

ORDINANCE NO. 18-2016

Approving a Grant as Part of the City's Economic Development Venture Program and Authorizing the City Manager to Enter into an Economic Development Grant Agreement for the Same.

WHEREAS, this City Council has established an Economic Development Venture Grant Program in order to assist in creating job and employment opportunities within the City; and,

WHEREAS, this City Council created an Economic Development Fund (the "**Fund**") to provide incentives to businesses wishing to remain, locate or expand within the City; and,

WHEREAS, Wheels Up Partners LLC (the "**Company**") desires to lease office space at 350 West Wilson Bridge Road for a period of no less than five (5) years (the "**Project**"); and,

WHEREAS, the Company, a private aviation business, delivers guaranteed access to type-specific, fleet-specific aircrafts without the cost and burden of purchasing a fractional ownership interest; and,

WHEREAS, the Company, operationally headquartered in New York, New York, has committed to expand their business and workforce in the City of Worthington; and,

WHEREAS, the City seeks to assist the Company in the costs borne under the Project and accommodate an expansion of its operations in the City of Worthington; and,

WHEREAS, as structured, this Venture Grant Project meets the criteria for a grant of funds established in the City Economic Development Incentive Policy;

NOW THEREFORE; BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That there be and hereby is approved a grant to the Company in the amount of Fifty Eight Thousand Dollars (\$58,000.00), to be paid in four (4) installments, in the form of one (1) up-front payment of \$22,000 upon the full execution of the lease for 350 W. Wilson Bridge Road or the issuance of a Certificate of Occupancy, and three (3) subsequent annual installments of \$12,000 each upon the City's confirmation that annual payroll commitments have been met.

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SECTION 2. That the City Manager is hereby authorized and directed to enter into an Agreement with the Company substantially in the form in EXHIBIT A, attached hereto and made a part hereof, establishing the conditions of the grant, with such changes as may be approved by the City Manager and Director of Law and not adverse to the City.

SECTION 3. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington Ohio.

Passed May 16, 2016

/s/ Bonnie D. Michael  
President of Council

Attest:

/s/ D. Kay Thress  
Clerk of Council

Introduced May 2, 2016  
P.H. May 16, 2016  
Effective June 8, 2016

## ECONOMIC DEVELOPMENT GRANT AGREEMENT

THIS ECONOMIC DEVELOPMENT GRANT AGREEMENT (the "**Agreement**") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2016 (the "**Effective Date**"), by and between the City of Worthington, an Ohio municipal corporation with primary offices at 6550 North High Street, Worthington, Ohio 43085 (the "**City**") and Wheels Up Partners LLC, a Delaware limited liability company with primary offices at 220 West 42<sup>nd</sup> Street, 9<sup>th</sup> Floor, New York, New York 10036 (the "**Company**"). The City and the Company are collectively referred to herein as the "**Parties**".

### RECITALS

WHEREAS, pursuant to Ordinance No. 44-2002 (As Amended), Ordinance No. 37-2004, and Ordinance No. 57-2006 (As Amended) (the "**Approval Ordinances**"), and consistent with the goal of encouraging the development and maintenance of commercial and industrial businesses within the City and to provide for the creation of jobs and employment opportunities, the City has adopted an Economic Development Incentive Policy (the "**Policy**"); and

WHEREAS, as authorized in Article VIII, Section 13 of the Ohio Constitution and in accordance with the guidelines established under the Policy, the City has offered to provide the Company an economic development incentive grant to encourage the Company to locate certain of its corporate and administrative offices into commercial office space located within the City (the "**Project**"); and

WHEREAS, the Company has accepted the City's offer to provide an economic development incentive grant and has agreed to enter into this Agreement, which sets forth the Company's respective rights and obligations concerning the payment of such grant.

NOW THEREFORE, the Parties covenant, agree and obligate themselves as follows:

Section 1. Terms of the Grant. The City shall provide to the Company an economic development incentive grant in amounts set forth in this section (the "**Grant**"), which the Company shall use to expand its existing operations. The Company will be located at 350 West Wilson Bridge Road (the "**Premises**") and conduct operations therein. Payments under this Section shall be made to the Company provided that a Certificate of Occupancy (the "**CO**") has been issued for the Premises or that the lease for 350 W. Wilson Bridge Road has been signed, and that this Agreement has been fully executed by both Parties. By accepting the Grant, the Company agrees to meet certain objectives as set forth in Section 3 below (the "**Grant Objectives**").

The Grant shall be payable to the Company pursuant to the following: one (1) one-time payment of Twenty Two Thousand dollars (\$22,000.00) (the "**Initial Grant Amount**") due and payable to the Company upon full execution of the lease for 350 W. Wilson Bridge Road or the issuance of the CO for the Premises (the "**Occupancy Date**"); thereafter, subject to the City's Annual Review under Section 4 of this Agreement to determine if the Company has met the Grant Objectives, upon the subsequent completion of each of three 12-month periods following the Occupancy Date, and until such time as the City has remitted to the Company under this Section

1 a total amount of Fifty Eight Thousand dollars (\$58,000.00) (inclusive of the Initial Grant Amount) (the “**Total Grant Amount**”), the City will pay to the Company Twelve Thousand dollars (\$12,000.00) (each of which constitutes an “**Annual Installment Amount**”). The term of this Agreement shall commence on the Effective Date and end on the later of (i) five (5) years after such Effective Date or (ii) the date on which the City has caused to remit to the Company the Total Grant Amount (the “**Term**”).

Section 2. City's Obligation to Make Payments Not Debt: Payments Limited to Nontax Revenues. Notwithstanding anything to the contrary herein, the obligations of the City pursuant to this Agreement shall not be a general obligation debt or bonded indebtedness, or a pledge of the general credit or taxes levied by the City, and the Company shall have no right to have excises or taxes levied by the City, the State or any other political subdivision of the State for the performance of any obligations of the City herein. Consistent with Section 13 of Article VIII, Ohio Constitution, any payments required to be made by the City pursuant to this Section 2 shall be payable solely from the City's nontax revenues. Further, the obligation of the City to make the payments pursuant to this Agreement shall be in accordance with the Approval Ordinances and subject to certification by the Director of Finance of the City as to the availability of such non-tax revenues.

Section 3. Grant Objectives. In consideration of the City’s agreement to provide the Grant to the Company, the Company agrees to meet and maintain the following Grant Objectives:

(a) The Company shall lease property at 350 West Wilson Bridge Road to facilitate the relocation and expansion of its operations; and

(b) Throughout the Term of this Agreement and during each successive 12-month period therein, the Company shall cause to be paid amounts at least equal to the amounts set forth below, which actual amounts shall solely be used to authorize payment of the Annual Installment Amounts due, if any (the “**Eligible Payroll**”):

(i) At the end of the first 12-month period following the Occupancy Date, the Eligible Payroll shall equal or exceed One Million Five Hundred Thousand dollars (\$1,500,000.00); and

(ii) At the end of the second 12-month period following the Occupancy Date, the Eligible Payroll shall equal or exceed One Million Eight Hundred Thousand dollars (\$1,800,000.00); and

(iii) At the end of the third 12-month period following the Occupancy Date, the Eligible Payroll shall equal or exceed Two Million Two Hundred Eighty Thousand dollars (\$2,280,000.00); and

(iv) At the end of the fourth 12-month period following the Occupancy Date, the Eligible Payroll shall equal or exceed Two Million Seven Hundred Sixty Thousand dollars (\$2,760,000.00); and

(v) At the end of the fifth 12-month period following the Occupancy Date, the Eligible Payroll shall equal or exceed Three Million Two Hundred Forty Thousand dollars (\$3,240,000.00); and

(c) For purposes of this Agreement, Eligible Payroll remitted by the Company shall be equal to the total wages paid to the City by the Company which are subject to City withholding.

Section 4. Annual Review of Grant Objectives; Actions by City. The Company shall make annual reports, in such detail as may reasonably be requested by the City, as to the actual progress of the Company with respect to the Project and the terms of this Agreement. Information requested by the City may include the number of jobs retained, the number of any new jobs created, the amount of payroll attributable to such retained and new jobs, and such other information related to carrying out this Agreement as the City reasonably requires. Prior to remitting the Annual Installment Amount for the respective period, the City shall review the information supplied by the Company to determine whether it is satisfying the Grant Objectives (the “**Annual Review**”).

In the event the City determines in its Annual Review that the Company has met the Grant Objectives during the respective period, the City shall remit to the Company the Annual Installment Amount for that period. If, however, the City determines in its Annual Review that the Company did not otherwise meet the Grant Objectives for the respective period, the Annual Installment Amount shall not be remitted to the Company for that period.

In the event that the City determines at any Annual Review during the Term that the Company has not met the requirement under Section 3 of this Agreement to achieve the Eligible Payroll Amounts, then the City shall have the right to require the Company to repay such portion of the Total Grant Amount previously remitted by the City under this Agreement. Such repayment by the Company shall be paid within sixty (60) days following the date the City notifies the Company of its determination hereunder and the amount of the repayment requested. The City’s failure to notify the Company at any point in time that a repayment is required shall not constitute a waiver of the City’s right to do so.

Section 5. Miscellaneous.

(a) Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by a recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, Notices shall be addressed to:

(i) If to the City:

The City of Worthington  
Attention: Economic Development Manager  
6550 North High Street  
P.O. Box 480  
Worthington, Ohio 43085

with a copy to:

Pamela A. Fox  
Director of Law  
370 Highland Avenue  
Worthington, Ohio 43085

- (ii) If to the Company:  
Attention: Rob Patris, Executive Vice President  
Wheels Up Partners LLC  
350 West Wilson Bridge Road  
Worthington, Ohio 43085

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

(b) Extent of Provisions: No Personal Liability. All rights, remedies, representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. No representation, warranty, covenant, agreement, obligation, or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future official, member, officer, agent or employee of the City or the Company in other than his or her official capacity. No official executing or approving the City's or the Company's participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

(c) Successors. This Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns.

(d) Amendments. This Agreement may only be amended by a written instrument executed by both Parties.

(e) Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(f) Severability. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason:

(i) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into, or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein;

(ii) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof; and

(iii) each section, provision, covenant, agreement, obligation or action, or part thereof shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the fullest extent permitted by law.

(g) Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of the Agreement.

(h) Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Company, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Franklin County, Ohio.

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the Effective Date defined above.

WHEELS UP PARTNERS LLC

By \_\_\_\_\_  
(Name) (Title)

THE CITY OF WORTHINGTON

By \_\_\_\_\_  
Matthew H. Greeson, City Manager

Approved as to form:

\_\_\_\_\_  
Pamela A. Fox  
City of Worthington  
Director of Law