

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN INCOME TAX RETENTION AND CREATION INCENTIVE GRANT AGREEMENT WITH NEXEN TIRE AMERICA, INC, AND DECLARING AN EMERGENCY

WHEREAS, the Village and the Nexen Tire America, Inc. (“Nexen”) previously entered into a Development Agreement on or about January 17, 2017 in order to create and preserve jobs and employment opportunities in the jurisdiction of the Village and improve the economic welfare of the people of the Village; and

WHEREAS, as part of the Village’s obligations under the Development Agreement, the Village sold 4.0 acres of land on South Wheatley Road to the Company at a reduced price to be used for the construction of an approximate 30,000 square feet facility for the relocation and expansion of Nexen’s business operations then located at 4150 Highlander Parkway in the Village; and

WHEREAS, Nexen completed the construction of its new headquarters on South Wheatley Road that resulted in the relocation of 13 full-time employees to the new facility; with a current approximate total payroll of \$1,700,000.00 dollars; and

WHEREAS, Nexen intends to close its other business operations currently located in California and relocate the California employment to the Village (the “Relocation Project”); and

WHEREAS, the Relocation Project will result in the creation of an additional 38 full-time jobs by year-end 2025 with an estimated new additional payroll of approximately \$2,992,500.00; and

WHEREAS, Relocation Project is economically sound and will strengthen the economy of the Village and the Village desires to provide local incentives for the economic development of the Relocation Project; and

WHEREAS, Village Council has determined that it is in the best interests of the Village to offer the local incentives to Nexen and desires 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) to provide the local incentives to Nexen.

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

SECTION 1. The Mayor and the Finance Director are hereby authorized and directed to enter into an Income Tax Retention and Creation Incentive Grant Agreement with Nexen

Tire America, 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 adoption of this Resolution were adopted in an open meeting of this Council, and that the all deliberations of this Council and 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 Resolution 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 ensure the expansion of new job opportunities in the Village; wherefore, provided this Resolution 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: 1-4-22

Bobbie Basham
President of Council

Michael Wheeler
Mayor

Dated: 1/18/2022

ATTEST:
Jeff Gray
Clerk of Council

INCOME TAX JOB CREATION INCENTIVE GRANT AGREEMENT

This Agreement is made and entered into on this ___ day of ___, 2021 (“Effective Date”) by and between the **Village of Richfield, Ohio**, an Ohio municipal corporation, with its main offices located at 4410 West Streetsboro Road, Richfield, Ohio 44286 (hereinafter referred to as “Village”), and **Nexen Tire America, Inc.**, d.b.a. Nexen Tire America Technology Center (“Company”).

WHEREAS, the Village and the Company previously entered into a Development Agreement on or about January 17, 2017 in order to create and preserve jobs and employment opportunities in the jurisdiction of the Village and improve the economic welfare of the people of the Village; and

WHEREAS, as part of the Village’s obligations under the Development Agreement, the Village sold 4.0 acres of land on South Wheatley Road to the Company at a reduced price to be used for the construction of an approximate 30,000 square feet facility for the relocation and expansion of the Company’s business operations then located at 4150 Highlander Parkway in the Village; and

WHEREAS, the Company completed the construction of its new headquarters on South Wheatley Road that resulted in the retention of 13 full-time employees to the facility; with a current approximate total payroll of \$1,700,000.00 dollars; and

WHEREAS, the Company intends to close its other business operations currently located in California and relocate the California employment to the Village (the “Relocation Project”); and

WHEREAS, the Relocation Project will result in the creation of an additional 38 full-time jobs by year-end 2025 with an estimated new additional payroll of approximately \$2,992,500.00; and

WHEREAS, the Village has determined that it is in the best interest of its residents to encourage the creation of job opportunities throughout the Village; and

WHEREAS, based upon the application and certain documentation presented to the Village by the Company, the Company represents that the Relocation Project is economically sound and will strengthen the economy of the Village; and

WHEREAS, the Village has investigated the application and documentation of the Company and recommended that Village Council approve certain incentives to the Company on the basis that the Company is qualified by financial responsibility and business experience to create employment opportunities in the Village and further support the economic climate of the Village; and

WHEREAS, the Village 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); and

WHEREAS, the Village, having the appropriate authority, is desirous of providing the Company with incentives available for the Relocation Project based upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of 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.

A. The Company shall relocate its California business operations to property located at 4014 Wheatley Road, Richfield, Ohio 44286, including the relocation of 38 existing full-time employees by year-end 2025.

2. Job Creation.

A. The Company intends to create the equivalent of 38 new full-time (“F/T”) job opportunities (“New Jobs”) at the Relocation Project by December 31, 2025. The Village and the Company expressly acknowledge that the 38 new jobs is not a mandatory target goal and that the Job Creation grant will be determined by actual payroll created during the job creation period that is above the base line payroll of \$1,700,000.00. The full-time job opportunities stated in this paragraph and in subsequent sections of this Agreement do not include the existing 13 F/T jobs at its current operations and which will be retained.

B. The job creation period shall begin on _____ and all new F/T jobs shall be in place by December 31, 2025.

C. Pursuant to the Company’s representations, the increase in the number of New Jobs to the Village will result in approximately \$2,992,500.00 of additional annual payroll in the Village by December 31, 2025, which does not include the \$1,700,000.00 of current payroll being paid to existing employees at the 4014 Wheatley Road property.

3. Issuance of Grant.

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

Amount of Job Creation Grant as a Percentage

<u>Years</u>	<u>of Payroll Taxes on New Jobs to the Village</u>
1-5	20%

B. Although specific maximum job creation projections are indefinite as of the effective date of this Agreement, there shall be no maximum payroll upon which the Job Creation Grant may be based

4. Grant Payments.

A. Initial Grant Payment.

- (1) The initial grant payment, for 2021 (being Year 1), shall be made by April 15, 2022, provided that the Company files its Reconciliation of Return of Income Tax Withheld Form 17 by February 28, 2021 and meets the eligibility requirements in this Agreement.
- (2) If the Relocation 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 with notice to the Village Administration and Village Council.
- (3) If the Relocation Project begins in the third or fourth quarter of the year and the Company is not able to meet its Year 1 projections by December 31st 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 full year of the Relocation Project or occupancy of the Relocation 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 and the eligibility requirements of this Agreement are met. If the Company requests an extension for filing of its S-W3 form, the Village will make the grant payment within three (3) months of the extended filing date. It is the responsibility of the Company to advise the Director of Finance of the filing extension.

- C. Adjustment of Annual Grant Payments. The Village shall be reimbursed by the Company for any income tax payments sent by the Village to another political subdivision on behalf of a Company employee, or for any payment sent directly to a Company employee as a refund, as required by law, for years one (1) through five (5) of the term of the Job Creation Period and for three (3) years from end of such period. In order to be reimbursed, the Village may deduct such undisputed amounts from any grant owed to the Company for the year in which the amounts were paid by the Village, provided that any such deduction shall be itemized in writing. The parties will endeavor in good faith to resolve any disputes concerning adjustment payments owed under this Section 5(C). To receive reimbursement from the Company for payments described above during a year in which no grant payment is to be made, or associated with the three (3) year period after the end of the term of the Job Creation Grant, the Village must send a written payment request to the Company not later than March 31 of the year immediately following the year in which the Village made payment of refund. The Company shall reimburse the Village within 45 days of the date of the request.
- D. True-Up. In addition to receiving reimbursements from the Company for payments or refunds of withheld taxes made by the Village as described in Section 5(C) of the Agreement, the Village may (1) re-determine the Company's eligibility for a grant under this Agreement for the year for which taxes paid elsewhere or refunded by the Village were originally withheld, and (2) recalculate the amount of any such grant, in accordance with the provisions of this Agreement. In the event a grant previously paid is reduced or eliminated as a result, the Village shall be reimbursed by the Company for the difference between the original grant payment and recalculated grant payment in accordance with the reimbursement procedures provided in Section 5(C).

In the event that Company vacates the Project and moves substantially all of its operations out of the Village or terminates its operations in the Village altogether during a five (5) year period beginning on the Effective Date of this Agreement, Company agrees to reimburse the Village as provided below for any grant payments received.

Reimbursement to Village if Company ceases operations in the Village:

- 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: 0% of grant received

5. Payment of Taxes and Filing Reports and Returns. The Company shall pay such real and tangible personal property taxes as are charged against such property in the Village 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 the Village any information reasonably required by the Village to evaluate the Company's compliance with this Agreement. Moreover, by executing this Agreement, the Company shall provide the Village Administration with employee counts and payroll data during the duration of this Agreement. Village Administration includes the Economic Development Coordinator, the Mayor, and/or Finance Director. If a public records request is made for this information, the Village, to the extent permitted by law, will notify Company of the request prior to making the document available for inspection or copying and Company 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 Company 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.
7. Maintenance of Grant. The Village shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain the 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 Chapters 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, and further certifies that it has not filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has not 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 Ohio Revised Code governing payment of those taxes.
9. Non-Discrimination Hiring. By executing this Agreement, the Company is committed 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.
10. Transfer and Assignment. This Agreement is not transferable or assignable without the express, written approval of Village Council. The Village 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 the Village, to the Village's reasonable satisfaction, its financial ability, business experience and intentions to continue its operations in the Village in a manner similar to that of the Company in all pertinent respects and the proposed transferee 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 five (5) years from the Effective Date of this Agreement.
- B. If the Project does not proceed to full completion as specified in Section 5(A)(1) of the Agreement or within the approved one-year extension period as specified in Section 5(A)(2), the Village may terminate the Agreement upon legislative approval of Village Council.
- C. If the Company fails to submit required information and/or reports as set forth in Section 6 above, the Village, after thirty (30) days written 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, the Village'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 the Village within thirty (30) days of receiving written notice of such failure from the Village or, if 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 the same.

- D. The Village may terminate or modify this Agreement and may also require the repayment of grant payments awarded under this Agreement in accordance with Section 5(D), upon the occurrence of any of the following:
 - 1) The Village 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
 - 2) The Company vacates the Project and moves substantially all of its operations out of Village or terminates its operations in the Village altogether during a five (5) year period beginning on the Effective Date of this Agreement.

If the Village 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. The Village may, absent any legislative action, resolution or court ordered mandate to the contrary, collect any and all grant payments awarded under this Agreement, and the Company shall pay directly to the Village or its authorized agent any and all grant payments awarded under this Agreement due on the date the Company vacates the Project and moves substantially all of its operations out of the Village or terminates its operations in the Village altogether during the five (5) year period beginning on the Effective Date of this Agreement; or within ten (10) days from the date the Company is notified by Village that any tax certification is fraudulent or tax payments are delinquent.

E. The Company or its successor entity shall promptly notify the Village 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 set forth 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 cease to own such or cease to be shareholders of the corporation that is the Company.

F. Each provision for modification or termination hereunder shall not affect the Company's obligations or the Village'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 the Village to:	Village of Richfield 4410 West Streetsboro Road Richfield, Ohio 44286 Attention: Mayor
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With a copy to: Law Director – Village of Richfield
c/o Walter | Haverfield LLP
The Tower at Erieview
1301 East Ninth Street, Suite 3500
Cleveland, Ohio 44114-1821
Attention: Alejandro V. Cortes

If to the Company: [INSERT]

13. Condition Precedent. The Company and the Village acknowledge that this Agreement must be approved by formal action of the legislative authority of the Village as a condition for the Agreement to take effect.

The **Village of Richfield, Ohio**, by Michael Wheeler, its Mayor, pursuant to Richfield Village Council Resolution No. __-2021, and **Nexen Tire America, Inc.**, by _____, its authorized representative, have caused this Agreement to be executed as of the Effective Date set forth above.

[The Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the _____ day of _____, 2021.

VILLAGE OF RICHFIELD, OHIO

NEXEN TIRE AMERICA, INC.

BY: _____
Michael Wheeler, Mayor

BY: _____

BY: _____
Sandy Turk, Finance Director

(Printed Name and Title)

CERTIFICATE OF DIRECTOR OF FINANCE

The undersigned fiscal officer of the Village hereby certifies that the moneys required to meet the obligations of the Village during the year 2021 under this Agreement have been lawfully appropriated by the Council of the Village 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.

Director of Finance, Sandy Turk

Date