

RESOLUTION NO. 63-22
CITY OF CENTERVILLE, OHIO

15th SPONSORED BY COUNCILMEMBER Duke Lunsford ON THE
DAY OF August, 2022.

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AN AGREEMENT REGARDING ED/GE
FUNDS WITH ARDENT TECHNOLOGIES, INC.**

WHEREAS, in December 2021, the City of Centerville submitted a grant application to Montgomery County for Economic Development/Government Equity (ED/GE) program funds to assist Ardent Technologies, Inc. with improvements to its facility at 6234 Far Hills Avenue (the “Project”); and

WHEREAS, the Project was selected to receive funding from ED/GE grant funds; and

WHEREAS, the City adopted Resolution No. 38-22 on May 2, 2022, approving a grant agreement with Montgomery County, whereby the City agreed to enter into an agreement with Ardent Technologies, Inc. acceptable to the County; and

WHEREAS, the City is responsible for administering the ED/GE grant; and

WHEREAS, Ardent Technologies, Inc. is guaranteeing the creation of 20 new jobs during a three-year period, along with a capital investment of \$250,000; and

WHEREAS, the City’s contribution is \$20,000 or eight percent of the total project cost..

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF
THE CITY OF CENTERVILLE, MONTGOMERY COUNTY, OHIO, AS
FOLLOWS:**

Section 1. The City hereby agrees to enter into an Agreement Regarding ED/GE Funds with Ardent Technologies, Inc.; and the City Manager is hereby authorized to execute the Agreement attached hereto as Exhibit “A” and incorporated herein on behalf of the City of Centerville.

Section 2. This Resolution shall be in full force and effect at the earliest date allowed by law.

PASSED THIS 15th day of August, 2022.



Mayor of the City of Centerville, Ohio

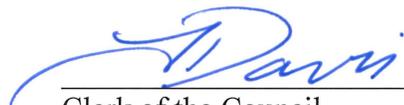
ATTEST:



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. 63-22, passed by the Council of the City of Centerville, Ohio on the 15th day of August, 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

AGREEMENT REGARDING ED/GE FUNDS

THIS AGREEMENT is made and entered into by and between the **CITY OF CENTERVILLE** (the "Member Jurisdiction"), Montgomery County, Ohio and the **ARDENT TECHNOLOGIES** (the "Recipient/Business").

WHEREAS on **December 14, 2021**, by **Resolution No. 21-1559**, the Montgomery County Board of County Commissioners (the "County") awarded the Member Jurisdiction, an amount not to exceed **\$20,000**, or **EIGHT** percent (**8%**) of total project costs, from the Primary Economic Development Fund, to provide funding support for a project known as the **ARDENT TECHNOLOGIES** Project (the "ED/GE grant"); and

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

WHEREAS the Recipient/Business hereby acknowledges that all Member Jurisdictions awarded ED/GE grants are required to enter into a written development agreement with the Recipient/Business receiving the grant funds that memorializes the Recipient/Business' understanding of project cost reimbursements FIFTY percent (50%) reimbursed for eligible project costs, TWENTY-FIVE percent (25%) when the company meets FIFTY percent (50%) of total pledged jobs and the remaining TWENTY-FIVE percent (25%) when the company meets ONE HUNDRED percent (100%) of its total pledge jobs amount, and sets forth the grant monitoring and reporting obligations of the Recipient/Business and Member Jurisdiction; and

WHEREAS as part of the **ARDENT TECHNOLOGIES** Project, the Recipient/Business is guaranteeing the creation of 20 new jobs during a three-year period, along with a capital investment of \$250,000.

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** The project calls for the renovation of an existing 6,300 square foot office building. ED/GE funds will be used to offset the cost of the above. The foregoing is referred to herein as the "Project". Over the next three (3) years, the Recipient/Business expects to retain its current FIFTY (50) employees and add new employees, bringing its total employment to 70 for 2024.

2. **GRANT AMOUNT** The Member Jurisdiction agrees to provide the ED/GE grant funds made available to the Member Jurisdiction by the County for this Project pursuant to both the terms and conditions of the ED/GE contract between the Member Jurisdiction and the County and this Agreement.

The amount of the ED/GE Grant is \$20,000 or EIGHT percent (8%) 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. The parties further acknowledge that they have been informed and fully understand that ED/GE grants are given to Member Jurisdictions as follows:

Following execution of this Agreement, (1) FIFTY percent (50%) of the grant amount will be reimbursed to the Member Jurisdiction on an invoice basis for eligible expenses; (2) TWENTY-FIVE percent (25%) of the grant amount will be reimbursed to the Member Jurisdiction, on an invoice basis when the Recipient/Business attains FIFTY percent (50%) of total pledged jobs; and 3) TWENTY-FIVE percent (25%) of the grant amount will be reimbursed to the Member Jurisdiction, on an invoice basis when the Recipient/Business attains ONE HUNDRED (100%) of total pledged jobs. Job creation will happen over a three year period commencing with the Recipient/Business' provision of adequate proof to the Member Jurisdiction that the jobs have been created and actually hired and/or filled.

3. **GRANT PAYMENT** The Member Jurisdiction shall distribute the Grant, if at all, only after receiving such funds from the County and only after the completion of the following conditions, which shall be verified by the Member Jurisdiction in advance of Grant distribution: The Recipient/Business shall supply the Member Jurisdiction with written evidence of the amount of monies expended by the Recipient/Business in the furtherance of the Project, containing a statement 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 Recipient/Business shall also provide a copy of any fully executed lease between it and another party for the subject property that is part of the Project. The County, through its Office of Economic Development, has the authority to meet with any contractor, person or business entity employed by the Recipient/Business to determine that the ED/GE funds are being expended for Project purposes.

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

5. **PAYROLL CREATION** The Recipient/Business agrees to creation of 20 jobs during a three year period.

6. **LOCATION IDENTIFICATION** The Recipient/Business agrees to make a good-faith effort in all its business communications to identify that the Company's facility is located in the Member Jurisdiction, Montgomery County, Ohio. Communication may include signage, promotional literature, stationery, and licensed vehicles.

7. **TAXES CURRENT** The Recipient/Business 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.

8. **PREVAILING WAGES** The Recipient/Business agrees that all labor, including that employed by contractors and subcontractors, used in the Project shall be compensated at a level equal to that of prevailing wages as determined by Ohio Revised Code Chapter 4115. The Recipient/Business agree(s) to fully indemnify, defend and save harmless the Member Jurisdiction, its officials, agents and employees, from and against all suits, claims demands or actions, damages, liabilities, judgments, losses, costs and reasonable attorney fees to the extent such arise out of or flow from, whether directly or indirectly, actual failure of the Recipient/Business or its contractors and subcontractors to pay such compensation in the manner specified.

9. **COMPLIANCE WITH ED/GE PROGRAM AND INDEMNIFICATION.** The Recipient/Business 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 serve valid public purpose under the ED/GE Program. The Recipient/Business agree(s) to indemnify, defend and save harmless the Member Jurisdiction, 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, the Recipient/Business agrees that it will repay the County the amount improperly expended and will do so within seven (7) calendar days of written notice delivered to it by the Member Jurisdiction that such an improper expenditure has occurred. Said notice shall state the amount which the Member Jurisdiction believes to have been improperly expended.

10. **INFORMATION WARRANTED** The Recipient/Business affirmatively covenant(s) that it/they has/have made no false statements to the Member Jurisdiction in the process of obtaining approval of the ED/GE funds. If any representative of the Recipient/Business knowingly made false statements to the Member Jurisdiction to obtain or maintain the incentive provided by this Agreement, it is mutually agreed that such false statements shall be legally attributed to the representative's principal for purposes of this Agreement.

11. **AUDIT** The Recipient/Business acknowledge(s) that if they are receiving public funds, and that documentation of the use of such funds may be subject to audit by the County Auditor or the State Auditor or their representatives. The Recipient/Business agree(s) 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. The Recipient/Business also agree(s) to notify persons or business entities with which (it/they) (does/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.

12. **RECORD RETENTION** The Recipient/Business agree(s) that all documentation, financial records and other evidence of project activity under this Agreement shall be maintained by the Recipient/Business, 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, the Recipient/Business must notify the Member Jurisdiction, in writing, of its intent to destroy said records. The Member Jurisdiction reserves the right to extend the retention period for such records, and if it decides to do so it will notify the Recipient/Business in writing, otherwise, the Member Jurisdiction will issue to the Recipient/Business a written Certificate of Records Disposal. It is mutually understood and agreed that no records in the Recipient/Business' possession will be destroyed until the Recipient/Business has received a Certificate of Records Disposal.

13. **NO DISCRIMINATION** The Recipient/Business agrees 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. The Recipient/Business 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. The Recipient/Business agree(s) not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything related to this Agreement, or in reference to any contractors or subcontractors.

14. **TRANSFER** This Agreement is not transferable or assignable without the express, written approval of the Member Jurisdiction.

15. **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. This Agreement shall not be modified in any manner except by an instrument, in writing, executed by the parties hereto. This Agreement may only be voided or amended by written mutual consent.

16. **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.

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

18. **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.

MEMBER JURISDICTION:

RECIPIENT/BUSINESS:

By:
Its: _____
Date: _____

By:
Its: _____
Date: _____

Approved as to form:

Scott A. Liberman
Municipal Attorney