

RESOLUTION NO. 03-18
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Janne Rall ON THE 22nd
DAY OF January, 2018.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN ECONOMIC DEVELOPMENT GRANT AGREEMENT WITH AEROSEAL, LLC FOR A PROJECT LOCATED AT 2601 E. ALEX-BELL ROAD.

WHEREAS, Aeroseal, LLC plans to purchase and redevelop an existing commercial site at 2601 E. Alex-Bell Road, which will both retain and create jobs in the City of Centerville (the "Project"); and

WHEREAS, the City of Centerville submitted an application for an Economic Development/Government Equity (ED/GE) grant from Montgomery County, Ohio for the Project; and

WHEREAS, on December 14, 2017, the Montgomery County Board of Commissioners awarded the City of Centerville a distribution from the 2017 Primary Economic Development Fund not to exceed \$170,000 or 6% of total project cost, to provide funding support for the Project; and

WHEREAS, the City of Centerville desires to use the ED/GE grant for the Project; and

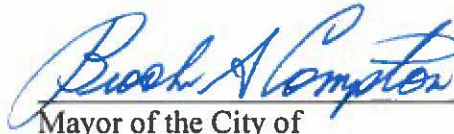
WHEREAS, it is in the best interests of the City to enter into an agreement with the Aeroseal for this ED/GE grant.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized and directed to enter into an Economic Development Grant Agreement with Aeroseal, LLC in accordance with the terms and conditions of said Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein.

Section 2. This Resolution is to take effect at the earliest date allowed by law.

PASSED THIS 22nd day of January, 2018.



Mayor of the City of
Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 03-18, passed by the Council of the City of Centerville, Ohio on the 22nd day of January, 2018.



Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

Exhibit "A"

2017
MONTGOMERY COUNTY
ECONOMIC DEVELOPMENT/GOVERNMENT EQUITY (ED/GE)
PROGRAM PROJECT AGREEMENT

THIS AGREEMENT is entered into on the date(s) at the end hereof, by and between the BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO, Montgomery County Administration Building, 451 West Third Street, Dayton, Ohio 45422, hereinafter referred to as the "Board," and the CITY OF CENTERVILLE, MONTGOMERY COUNTY, OHIO, hereinafter referred to as the "Participant."

WITNESSETH:

WHEREAS, in October of 1989, O.R.C. Section 307.07 became effective, and granted the Board the authority to create an Office of Economic Development and to appoint a person to act as Director of said Office, referred to hereinafter as the Director; and

WHEREAS, O.R.C. Section 307.07 further constitutes a grant of authority to the Board to become actively involved in the development and execution of economic development in Montgomery County, Ohio; and

WHEREAS, on or about June 4, 1991, and pursuant to O.R.C. Section 307.07, the Board did create a Montgomery County Office of Economic Development and did appoint a Director of same; and

WHEREAS, O.R.C. Section 307.07 further authorizes the Board to use a portion of its sales tax revenues for the purpose of furthering and fostering economic development in Montgomery County, Ohio; and

WHEREAS, O.R.C. Section 307.07(B)(3) authorizes the Director, with the approval of the Board, to enter into Agreements with federal, state and local governmental agencies for the purpose of carrying out economic development functions of the Board relative to economic development; and

WHEREAS, the Board and the Participant are desirous of mutually cooperating in the funding of an economic development project situated within the boundaries of the City of Centerville Montgomery County, Ohio, known as the AEROSEAL Project, hereinafter referred to as the "Project;" and

WHEREAS, the Board is willing to use some of its sales tax revenues to foster same; and

WHEREAS, the Board has been advised by the Director that the Project properly qualifies as an economic development project in the Montgomery County area; and

WHEREAS, the Participant has supplied the Board with proof that it possesses sufficient statutory/legal authority and management capability needed to assume the primary administration of the Project; and

WHEREAS, on DECEMBER 14, 2017, by Resolution #17-1686, the Board awarded the CITY OF CENTERVILLE an amount not to exceed \$170,000, or 6% of total project cost, from the 2017 Primary Economic Development Fund, to provide funding support for the AEROSEAL

Project.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties to this Agreement, with the intent to be legally bound, agree as follows:

1. The Participant agrees to assume the responsibility of administering the Project, which project is found specifically identified in the Scope of Work, which scope is attached hereto and made a part hereof as Exhibit "A," and a budget document for said project, which budget is attached hereto and made a part hereof, as Exhibit "B". The Board agrees to tender to the Participant the sum of ONE HUNDRED SEVENTY THOUSAND Dollars (\$170,000) or SIX PERCENT (6%) of total project cost, whichever is less, of the Board's 2017 sales tax revenue to assist the Participant in conducting the Project.

2. The Participant agrees that the Board's sales tax revenues referred to in paragraph 1, above, will be used solely and exclusively by the Participant to offset the cost incurred by it in undertaking the Project, and further agrees that should any or all of Board's said sales tax revenues be used for any purpose other than that of the Project, the Participant will repay the Board the amount improperly expended, and will do so within fourteen (14) calendar days of written notice to it by the Board that such an improper expenditure has occurred, stating therein the amount which the Board believes has been misapplied.

3. Upon execution of this Agreement by both parties and certification by the Montgomery County Auditor, the Board agrees to tender the amount identified in paragraph 1

hereof to the Participant on a regular reimbursement basis as more fully explained in this paragraph. The Participant agrees to supply the Board with regular statements, or invoices, indicating therein the amount of monies expended by the Participant in the furtherance of the Project, this statement, or invoice, will also contain a statement therein identifying the date of each expenditure, the name of the person or business enterprise paid, and the goods or services provided warranting the payment. The Board will, within thirty (30) calendar days of the receipt of such a statement, or invoice, reimburse the Participant the amount stated in the Participant's statement or invoice. Should the Board be of the opinion that any amount of monies identified in the Participant's invoice was expended for purposes other than the furtherance of the Project, the Board may, in its sole discretion, reduce such payment by the amount of the alleged misapplication, or seek reimbursement as same is provided in paragraph 2 hereof. The parties also agree that the Board, through its Office of Economic Development, has the authority to meet with the contractor, person or business entity employed by the Participant for the Project, and review documentation as it deems necessary to determine that the Board's sales tax revenues are being expended for Project purposes.

4. The Participant agrees that the Board's sales tax revenues are to be expended by the Board in its sole discretion, and that the Board's financial assistance to the Participant is voluntary and that the Participant has no legal or equitable claim to any of the Board's sales tax revenues.

5. The Participant acknowledges that part of the consideration for this Agreement emanates from the Board's sales tax revenues, and that as such, said consideration constitutes public funds, and the Participant acknowledges that the Board, the Montgomery County, Ohio Auditor and/or the Ohio Bureau of Inspection and Supervision of Public Offices (State Auditor's Office) is legally authorized to inspect and make copies of the Participant's books and audit the receipt and expenditure of said consideration. The Participant, therefore, agrees to allow either the Board, the Montgomery County, Ohio Auditor or his representative, or a representative of the State Auditor's Office, to enter upon its premises during regular business hours and to supply the Board, the Montgomery County, Ohio Auditor or his representative, the State Auditor's Office or its representative, the books/financial records concerning the Participant's receipt and expenditure of the economic development funding received by the Participant pursuant to the Agreement.

6. The Participant agrees that all documentation, financial records and other evidence of project activity under this Agreement shall be maintained by the Participant, consistent with the records retention requirements of the Ohio Revised Code, for a period of three (3) years after the completion or termination of the Project. After this three (3) year retention period, the Participant must notify the Board, in writing, of its intent to destroy said records. The Board reserves the right to extend the retention period for such records, and if it decides to do so it will notify the Participant in writing, otherwise, the Board will issue to the Participant a written Certificate of Records Disposal, it being understood that no records in the Participant's possession will be destroyed until the Participant has received a Certificate of Records Disposal. The Participant also agrees to notify persons or business entities with which it does business in the prosecution of the work called for in the "Project" of the fact that such person or business entity is receiving public funds and that such funds may be audited by the County Auditor or the State Auditor even though they have been received by a private person or business entity.

7. The Participant agrees that, upon completion of said Project, Participant will deliver to the Board's Director of Economic Development a report certifying the Participant's expenditures for the total Project, including ED/GE funds and all other financial sources. In addition, the Participant agrees to provide to the Board's Director of Economic Development, upon the Director's request and at such intervals as requested by the Director, but not to exceed three years, a report certifying the jobs created/retained and the tax base enhanced/retained as a direct result of the Project.

8. The parties acknowledge that this Agreement is made pursuant to the Montgomery County ED/GE program and that the distribution of funds provided for herein is

made pursuant to that program and constitutes a distribution to the Participant thereunder. The parties agree that use of the funds distributed hereunder is subject to all terms and conditions of the Economic Development/Government Equity Participation Agreement previously entered into between the parties hereto.

9. The parties expressly agree that this Agreement shall not be assigned by the Participant without the prior written approval of the Board, which approval may be withheld in the sole discretion of the Board.

10. During the performance of this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. The Participant will ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Participant, or any person claiming through the Participant agrees not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything relating to this Agreement, or in reference to any contractors or subcontractors of said Participant.

11. Either party may terminate this Agreement by serving written notice on the other party at least fourteen (14) calendar days before the effective date of such termination as is mentioned in the notice.

12. If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. This instrument embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either written or oral, between the parties to this Agreement. Also, this Agreement shall not be modified in any manner except by an instrument, in writing, executed by the parties to this Agreement and approved by proper Resolution of the parties, if necessary.

14. This Agreement and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of The State of Ohio.

15. Signatures hereon shall act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations and responsibilities incurred by way of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of

_____, 20____.

Signed and acknowledged
in the presence of:

BOARD OF COUNTY COMMISSIONERS OF
MONTGOMERY COUNTY, OHIO

Witness

By: _____

Witness

By: _____

By: _____

OR

Witness

By: _____

Joseph P. Tuss
County Administrator

AND

Witness

By: _____

Erik S. Collins, Director
Community & Economic Development

AND

Witness

City of Centerville, Ohio

100 W. Spring Valley Dr.
Centerville, OH 45458

By: _____

By: Wayne S. Davis
Its: City Manager

Approved as to Form:

Scott A. Liberman, Municipal Attorney

APPROVED AS TO FORM:
MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

BY: _____
Assistant Prosecuting Attorney

DATE: _____