

RESOLUTION NO. 04-18
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER J. Anne Rau ON THE 22nd
DAY OF January, 2018.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN ECONOMIC DEVELOPMENT/GOVERNMENT EQUITY (ED/GE) PROGRAM PROJECT AGREEMENT WITH MONTGOMERY COUNTY, OHIO FOR THE AEROSEAL PROJECT.

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

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That, contingent upon the City entering into an Economic Development Agreement with Aeroseal, LLC, the City Manager is hereby authorized and directed to enter into an Economic Development/Government Equity (ED/GE) Program Project Agreement with Montgomery County 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

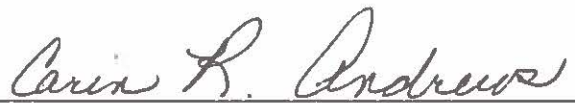
ATTEST:



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. 04-18, passed by the Council of the City of Centerville, Ohio on the 23rd 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

**ECONOMIC DEVELOPMENT GRANT
AGREEMENT**

BY AND BETWEEN

City of Centerville

AND

Aeroseal, LLC

Dated as of January _____, 2018

EXHIBIT "A"

ECONOMIC DEVELOPMENT GRANT AGREEMENT

BETWEEN THE CITY OF CENTERVILLE AND AEROSEAL, LLC REGARDING USE OF ED/GE FUNDS

This Agreement made and entered into by and between the City of Centerville, a Charter Ohio municipal corporation (“City”) located at 100 W. Spring Valley Road Centerville, Ohio 45458, and AEROSEAL, LLC, a Delaware limited liability company registered as an Ohio foreign limited liability company (Aeroseal”).

WHEREAS, on December 14, 2017, by Resolution #17-1686, the Montgomery County Board of Commissioners (the “County”) awarded the City of Centerville an amount not to exceed One Hundred Seventy Thousand and no/100 Dollars (\$170,000.00) from the 2017 Primary Economic Development Fund, to provide funding support for a project known as the Aeroseal Expansion Project (the “ED/GE grant”); and

WHEREAS, under the Agreement between the County and City, the City is responsible for administering the ED/GE grant; and

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. PROJECT. Aeroseal plans to purchase and redevelop an existing commercial site located at 2601 E. Alex-Bell Road. The company will invest \$2,720,000 for land acquisition, construction, and redevelopment of the site. Forty-four (44) jobs will be retained and another nineteen (19) will be created as a result of this project within the City. (For purposes of this agreement, the term “job” shall have the meaning of individuals employed directly by Aeroseal in full-time positions) The average wage of the new jobs will be approximately \$61,300 per annum, plus benefits. The foregoing is referred to herein as the “Project”.

2. GRANT AMOUNT. The City agrees to provide the ED/GE grant funds made available to City by County for this Project pursuant to the terms and conditions of the ED/GE grant which are not to exceed \$170,000 or **6.0% of the total project cost, whichever is less**. 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’s requirements and guidelines.

3. GRANT PAYMENT. The City shall distribute the Grant, if at all, only after receiving such funds from the County and only after a permit for the redevelopment is issued. The City shall not be liable for any funds that are requested by Aeroseal for reimbursement and which are subsequently denied by the County pursuant to the ED/GE program's guidelines. Aeroseal shall supply the City evidence of the amount of monies expended by Aeroseal in the furtherance of the Project, containing regular statements or invoices 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 County, through its office and Economic Development, has the authority to meet with any contractor, person or business entity employed by Aeroseal for the Project, and review documentation as it deems necessary to determine that the ED/GE funds are being expended for Project purposes. The City is not obligated to reimburse Aeroseal until after receipt of funds from the County. At the completion of the Project, Aeroseal agrees to provide the City with a report certifying all expenditures for the total Project, including ED/GE funds and all other financial sources in a form acceptable to the City.

4. ED/GE FUNDS ACKNOWLEDGEMENT. Aeroseal agrees that the ED/GE grant is expended by the County in its sole discretion, and that the County's financial assistance is voluntary and that Aeroseal has no legal or equitable claim to any of the ED/GE funds.

5. PAYROLL CREATION. Aeroseal agrees that at least nineteen (19) full-time employees will be hired in the City. The average wage of the new jobs shall be at least \$61,300 per annum, plus benefits. Upon request of the City, Aeroseal agrees to provide at such intervals requested by the City, but not to exceed three (3) years, a report certifying the jobs created/retained and the tax base enhanced/retained as a direct result of the Project.

6. TAXES CURRENT. Aeroseal agrees to pay all respective applicable real and tangible personal property taxes and all municipal earnings tax amounts, including payroll withholding owed in a timely manner.

7. COMPLIANCE WITH ED/GE PROGRAM AND INDEMNIFICATION. Aeroseal agrees to use any Grant money received from the ED/GE program only for the purpose(s) provided in this Agreement, which have been determined to be a valid public purpose under the ED/GE Program. Aeroseal agrees to indemnify, defend and save harmless the City, its officials, agents and employees, from and against all suits, claims, demands or actions, damages, liabilities, judgments, losses, costs and reasonable attorney fees arising out of or flowing from its failure to use the funds for the stated purpose. Further, if any of the ED/GE funds are used for any purpose other than that of the Project, Aeroseal will repay the County the amount improperly expended, and will do so within seven (7) calendar days of written notice to it by the City that such an improper expenditure has occurred, stating therein the amount which the City believes has been misapplied.

8. PREVAILING WAGE COMPLIANCE. Aeroseal agrees to pay, and cause the contractors to pay, State of Ohio prevailing wage rates as ascertained by the Ohio Department of Commerce, Wage and Hour Bureau for the Project as provided in Ohio

Revised Code ("ORC") Sections 4115.03 through 4115.14, and Aeroseal shall comply with the prevailing wage requirements described under ORC Chapter 4115. Aeroseal shall also file such other reports and records with the Prevailing Wage Coordinator at such intervals as may be required by ORC Chapter 4115, including ORC Section 4115.071. Aeroseal shall pay to laborers and mechanics performing Work on the Project the prevailing wage rates of the locality as determined by the Ohio Department of Commerce, Wage and Hour Bureau. If required by law, Aeroseal shall post in a prominent place readily accessible by all workers on the Project site, a legible listing of the current classifications of laborers, workers, and mechanics employed under the Agreement for the Project. Aeroseal shall ensure that the rates posted are current and remain posted in legible condition during the period of the Agreement. Aeroseal shall pay any revised wage rates issued during the term of the Agreement. Aeroseal shall submit with respect to the Project an affidavit to certify that it has complied with all requirements of ORC Chapter 4115.9. INFORMATION WARRANTED. Aeroseal affirmatively covenants that it has made no false statements to the City in the process of obtaining approval of the ED/GE funds.

10. AUDIT. Aeroseal acknowledges that it is receiving public funds and documentation of the use of such funds may be subject to audit by the County Auditor or the State Auditor or their representatives. Aeroseal agrees to allow either the County or its representative, or a representative of the State Auditor's Office, to enter upon its premises during regular business hours, and to supply the books/financial records concerning the receipt and expenditure of the economic development funding received pursuant to the Agreement. Aeroseal also agrees to notify persons or business entities with which they do 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.

11. RECORD RETENTION. Aeroseal agrees that all documentation, financial records and other evidence of project activity under this Agreement shall be maintained by Aeroseal, 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, Aeroseal must notify the City, in writing, of its intent to destroy said records. The City reserves the right to extend the retention period for such records, and if it decides to do so, it will notify Aeroseal in writing, otherwise, the City will issue to Aeroseal a written Certificate of Records Disposal, it being understood that no records in Aeroseal's possession will be destroyed until Aeroseal has received a Certificate of Records Disposal.

12. NO DISCRIMINATION. Aeroseal is not to 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. Aeroseal 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. Aeroseal or any person claiming through them 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 contractor or subcontractors.

13. TRANSFER. This Agreement is not transferable or assignable without the express, written approval of the City.

14. AMENDMENT. 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. This Agreement may only be voided or amended by the written mutual consent of both parties.

15. SEVERABILITY. 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.

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

17. SIGNATURES. 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

[REMAINDER OF PAGE IS BLANK – SIGNATURES TO FOLLOW.]

IN WITNESS WHEREOF, the City and AeroSeal have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above, but actually on the dates by their respective executions.

CITY OF CENTERVILLE, OHIO

Date: _____, 2018

By: Wayne S. Davis
Its: City Manager

Approved as to Form:

Scott A. Liberman, Municipal Attorney

**AEROSEAL, LLC, a Delaware
liability company**

Date: _____, 2018

By: _____
Its: _____

FISCAL OFFICER'S CERTIFICATE

The undersigned, Finance Director of the City of Centerville, Ohio under the foregoing Agreement, certifies hereby that the monies required to meet the obligations of the City during the year 2018 under the foregoing Agreement will, upon the issuance of bonds or notes for that purpose, have been lawfully appropriated for that purpose, and will be in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2018

Finance Director
City of Centerville, Ohio