution of all documentation and providing necessary information to maintain the incentives granted hereunder.
7. Certification as to Payment of Taxes. The Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which the Company is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code, or, if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against the Company. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.
8. Non-Discrimination Hiring. By executing this agreement, the Company is committing to following non-discriminatory hiring practices acknowledging that no individual may be

denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.

9. Transfer and Assignment. This Agreement is not transferable or assignable without the express, written approval of Richfield. Richfield acknowledges that it would be unreasonable to withhold such consent in the event of a proposed transfer or assignment to any parent, subsidiary or affiliate of the Company or to any third party so long as with respect to all or any of such proposed transfers or assignments, the proposed transferee or assignee adequately and sufficiently demonstrates to Richfield, to Richfield's reasonable satisfaction, its financial ability, business experience and intentions to continue its operations of the Company and the Project in a manner similar to that of the Company in all pertinent respects.

10. Termination or Modification of Incentives.

- A. For any year in which the Company fails to meet or exceed the final net annual payroll for 2015, no grant shall be awarded.
- B. If the Project does not proceed as specified in Section 1 of the Agreement, Richfield may terminate the Agreement upon recommendation of the Mayor and Council.
- C. If the Company fails to submit required information and/or reports as set forth in Section 5 above, Richfield, after thirty (30) days notice of said default and failure to cure, may terminate or modify this Agreement and deny or modify future grants heretofore granted from the date of the Company's breach or default.

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

- D. The Company agrees that if it should move its operations, close the facility or be placed in receivership or bankruptcy, this Agreement shall be automatically terminated and the Village shall have no further obligation to provide any grant payments. Richfield may terminate or modify this Agreement and may also require the immediate repayment of the full amount of grant payments awarded under this Agreement, upon the occurrence of any of the following:
 - (i) Richfield determines that the certification as to delinquent taxes required by this Agreement is fraudulent, or

- (ii) The Company moves its operations and the Project out of Richfield or terminates its operations at the Timberlake Business Park property altogether, in which case the following will take place with respect to any repayment of grant payments received by the Company from the Village: Years 1-6: full repayment; Years 7-8: repayment of the most recent prior two years of grant payments.

Richfield may, absent any legislative action, resolution or court-ordered mandate to the contrary, collect any and all grant payments awarded under this Agreement, the Development Agreement or in conjunction with the TIF Ordinance and the Company shall pay directly to Richfield or its authorized agent any and all grant payments awarded under this Agreement within ten (10) days from the date the Company is notified by Richfield that any tax filing or certification of the Company is fraudulent.

- E. The Company or successor entity shall promptly notify Richfield if any of the following events occur:
 - (i) If control of the Company or substantially all of its assets located at the Project site is obtained by another entity or shareholders; or
 - (ii) If the Company merges with another entity; or
 - (iii) If the Company substantially restructures itself through an acquisition or divestiture or otherwise;

and if any of these events affects the ability of the Company or its successor entity to perform substantially the obligations of the Company under this Agreement and to meet the employment and payroll projections anticipated herein. "Control of the Company" for the purposes of this subsection means that persons and/or entities owning the majority of Company's outstanding voting stock at the date of this Agreement cease to own such or cease to have the unconditional right to elect a majority of the Company's board of directors.

- F. Each provision for modification or termination hereunder shall not affect the Company's obligations or Richfield's rights under any other provision of this Agreement.
11. Any notices, statements, acknowledgements, consent approvals, certificates, or requests required to be given on behalf of either party shall be made in writing addressed as follows:

If to Richfield to: Bobbie Beshara, Mayor
Village of Richfield
4410 West Streetsboro Road
P.O. Box 387
Richfield, Ohio 44286-0381
bbeshara@richfieldvillageohio.org

With a copy to: William R. Hanna, Esq.
c/o Walter | Haverfield LLP
The Tower at Erieview
1301 East Ninth Street, Suite 3500
Cleveland, OH 44114-1821
whanna@walterhav.com

If to the Company or its
affiliate to: Winar Connection, Inc.
c/o David Winar
Its: Chief Executive Officer
3623 Brecksville Road
Richfield, Ohio 44286
david@winar.com

With a copy to: Witschey Witschey & Firestine Co., LPA
c/o Jeffrey T. Witschey, Esq.
405 Rothrock Rd., Suite 103
Akron, Ohio 44321
Telephone: (330) 665-5117
jt看@witscheylaw.com

or such other address as may be noticed.

12. Condition Precedent. The Company and Richfield acknowledge that this Agreement must be approved by formal action of the legislative authority of Richfield as a condition for the Agreement to take effect. The Agreement shall become effective upon its execution by the Village and the Company pursuant to Resolution No. 19-2015, passed by the Council of the Village of Richfield on April __, 2015, and signed by the Mayor on April __, 2015. Any amendment to this Agreement must be in writing and approved by resolution of the Council of Richfield.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and place first above written.

VILLAGE OF RICHFIELD

By: _____
Bobbie Beshara
Title: Mayor

By: _____
Sandy Turk
Title: Finance Director

WINAR CONNECTION, INC.

By: _____
Title: _____

RICHFIELD BROTHERS PROPERTIES, LLC

By: _____
Title: _____

The legal form and correctness of the
within instrument is hereby approved.

VILLAGE OF RICHFIELD
LAW DIRECTOR

By: _____
William R. Hanna

Date: _____