

CITY OF GREEN Exhibit "A" 2018-R36
MUNICIPAL ECONOMIC DEVELOPMENT GRANT AGREEMENT

This Grant Agreement ("Grant Agreement") made and entered into by and between the **City of Green, Ohio**, with its administrative offices located at 1755 Town Park Blvd., PO Box 278, Green, OH, 44232-0278 ("City") and **The Karcher Group, Inc.** an Ohio corporation whose offices are located at 5590 Lauby Road, Suite 8, Green, OH 44720 ("TKG"). (The City and TKG are sometimes collectively referred to herein as the ("Parties")).

WITNESSETH:

WHEREAS, the City has encouraged the development of existing vacant industrial and office real property where occupancy results in new employment opportunities for the City; and

WHEREAS, TKG is in the digital marketing and web development business and intends to expand its operations at 5590 Lauby Road, Suite 8, in the City of Green ("Project Site"); and

WHEREAS, the Mayor has investigated the request of TKG and has recommended City Council's approval of this Grant Agreement because TKG is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City; and

WHEREAS, the City desires to provide TKG with an incentive consistent with the purposes of Section 13 of Article VIII of the Ohio Constitution to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio and the City; and

WHEREAS, City Council has enacted Resolution 2018-R36 authorizing the execution of this Grant Agreement to provide an economic development grant to TKG based on TKG's income taxes withheld on wages earned at the Project Site as more fully defined hereinafter.

NOW THEREFORE, in consideration of the mutual covenants contained in this Grant Agreement and the benefit to be derived by the parties from the execution of this Grant Agreement, the Parties agree as follows:

Section I: Definitions.

A. "Confidential Information" means income tax withholding forms or reports, tax returns and other substantiating evidence used pursuant to Section 718.13 of the Ohio Revised Code; provided, however, Confidential Information shall not include information that became known to the City prior to TKG's disclosure of such information.

B. "Date of Initial Operations" means the date stated in the Grant Agreement in which TKG's facility and equipment is in a condition sufficient to allow for the commencement of Company activities at the Project Site, or as further identified.

C. "Related Member" means a person that with respect to the taxpayer during all or any portion of the taxable year is a Related Entity, is a component member as defined in Section 1563(b) of the

Internal Revenue Code or is a person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code.

D. "Related Entity" means one of the following:

- i) An individual stockholder or a member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty (50) percent of the value of the taxpayer's outstanding stock;
- ii) A stockholder or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, and corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty (50) percent of the value of the taxpayer's outstanding stock;
- iii) A corporation or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation, if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least fifty (50) percent of the value of the corporation's outstanding stock.

E. "Full-Time Permanent Employee" means an individual who is employed by TKG for at least thirty-five hours (35) hours a week.

F. "Part-Time Permanent Employee" means an individual who is employed by TKG for less than thirty-five hours (35) hours a week.

G. "Retained Employees" means the Employees employed by TKG within the City of Green before the Date of Initial Operations and not transferred to the Project Site.

H. "New Employee" means a Full-Time Permanent Employee first employed by TKG at the Project Site after the established Date of Initial Operations; except as otherwise provided, New Employee does not include:

1. Any Employee of TKG who was previously employed in this state by a Related Member of TKG and whose employment was shifted to TKG;
2. An Employee of TKG who is employed in a position that was relocated to the Project Site from other operations in this state or from operations of a Related Member of TKG in this state and the position was not refilled; or
3. A child, grandchild, parent or spouse (other than a spouse who is legally separated from the individual) of any individual who is an Employee of TKG and who has a direct or indirect ownership interest of at least five (5) percent in the profits, capital or value of TKG. Such ownership interest shall be determined in accordance with Section 1563 of the Internal Revenue Code and the regulations prescribed.

I. "Tax Year" means the calendar year for which taxes are charged.

J. "Collection Year" means the calendar year in which taxes are collected.

K. “Grant Year” means the Tax Year in which a municipal economic development grant is received by TKG.

L. “Municipal Income Tax” means an annual tax that is imposed by the City on income at the current rate as defined in Chapter 880 of City’s Codified Ordinances.

M. “New Payroll Withholding Tax” means the total amount of Municipal Income Tax withheld by TKG from the compensation of New Employees during the applicable Tax Year minus any refunds. “Retained Payroll Withholding Tax” means the total amount of Municipal Income Tax withheld by TKG from the compensation of Retained Employees during the applicable Tax year minus any refunds.

N. “Reconciliation of City of Green Income Tax Withheld from Wages Form” means the form submitted by TKG showing the amount of payroll taxes withheld and paid during the applicable Tax Year to the City.

O. “Grant Payment” means the payment made by the City to TKG from revenue sources determined by the City based on a percentage of New Payroll Withholding Tax derived from job creation and retention from TKG as laid out in Section III.

P. “Non-Tax Revenues” as used in this Grant Agreement means all monies of the City, which are not monies raised by taxation, to the extent available for the purpose of making the Grant Payment required, including, but not limited to the following:

- i) Grants from the United States of America and the State;
- ii) Payments in lieu of taxes now or hereafter authorized by State statute to the extent pledged to pay debt charges on City indebtedness;
- iii) Fines and forfeitures which are deposited in the City’s General Fund;
- iv) Fees deposited in the City’s General Fund for services provided and from properly imposed licenses and permits;
- v) Investment earnings on the City’s General Fund;
- vi) Investment earnings on other funds of the City that are Granted to the City’s General Fund;
- vii) Proceeds from the sale of assets which are deposited in the City’s General Fund;
- viii) Gifts and donations;
- ix) All rental payments which are deposited in the City’s General Fund.

Section II: Company’s Determinations.

TKG has continued to grow since its formation in 1997 and has had its headquarters in Green, Ohio. TKG shall expand its digital marketing and web development operations and related employee services currently located at 5590 Lauby Road, Suite 8, Green, OH 44720.

Section III: Job Retention and Creation Requirements.

A. Retention

TKG shall retain existing employment levels (“Retained Employees”) at the facility located at 5590 Lauby Road, Suite 8, Green, OH 44720 as of December 1, 2017. TKG, as of December 1,

2017, has 38 Full-Time Permanent Employees with an annual payroll of approximately \$ 2,170,000.

B. New Job Creation

TKG is committed to hiring, within a five (5) year period, beginning January 1, 2018 and concluding five (5) years thereafter, at least ten (10) new Full-Time Permanent Employees at the Project Site with an average annual salary per employee of \$70,000.

Section IV: Grant Percentage & Term.

The City shall pay to TKG, as a Grant Payment from Non-Tax Revenues, a sum equal to Fifty Percent (50%) of the New Payroll Withholding Taxes paid on the final net annual payroll derived from the hiring of the ten (10) New Full-Time Permanent and a sum equal to Twenty-Five Percent (25%) of the Retained Payroll Withholding Taxes paid on the final net annual payroll derived from TKG retaining thirty-six (36) full-time permanent employees and one (2) part-time permanent employee with an average annual salary per employee of \$54,000.00. The Grant Payment shall be paid based on New Payroll Withholding Taxes for a period of five (5) Tax Years.

The Grant Payment shall be paid for Tax Years 2018-2022. The Grant Term shall begin in Tax Year 2018 (January 1, 2018) and terminate at the end of Tax Year 2022 (December 31, 2022) given that TKG maintains its current levels of employment within the City of Green and delivers on its projected job creation. TKG will meet new hiring requirements within five (5) years.

The following chart illustrates the terms and percentage amounts:

Job Creation – The Karcher Group

New Employees	Average Wage	Payroll	Income Taxes Paid	Grant Payment Percentage	Annual Grant Payment to TKG
5	\$70,000	\$ 350,000	\$ 7,000	50%	\$ 3,500
10	\$70,000	\$ 700,000	\$ 14,000	50%	\$ 7,000
10	\$70,000	\$ 700,000	\$ 14,000	50%	\$ 7,000
10	\$70,000	\$ 700,000	\$ 14,000	50%	\$ 7,000
10	\$70,000	\$ 700,000	\$ 14,000	50%	\$ 7,000
		\$ 3,150,000			\$ 31,500

Job Retention – The Karcher Group

Year	Retained Employees	Payroll	Income Taxes Paid	Grant Payment Percentage	Annual Grant Payment to TKG
2018	38	\$ 2,177,716	\$ 43,554	25%	\$ 10,889
2019	38	\$ 2,177,716	\$ 43,554	25%	\$ 10,889
2020	38	\$ 2,177,716	\$ 43,554	25%	\$ 10,889
2021	38	\$ 2,177,716	\$ 43,554	25%	\$ 10,889
2022	38	\$ 2,177,716	\$ 43,554	25%	\$ 10,889
Total		\$ 10,888,582			\$ 54,443

Section V: Grant Payment.

The Grant shall be paid to TKG within ninety (90) days of the receipt of TKG's Annual Report, Reconciliation of City of Green Income Tax Withheld from Wages Form and any supporting

documentation requested by the City from TKG. TKG's Annual Report will be considered tentative and subject to audit by the City of Green Finance Department. Any obligation of the City created by or arising out of this Grant Agreement shall not be a general debt on its part nor give rise to any pecuniary liability of the City, but shall be payable solely from Non-Tax Revenues as determined by the City. The Grant Payment(s) due shall be made by check payable to TKG and addressed to TKG's Chief Financial Officer.

Date of Initial Operations at the Project Site shall be January 26, 2018.

Section VI: Company's Operation.

TKG shall continue to maintain its full operations at the Project Site for the same number of Calendar Years as the term of the Grant ("Continuation Period"). The Continuation Period will begin January 1, 2023 and end on December 31, 2027.

Section VII: Effect of Failure to Maintain Operations.

If TKG fails to maintain full operations at the Project Site for the Continuation Period, TKG may be required to payback, in the City's sole and absolute discretion, in whole or in part, any Grant monies received. In determining the portion of any Grant to be repaid, the City shall consider the effect of market conditions on TKG's Project.

Section VIII: Reporting.

A. Annual Reports

TKG shall be required to provide Annual Reports to the City, which shall be on forms provided by the City and shall include any information reasonably required by the City to evaluate TKG's compliance with this Grant Agreement. The Annual Report shall specify, at a minimum, the number of eligible Employees, the annual payroll of the eligible Employees, the average wage of the eligible Employees, the Payroll Withholding Taxes withheld in connection with the eligible Employees, and any other information the City deems appropriate to perform its duties. TKG's Annual Report to the City shall be certified as accurate and complete as evidenced by the original signature of an authorized officer of TKG. Annual Reports are due to the City of Green Planning Department, no later than March 1 of each calendar year.

At the signing of this agreement, TKG shall provide to the City of Green a listing of current employees' names, job titles, home addresses, average hours worked per week, date of initial employment and their annual wages to determine the base benchmark.

Each year TKG shall provide, at a minimum to the City of Green Finance Department and the City of Green Planning Department, a copy of their Reconciliation of City of Green Income Tax Withheld from Wages Form showing the amount of payroll taxes withheld and paid during the applicable Tax Year to the City. TKG shall also provide a listing containing each employee's name, average hours worked per week and wages for that year.

In the event that the City determines TKG has submitted an Annual Report containing erroneous data or data not supported by the records established and maintained under this Grant Agreement, the City may, after providing written notice, require TKG to resubmit corrected Annual Reports for the Tax Year(s) in which such Annual Report(s) were filed.

B. Continuation Reports

No later than March 1 of each calendar year following a Continuation Period year, TKG shall submit to the City written notice that includes, but is not limited to, the total number of Retained and New Employee levels, Retained and New Employee annual payroll levels, Retained and New Employee average wage rates, and any other information demonstrating that TKG maintained substantial operations at the Project Site. The Continuation Report shall be itemized by Retained and New Employees and management employees and shall be certified as accurate and complete as evidenced by the original signature of any authorized officer of TKG.

Section IX: Non-Compliance and Termination.

In the event that TKG fails to achieve and/or maintain the minimum amounts required, or if TKG materially fails to fulfill any other obligation under this Grant Agreement, or upon just cause, the City shall give written notice of such failure(s) to TKG. The notice shall provide TKG with a thirty (30) day period to cure any and all defaults under this Grant Agreement.

Upon expiration of the thirty (30) day notice period, TKG is still in violation of any provision of this Grant Agreement, the City may unilaterally and prospectively reduce the percentage and term of the Grant or the City may immediately terminate the Grant Agreement in its entirety. The City may also require TKG to refund any or all Grant Payments received under this Grant Agreement.

Section X: Amendments or Modifications.

Either party may, at any time, during the Term of this Grant Agreement request amendments or modifications, but such changes or amendments shall not be effective until executed by the Parties. Requests for amendment(s) or modification(s) to this Grant Agreement shall be in writing and shall specify the requested change(s) and the justification of such change(s). The Parties shall review the request for modification(s) in terms of legislation, regulations, and goals relating to the Project. Should the parties consent to modification(s) of the Grant Agreement, an amendment shall be created, approved, and executed in the same manner as the original Grant Agreement. Such amendment(s) shall not be effective until a written amendment is signed by all Parties. Notwithstanding the above and pursuant to Ohio Revised Code Section 122.17(E) and Ohio Administrative Code Section 122:7-1-08, the City may amend the terms of the Grant Agreement, in appropriate circumstances, without the consent of TKG and without a written amendment executed by all Parties.

Section XI: Records, Access and Maintenance.

TKG is required to establish and maintain all relevant supporting documentation used in the generation of this Grant Agreement and its reporting requirements for at least four (4) years beyond the last Calendar Year of the Continuation Period. TKG shall make available for examination all of its records with respect to matters covered by this Grant Agreement including, but not limited to, records of personnel and conditions of employment and shall permit the City and appropriate state agencies or officials to audit, examine, and make excerpts or transcripts from such records. TKG shall maintain and organize its records in such form so that, in case of a review of its records or an audit, it is able to verify and document the information it provides in its Annual and Continuation Reports pursuant to this Grant Agreement. TKG shall make available, during normal business hours, company records for review and verification by the City and any appropriate state agency or official as often as the City or the appropriate state agency or official may reasonably deem necessary.

The parties further agree that records required by the City with respect to any questioned costs, audit disallowances, litigation, or dispute between the City and TKG shall be maintained for the time needed for the resolution of the question and that in the event of early termination of this Grant Agreement, or if for any other reason the City shall require a review of the records related to the Project, TKG shall, at its own cost and expense, segregate all such records related to the Project from its other records of operation.

Section XII: Audits and Inspections.

Final determination of the number of New Employees created, Payroll Withholding Taxes received, and findings as to all other matters pertaining to compliance with this Grant Agreement shall be made by the City. TKG authorizes the City, including, but not limited to, the Mayor, Finance Department, Law Department and/or Planning Department to review and inspect its City of Green Income Tax Division records as necessary.

Section XIII: Forbearance Not a Waiver.

No act of forbearance or failure to insist on the prompt performance by TKG of its obligations under this Grant Agreement, either express or implied, shall be construed as a waiver by the City of any of its rights under this Grant Agreement.

Section XIV: Equal Employment Opportunity.

TKG will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, veteran status, disability or age. TKG will incorporate the requirements of this Section in all of its respective employment applications, hiring practices, and contracts.

Section XV: Conflict of Interest.

No personnel of TKG, any subcontractor of TKG, or public official, who exercises any functions or responsibilities in connection with the review or approval of the Grant Agreement shall, voluntarily or involuntarily, acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of their functions or responsibilities with respect to this Grant Agreement. Any such person who, prior to or after the execution of this Grant Agreement, acquires any personal interest, involuntarily or voluntarily, in TKG shall immediately disclose their interest to the City and TKG in writing. Thereafter, such person shall not participate in any action affecting this Grant Agreement unless the parties determine that, in light of the personal interest disclosed, their participation in any such action would not be contrary to the public interest.

Section XVI: Governing Law.

This Grant Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to matters of validity, construction, effect, and performance.

Section XVII: Adherence to State, Local and Federal Laws, Regulations.

This Grant Agreement shall be governed by and construed in accordance with the laws of the City of Green, without giving effect to any choice or conflict of law provisions or rules that would cause the application of the laws of any other jurisdiction.

TKG also agrees to comply with all applicable federal, state, and local laws related to the Project. TKG accepts full responsibility for payments of all unemployment compensation, insurance premiums, worker's compensation premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by TKG. In the event of a dispute arising out of this Grant Agreement, the parties agree to continue in good faith to discuss and attempt to resolve the issues of the dispute through negotiation. If litigation ensues, the parties may use any and all Confidential Information necessary to support its case despite the provisions of Section XX.

Section XVIII: Outstanding Liabilities.

TKG does not owe:

- A. Any delinquent taxes to the State of Ohio, the City of Green or a political subdivision of the State;
- B. Any moneys to the State of Ohio or a state agency for the administration or enforcement of any environmental laws of the State; and
- C. Any other moneys to the State of Ohio, a state agency, the City of Green or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

Section XIX: Falsification of Information.

TKG affirmatively covenants that it, any parent corporation of TKG, and any other Related Entity or Member has made no false statements to the City in the process of obtaining this Grant. If it is discovered that TKG, any parent corporation of TKG, or other Related Entity or Member has knowingly made a false statement to the City to obtain this Grant, TKG shall be required to return all benefits immediately pursuant to Ohio Revised Code Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency, the City of Green or a political subdivision pursuant to Ohio Revised Code Section 9.66(C)(1).

Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code 2921.13(F)(1), which is punishable by a fine of not more than \$1,000.00 and/or a term of imprisonment of not more than one hundred eighty (180) days.

Section XX: Confidentiality.

The Parties agree:

- A. Not to disclose Confidential Information of the other party or its agents, to third parties (excluding a party's agents or representatives);
- B. Not to use the Confidential Information except for enforcement of or in furtherance of the purposes of this Grant Agreement; and
- C. The Confidential Information of a party is and shall remain the property of the disclosing party.

However, Confidential Information as it means in this Grant Agreement, shall not preclude the City from releasing any information as required by law.

Section XXI: Forum and Venue.

All actions regarding this Grant Agreement shall be forumed and venued in a court of competent subject matter with jurisdiction in Summit County, Ohio.

Section XXII: Indemnification.

TKG agrees to hold the City harmless from any and all liabilities or claims caused by or resulting from TKG's performance of the obligations or activities in furtherance of the Project. TKG agrees to reimburse the City for all costs incurred in defending itself against any such claims or legal actions.

Section XXIII: Entire Grant Agreement.

This Grant Agreement, its exhibits, and any documents referred to herein set forth the complete understanding of the Parties and merges and supersedes any and all other discussions, agreements, representations, and understandings, either oral or written, between the parties with respect to the subject matter of this Grant Agreement.

Section XXIV: Notices.

All notices, consents, demands, requests, and other communications, which may be or are required to be given hereunder, shall be in writing and shall be deemed duly given if personally delivered, sent by electronic mail with confirmation of delivery, sent by facsimile with confirmation, sent by Private Carrier, or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth in this Section or to such other address as the Parties may designate in writing.

If to the City of Green:

City of Green

Attention: Gerard M. Neugebauer, Mayor

PO Box 278, 1755 Town Park Blvd.

Green, Ohio 44232-0278

Phone: (330) 896-6602

E-mail: gneugebauer@cityofgreen.org

With a copy to:

City of Green Planning Department

Attention: Wayne L. Wiethe, Director of Planning

PO Box 278, 1755 Town Park Blvd.

Green, OH 44232-0287

Phone: (330) 896-6614

Email: wwiethe@cityofgreen.org

If to The Karcher Group:

Attention: Geoff Karcher, President

5590 Lauby Road, Suite 8

Green, OH 44720

Phone: (330) 493-6141

Email: geoff@tkg.com

Section XXV: Assignment.

This Grant Agreement nor any rights, duties, or obligations described shall be assigned or transferred by TKG without the express, legislative approval of the City. Such consent shall not be unreasonably withheld. The City acknowledges that it would be unreasonable to withhold consent in the event of a proposed transfer or assignment to any parent, subsidiary or affiliate of TKG 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 City, to the City's reasonable satisfaction, its financial ability, business experience and intentions to continue its operations in full at the Project Site in the City in a manner similar to that of TKG in all pertinent respects and the proposed transferee and assignee acknowledges and consents in writing to the assignment of this Grant Agreement.

Section XXVI: Successor in Interest.

Where the City has consented to an assignment as described in Section XXV, each and all of the terms and conditions of this Grant Agreement shall extend, bind, and inure to the benefit of not only TKG, but to its successors and assigns.

Section XXVII: Severability

Provisions of this Grant Agreement shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision(s) of this Grant Agreement are held to be prohibited by or invalid under applicable law, the provision(s) shall be ineffective only to the extent of the prohibition or invalidity, without invalidating the remaining provisions of this Grant Agreement.

Section XXVIII: Counterparts

This Grant Agreement may be signed in any number of counterparts, each of which constitute an original, but all of which constitute one Grant Agreement.

Section XIX: Pronouns.

The use of any gender pronoun shall be deemed to include all the other genders, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

Section XXX: Headings.

Section headings contained in this Grant Agreement are inserted for convenience only and shall not be deemed to be a part of this Grant Agreement.

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed and effective as of the date signed by the Mayor of the City of Green.

The Karcher Group, Inc.

By: _____

Printed Name: Geoff Karcher

Title: President

Date: _____

City of Green

By: _____

Printed Name: Gerard M. Neugebauer

Title: Mayor

Date: _____

Approved as to form:

William G. Chris, Director of Law, Interim