

RESOLUTION NO. 17-12
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Brooks Compton ON THE 16th
DAY OF April, 2012.

**A RESOLUTION AUTHORIZING AND DIRECTING THE CITY
MANAGER TO ENTER INTO AN ECONOMIC DEVELOPMENT
(PIR) GRANT AGREEMENT WITH TOTAL QUALITY
LOGISTICS, LLC.**

WHEREAS, Total Quality Logistics, LLC. (hereinafter "TQL") desires to expand its business operations located at 6525 Centerville Business Parkway within the City of Centerville; and

WHEREAS, the expansion will consist of making certain leasehold improvements to the facility located at 6525 Centerville Business Parkway and these expanded operations of TQL will create jobs and employment opportunities and will improve the economic welfare of the people of the State of Ohio and the residents of the City; and

WHEREAS, the City desires TQL to make these improvements and continue to operate within the City to create jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio and the residents of the City; and

WHEREAS, the City desires to award a Property Investment Reimbursement Grant ("PIR") to TQL to offset costs such as architecture, design, build out, construction, as well as one time expansion costs, such as new employee recruitment, costs for training and costs associated with business operation's disruption of revenue;

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1: That the City Manager is authorized and directed to enter into an Economic Development (PIR) Grant Agreement with TQL, Inc. in a form with terms similar to the Agreement attached hereto as Exhibit "A" and incorporated herein.

Section 2: That the City Manager is hereby authorized and directed to do any and everything necessary to carry out the terms of said Agreement.

PASSED THIS 16th day of April, 2012.

C. Mark Kuyed
Mayor of the City of
Centerville, Ohio

ATTEST:

Debra A. James
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. 17-12, passed by the Council of the City of Centerville, Ohio on the 16th day of April, 2012.

Debra A. James
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

Total Quality Logistics, LLC

Dated as of April 16, 2012

ECONOMIC DEVELOPMENT GRANT AGREEMENT

This Economic Development Grant Agreement (the "Agreement") is made and entered into as of _____, 2012, by and between the CITY OF CENTERVILLE, OHIO (the "City"), a municipal corporation organized and existing under the constitution and the laws of the State of Ohio and Total Quality Logistics, LLC an Ohio limited liability company (the "Company") under the circumstances summarized in the following recitals:

WITNESSETH:

WHEREAS, the Company desires to expand its business operations (the "Project") located at 6525 Centerville Business Parkway within the City of Centerville; and

WHEREAS, the Project will create jobs and employment opportunities and will improve the economic welfare of the people of the State of Ohio and the residents of the City; and

WHEREAS, the City desires the Company to expand its business which will create jobs and employment opportunities and improve the economic welfare of the people of the State of Ohio and the residents of the City; and

WHEREAS, the City desires to award a Property Investment Reimbursement Grant ("PIR") to the Company to offset costs such as architecture, design, build out, construction, as well as one time business expansion costs, such as new employee recruitment, costs for training and costs associated with business operation's disruption of revenue; and

WHEREAS, the City warrants that (i) it is a duly organized and validly existing municipal corporation and has the full right, power and authority to enter into this Agreement and to consummate or cause to be consummated all of the obligations of the City set forth in this Agreement; (ii) the person or persons executing this Agreement have been fully authorized and empowered to bind the City and all necessary and required actions, meetings, hearings and resolutions approving this Agreement have been completed and this Agreement constitutes a legal, valid and binding agreement of the City enforceable against the City in accordance with its terms; and (iii) upon request, the City shall deliver to the Company an opinion letter from the City's legal counsel that the City is fully authorized and empowered to execute this Agreement and that all legal action has been taken and all procedures and processes completed, that the Agreement is legal and binding and that all necessary third party approvals have been obtained; and

WHEREAS, the Company warrants that (i) it is in compliance with all applicable city, county, state and federal laws and ordinances; (ii) it is a duly organized and validly existing Ohio limited liability company and has the full right, power and authority to enter into this Agreement and to consummate or cause to be consummated all of the obligations of the Company set forth in this Agreement; and (iii) the person or persons

executing this Agreement have been fully authorized and empowered to bind the Company and all necessary and required actions, meetings, and resolutions approving this Agreement have been completed and this Agreement constitutes a legal, valid and binding agreement of the Company enforceable against the Company in accordance with its terms.

NOW, THEREFORE, in consideration of the foregoing promises and the covenants and agreements contained in this Agreement, the City and the Company agree as follows:

Section 1. The Company agrees to expand its business operations for the Project at 6525 Centerville Business Parkway. The expansion will include, but may not be limited to, constructing certain leasehold improvements to the building leased by the Company located at 6525 Centerville Business Parkway as well as hiring and training new employees to operate and further develop the expanded business operations. The Company, among other things, further agrees to use any provided funds for training and to offset any lost revenue due to disruption of business operations during the time of the improvements and expansion.

Section 2. Annually, for each of five consecutive years unless earlier terminated, commencing with the first calendar year after the Company realizes a net increase in annual payroll tax collected of at least \$7,000.00, the City shall, on or prior to April 1, pay to the Company an amount equal to 20% in the first two years and 15% in the remaining three years of the increased annual payroll tax collected from the Company and received by the City in the prior year using the amount collected in 2011 as a baseline. For calculation purposes, the Federal Bureau of Labor Statistics Consumer Price Index will be used to determine each subsequent year's baseline payroll tax collection level in order to identify true payroll growth adjusted for inflation.

Section 3. The annual PIR grant will expire on the earlier of five (5) years from the date that the Company qualifies for the grant, or if Company fails to maintain the requisite \$7,000.00 in increased annual payroll tax collected as referenced in Section 2 of this Agreement, whichever occurs first.

Section 4. In the event that the Company fails to qualify for the PIR grant by the end of tax or calendar year 2013, whichever is later, the grant award provided herein shall become null and void.

Section 5. PIR grant funds received by the Company shall be used by the Company to offset one time business expansion costs, including but not limited to, new employee recruitment, costs for training and costs associated with business operation's disruption of revenue related to the Company's expansion.

Section 6. From the date of execution of this Amendment until terminated, the Company shall hereby annually or upon request release to the City of Centerville Income Tax Administrator, City Manager, Finance Director, Economic Development

Administrator, or their respective designees, any and all reasonable financial information required by the Tax Administrator in order to verify that Company qualifies for the grant payment; provided, however, that to the fullest extent applicable under the law, the City shall maintain the requisite level of confidentiality as to any and all financial information provided by the Company. Additionally, the Company grants City the authority to verify proper payment of taxes (non-delinquency) to other applicable governmental jurisdictions.

Section 7. All amounts to be paid by the City pursuant to this Agreement are payable solely from Non-tax Revenues available in the year any payment is due. If sufficient Non-tax Revenues are not available in any year to pay the amount due in that year, the City has no obligation to pay in that year any amount in excess of the amount of Non-tax Revenues available for payment; provided, however, (i) nothing in this Agreement shall be deemed to prohibit the City, on its own volition, from using, to the extent it is lawfully authorized, any other resources or revenues to fulfill any of its obligations under this Agreement, and (ii) any amount due that is not paid in the year it is due shall be paid by the City in the first succeeding year in which Non-tax Revenues are available to the City to pay the amount not previously paid. For purposes of this Section, "Non-tax Revenues" means all money of the City that is not raised by taxation including, but not limited to: (i) grants from the United States of America and the State of Ohio lawfully available for the purpose articulated in this Agreement; (ii) payments in lieu of taxes now or hereafter authorized by the laws of the State of Ohio and lawfully available for the purpose articulated in this Agreement; (iii) fines and forfeitures that are deposited into the City's general fund; (iv) fees that are deposited into the City's general fund; (v) investment earnings on funds of the City that are lawfully credited to the City's general fund; (vi) proceeds from the sale of assets that are deposited in the City's general fund; (vii) rental income that is deposited in the City's general fund; (viii) gifts and donations that are deposited in the City's general fund; and (ix) charges for services and payments received in reimbursement for services that are deposited in the City's general fund. In the event sufficient Non-tax Revenues are not available to pay the Company for two consecutive years, the Company shall be able to, at its sole discretion, terminate this Agreement immediately without penalty.

Section 8. The Company agrees to comply with all applicable federal, state and local laws with regards to its operations and with the Project, including but not limited to prevailing wage requirements of ORC Chapter 4115, if applicable.

Section 9. In the event the Company should become delinquent in paying any city, county, state, or federal taxes, without remedy for 180 consecutive days, or if the Company is in violation of any city, county, state or federal law without remedy for 90 consecutive days, City shall be able to, at its sole discretion, terminate this Agreement immediately. In the event this Agreement is terminated under the provisions of this section, any amounts due to the Company not yet paid will be forfeited by the Company. Additionally, if this Agreement is terminated under the provisions of this section, the Company shall be obligated to repay to City any and all grant proceeds previously paid to the Company under this Agreement.

Section 10. In the event the Company should discontinue business operations within the City during the term of this Agreement, or within three years of the Agreement's expiration or termination, any amounts due to the Company not yet paid will be forfeited by the Company and not paid by City. Additionally, the Company shall be obligated to repay to City any and all grant proceeds previously paid to Company under this Agreement.

Section 11. 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 recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the City or the Company, as appropriate, at the appropriate Notice Address or to such other address as that recipient shall have previously notified the sender of in writing as provided in this Section. The City or the Company, by notice given hereunder, may designate any further addressee or different Notice Address to which subsequent notices, certificates, requests, or other communications shall be sent.

For purposes of this Section, Notice Address means:

- (a) As to the City: City of Centerville
100 West Spring Valley Road
Centerville, OH 45458-3759
Attention: City Manager

- With copy to: Scott A. Liberman
Altick & Corwin Co., L.P.A.
One South Main Street, Suite 1700
Dayton, OH 45402

- (b) As to the Company: Total Quality Logistics, LLC
PO Box 799
Milford, OH 45150
Attention: Mike Zins, CFO

Section 12. All representations, warranties, covenants, agreements, and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of these representations, warranties, covenants, agreements, or obligations shall be deemed to be a representation, warranty, covenant, agreement, or obligations of any present or future member, officer, agent, or employee of the City in other than his or her official capacity.

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 member, officer,

agent, of employee of the City or the Company in an individual capacity. No official executing or approving the City's or the Company's participation in this Agreement shall be liable personally under this Agreement.

Section 13. This Agreement shall inure to the benefit of and shall be binding upon the City and the Company and their respective successors and assigns.

The City and the Company shall each observe and perform faithfully at all times all its covenants, agreements, and obligations under this Agreement.

Each covenant, agreement, and obligations of the City under this Agreement is binding upon each officer of the City who may have the authority or duty from time to time under law to take any action which may be necessary or advisable to observe or perform that covenant, agreement, or obligation.

Section 14. 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.

Section 15. 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,

- (a) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any covenant, agreement, obligations, or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if illegal or invalid portion were not contained herein or therein,
- (b) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof, and
- (c) 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 that manner and to the full extent permitted by law.

Section 16. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes, and other matters in question regarding the City and its agents and employees, and the Company and its employees, contractors, subcontractors, and agents arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the State of Ohio.

Section 17. All representations and warranties of the Company and the City contained in this Agreement shall survive the execution and delivery of this Agreement.

City and the Company 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: _____, 2012

By: Gregory B. Horn
Its: City Manager

**TOTAL QUALITY LOGISTICS,
LLC, an Ohio limited liability
company**

Date: _____, 2012

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 2012 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: _____, 2012

Finance Director
City of Centerville, Ohio