

ORDINANCE NO. 13- 2017

Offered by: All of Council

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A JOB CREATION INCOME TAX INCENTIVE GRANT AGREEMENT WITH GROUP MANAGEMENT SERVICES, INC. AND DECLARING AN EMERGENCY.

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

WHEREAS, the Company desires to purchase approximately 8 acres of vacant land and construct an approximately 40,000 square foot building in Timberlake Business Park to relocate and expand its current business operations from 3296 Columbia Road in the Village of Richfield and to create employment opportunities (the "Project") within the Village; and

WHEREAS, the Project will allow the Company to retain in the Village employment of 130 full-time employees with a current approximate payroll of \$7,600,000 and to create an additional 396 full-time jobs by year end 2026 with an estimated new payroll of approximately \$23,950,000 annually by year end 2026; and

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

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

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

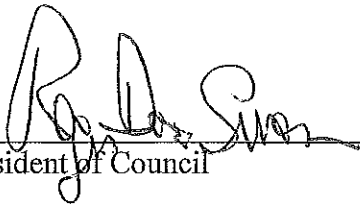
NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Richfield, Summit County, State of Ohio:

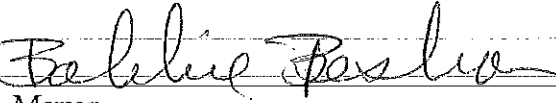
SECTION 1. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into a Job Retention and Job Creation Income Tax Incentive Grant Agreement with Group Management Services, Inc., substantially in accordance with the draft Agreement attached hereto as Exhibit "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.

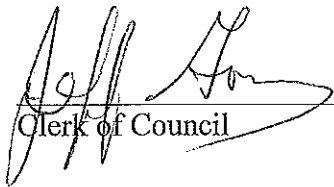
PASSED: 3-7-17

  
\_\_\_\_\_  
President of Council

  
\_\_\_\_\_  
Mayor

Dated: 3-7-17

ATTEST:

  
\_\_\_\_\_  
Clerk of Council

JOB CREATION INCENTIVE 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 GROUP MANAGEMENT SERVICES, INC., a corporation, qualified to do business in Ohio, with its main offices located at 3296 Columbus Road, RICHFIELD, OHIO 44286 (hereinafter referred to as "Company"), and is dated as of \_\_\_\_\_, 2017 (the "Agreement").

WITNESSETH:

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

WHEREAS, the Company is desirous of purchasing approximately 8 acres of vacant land and constructing an approximately 40,000 square foot building in the Timberlake Business Park to relocate and expand its current business operations from 3296 Columbia 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 will allow the Company to retain, in the Village, employment of 130 full-time employees with a current approximate payroll of \$7,600,000 and to create an additional 396 full-time jobs by year end 2026 with an estimated new payroll of approximately \$23,950,000 annually by year end 2026; 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 shall purchase an approximately 8 acre lot of vacant land and construct an approximately 40,000 square foot building on property known as Permanent Parcel Number \_\_\_\_\_, located in the Timberlake Business Park, Richfield, Ohio 44286 to house its operation and associated office facilities.

2. Job Creation.

A. The Company shall create at the Project by December 31, 2026, the equivalent of at least 396 new full-time (“F/T”) job opportunities (“New Jobs”). The full-time job opportunities stated in this paragraph and in subsequent sections of this Agreement do not include the existing 130 F/T jobs at its current operations in Richfield, which will be retained.

1) The Company’s projected schedule for hiring the new F/T employees, both on an annual and a cumulative basis, is as follows:

<u>Year</u>	<u>Cumulative New Jobs in Village at Year End</u>	<u>Cumulative New Payroll in Village at Year End</u>
No later than December 31, 2017	20 F/T	\$ 1,370,000
No later than December 31, 2018	42 F/T	\$ 2,715,000
No later than December 31, 2019	68 F/T	\$ 4,262,325
No later than December 31, 2020	97 F/T	\$ 6,041,749
No later than December 31, 2021	131 F/T	\$ 8,088,086
No later than December 31, 2022	171 F/T	\$10,441,375
No later than December 31, 2023	216 F/T	\$13,147,656
No later than December 31, 2024	268 F/T	\$16,259,879
No later than December 31, 2025	327 F/T	\$19,839,056
No later than December 31, 2026	396 F/T	\$23,954,971

B. The job creation period shall begin on January 1, 2017 and all New Jobs shall be in place by December 31, 2026.

C. Pursuant to the Company’s representations, the increase in the number of New Jobs to Richfield will result in approximately \$23,950,000 of additional annual payroll in Richfield when the maximum employment level is achieved, which does not include the \$7,600,000 of current payroll being paid to existing employees in Richfield.

3. Issuance of Grant.

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

<u>Years</u>	<u>Amount of Job Creation Grant as a Percentage of Payroll Taxes on New Jobs to Richfield</u>
1-10	25%

- B. For purposes of calculating the amount of the Job Creation grant, the payroll upon which the Job Creation Grant is based shall not exceed 150% of the maximum new payroll projected in Section 2(C) above. Accordingly, the maximum payroll upon which the Job Creation Grant may be based shall not exceed \$35,925,000.
- C. Job Creation Grant payments on the payroll of New Jobs shall be made according to the parameters below:

1)

Year	Minimum New Employment to Receive Grant (75% of projected new jobs, cumulative)	Minimum New Payroll to Receive Full Grant (90% of projected new payroll, cumulative)	Minimum New Payroll to Receive Any Grant (75% projected)	Maximum Eligible New Payroll (150% of maximum projected in final yr. of grant)
1	15	\$1,233,000.00	\$1,027,500.00	\$2,055,000.00
2	31	\$2,443,500.00	\$2,036,250.00	\$4,072,500.00
3	51	\$3,836,093.00	\$3,196,744.00	\$6,393,488.00
4	73	\$5,437,574.00	\$4,531,312.00	\$9,062,624.00
5	98	\$7,279,277.00	\$6,066,065.00	\$12,132,129.00
6	128	\$9,397,238.00	\$7,831,031.00	\$15,662,063.00
7	162	\$11,832,890.00	\$9,860,742.00	\$19,721,484.00
8	201	\$14,633,891.00	\$12,194,909.00	\$24,389,819.00
9	245	\$17,855,150.00	\$14,879,292.00	\$29,758,584.00
10	297	\$21,559,474.00	\$17,966,228.00	\$35,932,457.00

- 2) If the Company does not achieve at least 90% of the minimum payroll projections required for the Job Creation Grant on a cumulative basis, but achieves at least 75% of the minimum payroll projections required for the Job Creation Grant on a cumulative basis, then the Company will receive reduced incentives according to the schedule below:

<u>% of Payroll Projection Achieved</u>	<u>Amount of Job Creation Grant as a Percentage of New Payroll Taxes to Village</u>
90-100%	25%
80-89%	15%
75-79%	10%

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

4. Grant Payments.

A. Initial Grant Payment.

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

B. Timing of Annual Grant Payments. Annual grant payments shall be made by April 15th, provided that the Company files its Reconciliation of Village Income Tax Withheld Form S-W3 by February 28th of said year, with the last grant payment occurring in calendar year 2027. If the Company requests an extension for filing of its S-W3 form, Richfield 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.

5. Payment of Taxes and Filing Reports and Returns. The Company 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 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.

6. Information for Annual Review. The Company shall timely provide to Richfield any information reasonably required by Richfield to evaluate the Company's compliance with the Agreement.

7. 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.
8. 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.
9. Non-Discrimination in 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, sexual orientation, disability, color, national origin, or ancestry or other basis prohibited under state or federal law.
10. 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 and assignee acknowledges and consents, in writing, to the assignment of this Agreement.
11. Termination or Modification of Incentives.
- A. The Agreement shall terminate on the expiration of ten (10) years from the Effective Date of this Agreement.
- B. If the Project does not proceed to full completion as specified in Section 4(A)(1) of this Agreement or within the approved one year extension period as specified in Section 4(A)(2), 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. 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 Company's certification as to delinquent taxes required by this Agreement is fraudulent or if the Company becomes delinquent in any taxes during the term of this Agreement, or
  - (ii) The Company vacates the Project and moves substantially all of its operations out of Richfield or terminates its operations in Richfield altogether during a ten (10) year period beginning on the Effective Date of this Agreement.

Richfield may, absent any legislative action, resolution or court-ordered mandate to the contrary, collect any and all grant payments by Richfield under this Agreement or the Development Agreement, and the Company shall pay directly to Richfield or its authorized agent any and all grant payments awarded under this Agreement and the Development Agreement, which obligations and amounts shall be due and payable on the date the Company vacates the Project and moves substantially all of its operations out of Richfield or terminates its operations in Richfield altogether during the ten (10) year period beginning on the Effective Date of this Agreement; or within ten (10) days from the date the Company is notified by Richfield that any tax certification is fraudulent or tax payments are delinquent.

- 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 entities; or
  - (ii) If the Company merges with another entity or entities; or



- (iii) If the Company substantially restructures itself through an acquisition or divestiture or otherwise;

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

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.

12. 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](mailto: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](mailto:whanna@walterhav.com)

If to the Company to:

Group Management Services, Inc.  
c/o Michael Kahoe  
Its: Chief Executive Officer

Richfield, Ohio 44286

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

With a copy to:

Group Management Services, Inc.  
c/o Thomas S. Amato, Esq.

Richfield, Ohio 44286

Telephone: (330) 659-0104

[Tamato@groupmgmt.com](mailto:Tamato@groupmgmt.com)

or such other address as may be noticed.

13. 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. \_\_\_\_-2017, passed by the Council of the Village of Richfield on \_\_\_\_\_, 2017, and signed by the Mayor on \_\_\_\_\_, 2017. Any amendment to this Agreement must be in writing and approved by resolution of the Council of Richfield.

INTENDING TO BE LEGALLY BOUND, 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

GROUP MANAGEMENT SERVICES, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

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

VILLAGE OF RICHFIELD  
LAW DIRECTOR

By: \_\_\_\_\_  
William R. Hanna

Date: \_\_\_\_\_

CERTIFICATE OF DIRECTOR OF FINANCE

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

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Director of Finance, Sandy Turk

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Date

