

RESOLUTION NO. 30-2015

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH THE STATE OF OHIO, DEVELOPMENT SERVICES AGENCY FOR A ROADWORK DEVELOPMENT GRANT (SBIG20141135)

WHEREAS, the Village Director of Planning and Economic Development has recommended entering into a contract with the State of Ohio, Development Services Agency to accept a \$125,000.00 grant to provide Section 629 Road Development Funds for costs associated with the construction of more than 400 feet of new roadway off of Wheatley Road, directly across from Kinross Lake Parkway in the Village of Richfield, Summit County, State of Ohio; and

WHEREAS, the Mayor has recommended to this Council passage of legislation which would authorize the Mayor and the Finance Director to enter into an agreement with the State of Ohio, Development Services Agency for the Roadwork Development Grant (SBIG20141135).

NOW, THEREFORE, BE IT RESOLVED 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 an agreement with the State of Ohio, Development Services Agency to accept a \$125,000.00 grant for roadwork development (SBIG20141135), a copy of which grant agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

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

PASSED: 5-5-15

Rick Hudak
President of Council

Bethie Basham
Mayor

Dated: 5-5-15

ATTEST:

Carolyn E Sullivan
Clerk of Council

GRANT AGREEMENT

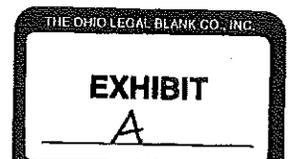
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|-----------------------------|-------------------------------------|-------------------------|---|--------------|-------|
| Grantee: | The Village of Richfield | | Grant Control No.: | SBIG20141135 | |
| Project Site Address: | Kinross Rd, Richfield, OH | | | | |
| Project Local Jurisdiction: | Village of Richfield | Effective Date: | 6/2/2014 | | |
| Project County: | Summit | Metric Evaluation Date: | 12/31/2016 | | |
| Grant Funds: | \$125,000.00 | End Date: | 12/31/2016 | | |
| Project Contact | | | | | |
| Grantee Contact: | Brian Frantz | Title: | Director of Planning and Economic Development | | |
| Address: | 4410 W. Streetsboro P.O. Box 387 | State: | OH | Zip: | 44286 |
| Email Address: | bfrantz@richfieldvillageohio.org | | | | |
| Phone Number: | (330) 659-9201 ext 501 | FAX Number: | _____ | | |

This Grant Agreement (the "Agreement") is made and entered into by and between the **State of Ohio, Development Services Agency ("Grantor")** and **Grantee** to set forth the terms and conditions upon which Grantor will provide financial assistance to Grantee and Grantee will use the financial assistance for costs associated with public roadwork improvements in support of The Village of Richfield at the Project Site listed above (the "**Project**"). This Agreement incorporates by reference the "**Scope of Work,**" which is attached as Exhibit I.

1. Project Funding.

(a) State Grant. Grantor hereby grants to Grantee funds in the aggregate amount of Grant Funds listed in the table above (the "**Grant Funds**") to be used for the sole and express purpose of undertaking and completing the Project. Grantee shall undertake and complete the Project substantially as described in Exhibit I. Grantee may not use the Grant Funds for any purpose other than completion of the Project.

(b) Availability of Other Funds. It is a condition to the award of Grant Funds that Grantee provides additional funds from other sources to pay Project costs in excess of the Grant Funds. Grantee represents and warrants to Grantor that Grantee has obtained such additional funds or that Grantee has a binding commitment for such additional funds and, with the exercise of reasonable diligence, will have obtained such additional funds no later than the time such funds will be required to pay Project costs as and when such costs are incurred and payable. No Grant Funds will be disbursed to reimburse Project costs unless



and until Grantee obtains the additional funds necessary to pay the balance of the Project costs.

(c) **Budget Reductions.** Grantee acknowledges that Grantor is subject to State of Ohio budgetary constraints that could result in the reduction of the amount Grant Funds provided under this Agreement. Should Grantor's funding levels be reduced, Grantor shall notify Grantee in writing of the extent of any reduction to the Grant Funds and reduce Grantee's commitments in a manner corresponding to the reduction of Grant Funds and such notice shall result in the Agreement being amended without further action by the parties. Grantee hereby revocably authorizes Grantor to reduce the amount of Grant Funds provided under this Agreement upon written notice to Grantee provided there is a corresponding reduction in commitments outlined on page 1 of this Agreement.

(d) **Subsequent Increase.** In cases where there is a reduction of Grant Funds and Grantor provides the written notice in accordance with Section 1(c) above, but subsequently additional funds become available to Grantor to increase the amount of Grant Funds to be provided to Grantee, Grantor shall notify Grantee in writing, but any such increase shall require mutual agreement of the parties which shall be reflected in an Amendment signed in accordance with Section 14(e) of this Agreement.

2. **Payment of Grant Funds.** Grantor shall disburse the Grant Funds on a reimbursement basis. Grantee shall submit to Grantor for review and approval requests for reimbursement detailing expenditures which have then been incurred by Grantee in accordance with the Project budget included in Exhibit I. The payment of the requests for reimbursement shall be based upon 43% reimbursement of the actual eligible Project costs. Travel expenses will not be costs eligible for reimbursement with Grant Funds. Grantor shall be the sole judge of the adequacy of reimbursement requests. All expenses to be reimbursed with Grant Funds shall be supported by contracts, invoices, vouchers, paid receipts and other documentation as appropriate to evidence the costs incurred by Grantee to perform the work described in Exhibit I. Grantee shall submit to Grantor such documentation necessary to substantiate a reimbursement request.

3. **Grant Funds Not Expended.** If the Grant Funds are not expended by Grantee in accordance with the terms and conditions of this Agreement or within the time period set forth in this Agreement, the award of the Grant Funds shall cease and Grantor shall have no further obligation to disburse the Grant Funds. Grantor shall also have no obligation to disburse any amount of the Grant Funds that exceeds the eligible costs of the Project actually incurred by Grantee. If Grant Funds have been paid to Grantee and Grantor determines that Grantee has not performed in accordance with the terms and conditions of this Agreement, Grantee shall return such improperly expended Grant Funds within 30 days after demand by Grantor. In the event that Grantee does not submit any requests for reimbursement by the End Date (as such date may be extended as provided in Section 4) and/or the Project is affirmatively abandoned by Grantee, this Agreement shall be null and void without any further action by the parties and neither party shall have any obligation under this Agreement.

4. **Agreement Deadlines and Term.**

(a) **Project Completion.** Grantee shall complete the Project not later than the End Date set forth on the first page of this Agreement. If Grantee anticipates that the Project will not be completed by the End Date, Grantee must request an extension of time to complete the Project at least 60 days before the scheduled End Date. It will be within the sole discretion of Grantor to grant or deny such extension of time.

(b) **Term of Agreement.** This Agreement shall be in effect from the Effective Date set forth on the first page of this Agreement through the End Date set forth on the first page of this Agreement unless it is terminated earlier as provided in Section 10 (collectively, the "Term").

5. **Secondary Goal of the Project.** The primary focus of the grant is to complete an eligible roadwork project. In addition, one of the secondary goals is the creation or retention of jobs as a result of the grant. Grantee intends to create or retain at least 27 full-time jobs as a result of the Project. Grantee is required to report any job creation or retention in the reports required under Section 7 of this Agreement, however, job creation will not be used to determine compliance under this Agreement.

6. **Non-Discrimination.**

(a) **Minority Hiring Goal.** Grantee shall make a good faith effort to employ minority persons in the completion and operation of the Project and in the fulfillment of Grantee's job creation obligations in the same percentage as the average percentage of minority persons who reside in the county in which the Project is located and any contiguous Ohio counties.

(b) **Equal Employment Opportunity.** Grantee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, military status or ancestry. Grantee shall ensure that applicants for employment are considered for employment, and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, military status or ancestry. Grantee will incorporate the requirements of this paragraph in all of its contracts for any of the work undertaken on the Project (other than subcontracts for standard commercial supplies or raw materials), and Grantee will require all of its contractors for any part of such work to incorporate such requirements in all subcontracts for such work.

7. **Reporting.**

(a) **Performance Reports.** Grantee shall submit to Grantor an Annual Report in the format required by Grantor (the "**Annual Report**"). Each Annual Report shall provide information for the applicable reporting period, including but not limited to, information detailing the progress of the Project, if required, the number of employees first hired by the company or companies benefiting at the Project Site on or after the Effective Date, the number of employees first employed at the Project Site prior to the Effective Date and retained at the Project Site on or after the Effective Date, the corresponding payroll information for the employees at the Project Site and the Investment to date. Annual Reports shall be submitted by Grantee for each year (or part of a year) during which this Agreement is in effect and each Annual Report shall be received by Grantor no later than March 1, following the year covered by such Annual Report. In addition, Grantee shall provide to Grantor such additional information and reports as Grantor may reasonably from time to time require to evaluate Grantee's performance and the effectiveness of the award.

(b) **Signature and Costs.** The chief executive officer, chief financial officer, or other officer of Grantee authorized to sign tax returns on behalf of Grantee shall certify by his or her signature of each Annual Report that the information reported by Grantee is true, complete and correct. All costs incurred by Grantee to comply with the reporting requirements of this Agreement shall be borne by Grantee and shall not be an allowable expense reimbursable from Grant Funds.

(c) **Remedy.** Performance reports are essential for Grantor's effective administration of this grant and its financial incentive programs, generally. If Grantee fails to submit any Annual Report and such breach continues uncured for more than 30 days, Grantor may recover, and Grantee shall pay, as liquidated damages for the breach, an amount equal to \$500 for each month or part of a month the Annual Report is past due.

8. **Records Maintenance and Access.**

(a) **Maintenance of Records.** Grantee shall establish and maintain for at least three (3) years after the

End Date or any earlier termination date its records regarding this Agreement, the Grant Funds and the Project, including, but not limited to, financial reports, job creation and retention statistics, and all other information pertaining to Grantee's performance of its obligations under this Agreement. If any audit, dispute or litigation is then pending, however, Grantee shall maintain such records as may be relevant to such matter until it is finally resolved.

(b) Inspection and Copying. At any time during normal business hours and upon not less than 24 hours prior written notice, Grantee shall make available to Grantor, its agents or other appropriate State agencies or officials all books and records regarding this Agreement, the Grant Funds and the Project which are in the possession or control of Grantee, including, but not limited to, records evidencing employment at the Project Site. Grantor, its agents and other appropriate State agencies and officials may review, audit and make copies of such books and records, and any such inspection of books and records will be undertaken in such a manner as not to interfere unreasonably with the normal business operations of Grantee. Grantee shall, at its own cost and expense, segregate records to be made available for inspection pursuant to this Section 8(b) from Grantee's other records of operation.

9. Adherence to State and Federal Laws and Regulations.

(a) General. Grantee shall comply with all applicable federal, state, and local laws in the performance of Grantee's obligations under this Agreement, the completion of the Project and the operation of the Project as long as Grantee has any obligation to Grantor under this Agreement. Without limiting the generality of such obligation, Grantee shall pay or cause to be paid all unemployment compensation, insurance premiums, workers' compensation premiums, income tax withholding, social security withhold, and any and all other taxes or payroll deductions required for all employees engaged by Grantee in connection with the Project, and Grantee shall comply with all applicable environmental, zoning, planning and building laws and regulations.

(b) Ethics. In accordance with Executive Order 2011-03K, Grantee, by its signature on this document, certifies: (1) it has reviewed and understands Executive Order 2011-03K, (2) has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, Ohio Revised Code §§ 102.01 *et seq.*, §§ 2921.01, 2921.42, 2921.421 and 2921.43, and §§ 3517.13(I) and (J), and (3) will take no action inconsistent with those laws and the order, as any of them may be amended or supplemented from time to time. Grantee understands that failure to comply with the Ohio ethics and conflict of interest laws, is in itself, grounds for termination of this Agreement and the grant of funds made pursuant to this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

(c) Conflict of Interest. No personnel of Grantee, contractor of Grantee or personnel of any such contractor, and no public official who exercises any functions or responsibilities in connection with the review or approval of any work completed under this Agreement, shall, prior to the completion of such work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his or her functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Grantee shall immediately disclose in writing to Grantor any such person who, prior to or after the execution of this Agreement, acquires any personal interest, voluntarily or involuntarily. Grantee shall cause any such person who, prior to or after the execution of this Agreement, acquires any personal interest, voluntarily or involuntarily, to immediately disclose such interest to Grantor in writing. Thereafter, such person shall not participate in any action affecting the work under this Agreement unless Grantor determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

(d) Outstanding Liabilities. Grantee represents and warrants to Grantor that Grantee does not owe:

(1) any delinquent taxes to the State of Ohio or a political subdivision of the State of Ohio; (2) any moneys to the State of Ohio or a state agency for the administration or enforcement of any environmental laws of the State of Ohio; and (3) any other moneys to the State of Ohio, a state agency or a political subdivision of the State of Ohio that are past due, whether or not the amounts owed are being contested in a court of law.

(e) **Falsification of Information.** Grantee represents and warrants to Grantor that Grantee has made no false statements to Grantor or any of its employees or agents in the process of obtaining the award of Grant Funds. Grantee acknowledges that any person who knowingly makes a false statement to obtain an award of financial assistance may be required under Ohio Revised Code § 9.66(C) to repay such financial assistance and shall be ineligible for any future economic development assistance from the State of Ohio, any state agency or a political subdivision. In addition, any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code § 2921.13(F)(1).

(f) **Prevailing Wage.** Construction of public improvements with public funds is subject to the prevailing wage requirements of Ohio Revised Code Chapter 4115. Construction projects undertaken with financial assistance provided by the State of Ohio under certain provisions of the Ohio Revised Code are also subject to the prevailing wage requirements of Ohio Revised Code Chapter 4115. Grantee shall comply, and shall cause its contractors and subcontractors to comply, with all prevailing wage requirements applicable to the Project. Grantee shall designate or cause to be designated an individual who shall perform the duties and responsibilities required by law of a prevailing wage coordinator for the Project.

(g) **Public Records.** Grantee acknowledges that this Agreement and other records in the possession or control of Grantor regarding the Project are public records under Ohio Revised Code § 149.43 and are open to public inspection unless a legal exemption applies. Grantee's non-public financial information may be exempt from disclosure under a trade secret exception to the public records law.

10. Default and Remedies.

(a) **Default.** Grantee shall be in default of this Agreement if Grantee fails to perform any of its obligations under this Agreement and such failure to perform continues uncured for more than 30 days after written notice (a "**Default Notice**") from Grantor. During the thirty-day cure period, Grantee shall incur only those obligations or expenditures pre-approved by Grantor that are necessary to enable Grantee to continue its operations and achieve compliance with the terms and conditions of this Agreement. Grantee shall also be in default of this Agreement if Grantee is in default of any other agreement between Grantor and/or the Director of Grantor and Grantee and such default continues beyond any applicable period of cure or grace.

(b) **Remedies.** Following a default by Grantee, Grantor may exercise one or more of the following remedies:

- (i) **Discontinue Disbursements.** If the Grant Funds have not been fully disbursed, Grantor may terminate any and all of Grantor's obligations under this Agreement, including the obligation to make further disbursements of Grant Funds.
- (ii) **Demand Repayment of Grant Funds.** If Grantee fails to complete the roadwork portion of the Project as required under Section 4(a) and detailed in Exhibit I, Scope of Work,, Grantor may demand repayment of Grant Funds. Grantee shall not be required to refund Grant Funds or pay liquidated damages in an amount that exceeds the Grant Funds awarded.

(iii) Other Legal Remedies. Pursue any other legal or equitable remedies Grantor may have under this Agreement or applicable law.

(c) Remedies Cumulative. No remedy provided to Grantor under this agreement or otherwise by law or in equity is exclusive of any other available remedy. No delay or omission by Grantor in exercising any right or power accruing upon any default shall impair any such right or power or be construed as a waiver, and each such right or power may be exercised from time to time as often as may be deemed by Grantor to be expedient.

(d) Early Termination. Grantor may also terminate this Agreement if Grantee (i) defaults under another Agreement between the Grantor and/or the Tax Credit Authority and Grantee, (ii) admits Grantee's inability to pay its debts as such debts become due, (iii) Grantee commences a voluntary bankruptcy, (iv) an involuntary bankruptcy action occurs against Grantee which remains undismissed or unstayed for 60 days, (v) Grantee fails to meet the minimum funding requirements under the Employee Retirement Income Security Act or other such employee benefits plan, or (vi) Grantor has reason to believe Grantee has ceased operations at the Project location. The events permitting early termination by Grantor shall be considered a default by Grantee and subject to the remedies available under paragraph (b) of this Section 10.

(e) Effects of Termination. Within 60 days after termination of this Agreement following any default, Grantee shall provide Grantor with a final report setting forth the number of full-time jobs created and/or retained by Grantee from the Effective Date through the termination, the total expenditure of the Grant Funds by Grantee and the status of the Project at the time of termination. The final report shall be signed and certified in the same manner as the reports required by Section 7 of this Agreement. This reporting obligation shall survive the termination of the Agreement.

(f) Grantor's Expenses. Grantee shall reimburse Grantor for all expenses, including, without limitation, reasonable attorneys' fees, in connection with the enforcement of this Agreement.

11. Liability. Grantee shall maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person, damage to property (including property of Grantor) caused by the negligent acts or omissions, or negligent conduct of the Grantee, to the extent permitted by law, in connection with the activities of this Agreement. Furthermore, each party to this Agreement agrees to be liable for the negligent acts or negligent omissions by or through itself, its employees, agents and subcontractors. Each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this Agreement shall impute or transfer any such liability from one to the other.

12. Certification of Funds. None of the rights, duties and obligations of the parties under this Agreement shall be binding on either party until all statutory provisions of the Ohio Revised Code including, without limitation, Section 126.07, have been complied with, and until such time as all funds have been made available and are forthcoming from the appropriate state agencies.

13. Notice. Any notice or report required or permitted to be given under this Agreement shall be deemed to have been sufficiently given for all purposes if mailed by first class certified or registered mail or sent by commercial delivery to the following addresses of the parties or to such other address as either party may hereafter furnish by written notice to the other party.

If to Grantor:
Ohio Development Services Agency
77 South High Street, 28th Floor
P.O. Box 1001
Columbus, Ohio 43216-1001
ATTN: Director, Strategic Business Investment
Division

If to Grantee:
To the Grantee Contact and address as set
forth on page one of this Agreement.

With a copy to the Chief Legal Counsel of the Ohio
Development Services Agency.

14. Miscellaneous.

- (a) Governing Law. This Agreement shall be governed by the laws of the State of Ohio as to all matters including, but not limited to, its validity, construction, effect and performance.
- (b) Forum and Venue. Grantee irrevocably submits to the non-exclusive jurisdiction of any federal or state court sitting in Columbus, Ohio, in any action or proceeding arising out of or related to this Agreement, Grantee agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, and Grantee irrevocably waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum. Nothing in this Agreement shall limit the right of Grantor to bring any action or proceedings against Grantee in the courts of any other jurisdiction. Any actions or proceedings by Grantee against Grantor or the State of Ohio involving, directly or indirectly, any matter in any way arising out of or related to this Agreement shall be brought only in a court in Columbus, Ohio.
- (c) Entire Agreement. This Agreement, including its exhibits and documents incorporated into it by reference, constitutes the entire agreement and understanding of the parties with respect to its subject matter. Any prior written or verbal agreement, understanding or representation between the parties or any of their respective officers, agents, or employees is superseded and no such prior agreement, understanding or representation shall be deemed to affect or modify any of the terms or conditions of this Agreement.
- (d) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.
- (e) Amendments. This Agreement may not be amended or modified except upon such terms as both parties may agree in a writing executed by authorized representatives of each party.
- (f) 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 Grantor of any of its rights under this Agreement or applicable law.
- (g) Pronouns. The use of any gender pronoun shall be deemed to include the other gender, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.
- (h) Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be used in construing this Agreement.

(i) Assignment. Neither this Agreement nor any rights, duties, or obligations of Grantee pursuant to this Agreement shall be assigned by Grantee without the prior express written consent of Grantor, which shall not be unreasonably withheld. Any purported assignment not made in accordance with this paragraph shall be void.

(j) Binding Effect. Each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of Grantee, its successors and permitted assigns.

(k) Survival. Any provision of this Agreement which, by its nature, is intended to survive the expiration or other termination of this Agreement, including, without limitation, any indemnification obligation, shall so survive and shall benefit the parties and their respective successors and permitted assigns.

(l) Permissible Expenses. If "travel expenses," as defined in Ohio Administrative Code Section 126-1-02, are a cost of the Project eligible for reimbursement with Grant Funds, Grantee shall be reimbursed for those permissible travel expenses in amounts in accordance with Ohio Administrative Code Section 126-1-02, as updated from time to time (the "Expense Rule") and Grantee agrees that it shall not be reimbursed and Grantor shall not pay any items that are deemed to be "non-reimbursable travel expenses" under the Expense Rule, whether purchased by the Grantee or Grantor or their respective employees or agents.

(m) Grantor's Authorized Representative. Grantor's Authorized Representative shall be the Director of the Ohio Development Services Agency or such individual authorized by the Director in writing.

Signature: Each of the parties has caused this Grant Agreement to be executed by its authorized representatives as of the dates set forth below their respective signatures effective as of the Effective Date:

Grantee:

The Village of Richfield

Grantor:

**State of Ohio
Development Services Agency**

David Goodman
Director
Ohio Development Services Agency

By: _____

Printed Name: _____

Title: _____

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____