

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN INCOME TAX JOB CREATION INCENTIVE GRANT AGREEMENT WITH AGRANA FRUIT US, INC., AND DECLARING AN EMERGENCY.

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

WHEREAS, Agrana Fruit US, Inc. (hereinafter the "Company") purchased approximately six (6) acres of vacant land (parcel nos. 5002566 and 5000903) bound by Broadview Road and Brecksville Road and immediately adjacent to Interstate 271 North exit ramp to Brecksville Road (the Property) and intends to relocate its business operations and existing employees to Richfield to create employment opportunities (hereinafter sometimes referred to as the "Project") within the boundaries of Richfield, provided that the appropriate development incentives are available to support the economic viability of the Project; and

WHEREAS, the Project will create employment opportunities within Richfield generating approximately \$9,300,000.00 in annual payroll; and

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

WHEREAS, the Village acknowledges the importance to find an appropriate use for the Property given its zoning when compared to the unique geographic and topographic impediments that make development of the Project challenging; and

WHEREAS, the Village believes the Project will compliment the Property and is the most ideal use given the site constraints referenced above; and

WHEREAS, the Village recognized the need to provide local incentives to assist with development of the Project on the Property; and

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

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

SECTION 1. The Mayor and the Finance Director are hereby authorized and directed to enter into an Income Tax Job Creation Incentive Grant Agreement with Agrana Fruit US, Inc., substantially in accordance with the Agreement attached hereto as Exhibit "A" and incorporated herein fully as if by reference subject to final approval by the Director of Law.

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

SECTION 3. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary ensure the 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: 4-19-2022

Balbiru Bashara
President of Council

Michael Lebeck
Mayor

Dated: 4/19/2022

ATTEST:
Jeff Hous
Clerk of Council

JOB CREATION GRANT AGREEMENT

This Job Creation Grant Agreement (the "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, Richfield, Ohio 44286-0387 (the "Village") and **AGRANA FRUIT US, INC.**, an Ohio corporation, with its current office located at 6850 Southpointe Parkway, Brecksville, Ohio 44141 (the "Company") and is dated as of _____, 2022.

RECITALS

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

WHEREAS, the Company desires to purchase an approximate six (6) acre parcel of vacant land bounded by Broadview Road and Brecksville Road and immediately adjacent to the to Interstate 271 North exit ramp to Brecksville Road (Parcel Nos. 5002566 and 5000903) to relocate its current business operations from 6850 Southpointe Parkway, Brecksville, Ohio 44141 in order to create employment opportunities within the boundaries of Richfield (the "Project"), provided that the appropriate development incentives are available to the support the economic viability of the Project; and

WHEREAS, the Project will create employment opportunities within Richfield generating approximately \$9,300,000.00 in annual payroll in Richfield; and

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

WHEREAS, the Village 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).

NOW, THEREFORE, in consideration of the significant investments to be made by the Company within Richfield 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. Project Description

The Company shall purchase an approximately six (6) acre parcel of vacant land bounded by Broadview Road and Brecksville Road and immediately adjacent to the adjacent to Interstate 271 North exit ramp to Brecksville Road (Parcel Nos. 5002566 and 5000903) and construct an approximately 35,000 square foot building on the property to house its business operations.

2. Issuance of Grant

- A. The Village shall issue a Job Creation Grant to the Company based on payroll from the relocation of the Company’s business and associated employment in Richfield in accordance with the following schedule:

<u>GRANT YEAR</u>	<u>GRANT AMOUNT (As a % of Payroll Tax to the Village)</u>
1-10	15%

- B. The Job Creation 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 Job Creation Grant for Years 1-10, the annual payroll upon which the grant is based shall be the Company’s current existing baseline payroll of \$9,300,000.00, and the Company shall receive, as the Job Creation Grant, a 15% rebate of the income tax collected on the final net payroll not exceeding the baseline payroll amount of \$9,300,000.00.

3. Grant Payments

- A. Initial Grant Payment. The initial grant payment shall be made by April 15, 2023, if the Company (i) files its Reconciliation of Return of Income Tax Withheld Form by February 28, 2023 and (ii) meets all of the eligibility requirements.
- B. Timing of Annual Grant Payments. Annual grant payments shall be made by April 15 of said year, if the Company files its Reconciliation of Village Income Tax Withheld Form by February 28th of said year, with the last grant payment occurring in calendar year 2032. If the Company requests an extension for filing of its form, the Village shall make the grant payment within three months of the extended filing date. It is the responsibility of the Company to advise the Mayor, Finance Director, and/or Economic Development Coordinator 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 an employee of the Company, or for any payment sent directly to an employee of the Company as a refund, as required by law, for years 1-10 of the term of the Agreement and for three (3) years from the end of such Agreement. 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 Village paid the amounts, 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 3(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 Agreement, 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 3(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:

Years 1-6:	100% of Grant Received
Year 7:	75% of Grant Received
Year 8:	50% of Grant Received
Year 9:	25% of Grant Received
Year 10:	0 % of Grant Received

4. 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.

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 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.

6. 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.

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 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.

8. 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.

9. 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.

10. 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 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 3(D), upon the occurrence of any of the following:
 - (i) 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
 - (ii) 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.

11. Notices.

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: Evan Goldy
Head of Finance
Evan.goldy@agrana.com
(440) 262-3326

12. 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. 24-2022, and **Agrana Fruit US, Inc.**, by Evan Goldy, 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 Village and the Owner have each caused this Development Agreement to be executed after due authorization as of the date aforesaid.

VILLAGE OF RICHFIELD

By: _____
Michael Wheeler, Mayor

Date: _____, 2022

And: _____
Sandy Turk, Finance Director

Date: _____, 2022

AGRANA FRUIT US, INC.

By: _____
Evan Goldy

Its: _____

Date: _____, 2022

The legal form of the within instrument is hereby approved.

By: _____
Alejandro V. Cortes, Law Director