

RESOLUTION NO. 16-22
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Bill Serr ON THE 7th
DAY OF March, 2022.

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

WHEREAS, Total Quality Logistics, LLC, (hereinafter “Company”) rents the property located at 6525 Centerville Business Parkway within the City of Centerville (the “Property”); and

WHEREAS, the Company desires to expand its business operations at the Property; and

WHEREAS, the expansion will consist of making certain leasehold improvements to the facility located at the Property and these improvements 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 make these improvements and allow them to locate and 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 (“PIR”) Grant to the Company to offset costs such as architecture, design, construction, and other costs associated with the redevelopment of the subject property;

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 Total Quality Logistics, LLC, in a form with terms substantially 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.


Section 3: That this resolution is to take effect at the earliest date allowed by law.

PASSED THIS 7th day of March, 2022.



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. 16-22, passed by the Council of the City of Centerville, Ohio on the 7th day of March, 2022.



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"

**ECONOMIC DEVELOPMENT GRANT
AGREEMENT**

BY AND BETWEEN

City of Centerville

AND

Total Quality Logistics, LLC

Dated as of February 28, 2022

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ECONOMIC DEVELOPMENT GRANT AGREEMENT

This Economic Development Grant Agreement (the “Agreement”) is made and entered into as of _____, 2022 (“EFFECTIVE DATE”), 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”), the scope of which is described on Exhibit A, 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 operations 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 associated with the Project, such as costs for new employee recruitment, hiring and training and costs of computer and other office equipment for new employees; 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) to its knowledge, 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 at **6525 CENTERVILLE BUSINESS PARKWAY** (or in Company's discretion, at another office space located in the City). Expansion costs will include, but may not be limited to, costs related to recruitment, hiring and training and costs of computer and other office equipment for new employees. If the Company relocates to another office space located in the City, then the parties will execute an amendment to this Agreement in a form reasonably acceptable to the parties reflecting the new address within the City.

Section 2. Commencing with calendar year 2021, unless this Agreement is earlier terminated pursuant to the terms hereof, the City, on or prior to April 1st of each respective following year (i.e., on or prior to April 1, 2022 for 2021), shall, pay to the Company an amount equal to 10% of the increased annual payroll tax collected from the Company and received by the City in the respective calendar year using the amount collected in 2020 as a baseline (\$4,365,699).

Unless earlier terminated pursuant to the terms hereof and subject to the execution of a lease extension for its current business operations at **6525 CENTERVILLE BUSINESS PARKWAY** (or execution of a lease agreement for a new office space located within the City), the term of this agreement shall be extended for an additional two (2) years. If extended, for calendar year 2022 and continuing for calendar year 2023, unless this Agreement is earlier terminated pursuant to the terms hereof, the City, on or prior to April 1st of each respective following year (i.e., on or prior to April 1, 2023 for 2022), shall pay to the Company an amount equal to 15% of the increased annual payroll tax collected from the Company and received by the City in the respective calendar year (i.e., in calendar year 2022 or 2023) using the amount collected in 2020 as a baseline (\$4,365,699).

Notwithstanding the foregoing or anything otherwise to the contrary herein, the Company shall have the right to elect to not have this Agreement be extended as provided in this Section 2, and may exercise such right by providing written notice to the City of its exercise of such right on or before expiration of the initial term, and in such event, this Agreement shall terminate upon expiration of the initial term.

Said annual payments shall be reduced by the amount of any refunds or adjustments subsequently filed or requested by any Company employees, and approved or paid by the City to any Company employee. 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. Unless earlier terminated pursuant to the terms of this Agreement or extended as set forth in Section 2 above, the initial term of this Agreement will expire on the earlier of one (1) year from the Effective Date, or if Company fails to maintain 95% of the 2020 baseline year annual payroll tax collected as referenced in Section 2 of this Agreement, whichever occurs first.

Section 4. PIR grant funds received by the Company under this Agreement shall be used by the Company for payment or reimbursement of business expansion costs, including but not limited to, costs related to new employee recruitment, hiring and training, and costs associated with the purchase of computer and other office equipment for new employees.

Section 5. From the Effective Date until this Agreement expires or is terminated pursuant to the term of this Agreement, the Company shall hereby annually or upon request release to the City of Centerville Income Tax Administrator, City Manager, Finance Director, Development Director, 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 as confidential and shall not disclose 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 6. 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 7. 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 8. In the event the Company should become delinquent in paying any city, county, state, or federal taxes (subject to any rights of Company to dispute under applicable law), without remedy for 30 consecutive days after written notice from City of such delinquency, or if the Company is in violation of any city, county, state or federal law relating to its operations at the location of the Project, without remedy for 30 consecutive days after written notice from City of such violation, 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 under this Agreement 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 9. In the event the Company should discontinue business operations within the City during the term of this Agreement, any amounts due to the Company under this Agreement not yet paid will be forfeited by the Company and not paid by City. Additionally, in such event, the Company shall be obligated to repay to City any and all grant proceeds previously paid to Company under this Agreement.

Section 10. 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 1590
Dayton, OH 45402

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(b) As to the Company: Total Quality Logistics, LLC
PO Box 799
Milford, OH 45150
Attention: Courtney Zeuch, Sr. Tax
Manager

With a copy to: Total Quality Logistics, LLC
4289 Ivy Pointe Blvd.
Cincinnati, OH 45245
Attention: Legal Department

Section 11. 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, or 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 12. 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 13. 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. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 14. 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 15. 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 16. This Agreement constitutes the entire agreement between the parties and terminates and supersedes any and all prior agreements and understandings between the parties with respect to the subject matter of this Agreement. All representations and warranties of the Company and the City contained in this Agreement shall survive the execution and delivery of this Agreement. In addition, all of the Company's and the City's covenants and obligations under this Agreement which by their nature involve performance after the end of the term of this Agreement, including any extension thereof, or which cannot be ascertained to have been fully performed until after the end of the term of this Agreement, including any extension thereof, shall survive the expiration or sooner termination 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: _____, 2022

By: Wayne S. Davis
Its: City Manager

Approved as to form:

Scott A. Liberman, Municipal Attorney

**TOTAL QUALITY LOGISTICS,
LLC**

Date: _____, 2022

By: _____
Its: _____

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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 2021 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: _____, 2022

Finance Director
City of Centerville, Ohio

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Exhibit A: Project Scope

TOTAL QUALITY LOGISTICS, LLC intends to expand its existing operation at **6525 CENTERVILLE BUSINESS PARKWAY** (or in Company's discretion, at another office space located within the City). The Company intends that the expansion will result in the retention of 71 and creation of 23 new jobs in the City of Centerville, and expects an estimated \$5.5 million in annual payroll in the City by the end of calendar year 2023.

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