

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A JOB CREATION INCOME TAX INCENTIVE AGREEMENT WITH FEDEX CUSTOM CRITICAL, INC. AND DECLARING AN EMERGENCY.

WHEREAS, the Village has determined that it is in the best interest of its residents to encourage the creation of job opportunities throughout the Village;

WHEREAS, Fedex Custom Critical, Inc. ("Company") has proposed to create new employment opportunities in the Village by relocating its existing operations to the Village by leasing an approximately 70,000 square foot existing facility located at 4205 Highlander Parkway in the Village ("Project");

WHEREAS, the Council desires to provide the Company with incentives available for the Project in accordance with terms and conditions substantially similar to those in the agreement attached hereto as "Exhibit A."

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Richfield, County of Summit, State of Ohio that:

SECTION 1. The Mayor is hereby authorized and directed to enter into a Job Creation Income Tax Incentive Agreement with Fedex Custom Critical, Inc. in accordance with terms and conditions substantially similar to the agreement attached hereto as Exhibit A.

SECTION 2. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 3. This Resolution is hereby declared to be an emergency measure for the reason that it is immediately necessary to execute the Agreement in order to ensure that Fedex Custom Critical, Inc. can immediately begin taking steps to complete the Project, provided that it receives the requisite number of votes needed to pass as an emergency measure; otherwise, it shall take effect at the earliest date allowed by law.

PASSED: 9.5.23



President of Council

Michael Uebel

Mayor

Dated: 9/5/2023

ATTEST:

Jill Gonyea

Clerk of Council

**JOB CREATION INCOME TAX INCENTIVE GRANT
AGREEMENT**

This Job Creation Income Tax Incentive Grant Agreement (this “Agreement”) is made and entered into as of September ___, 2023 (the “Effective Date”) by and between the **VILLAGE OF RICHFIELD, OHIO** (the “Village”), a municipal corporation, with its main offices located at 4410 West Streetsboro Road, P.O. Box 387, Richfield, Ohio 44286 (hereinafter referred to as “Village”), and **FEDEX CUSTOM CRITICAL, INC.**, an Ohio corporation, with its main offices located at 70 FedEx Parkway, 2nd Floor Vertical, Collierville, TN 38017 (hereinafter referred to as “Company” and together with the Village, collectively, the “Parties”).

RECITALS:

WHEREAS, the Village has determined that it is in the best interest of its residents to encourage the creation of job opportunities throughout the Village; and

WHEREAS, the Company has proposed to create new employment opportunities in the Village by relocating its existing operations to the Village by leasing an approximately 70,000 square foot existing facility located at 4205 Highlander Parkway in the Village (the “Project”); and

WHEREAS, the Project will provide the Company the opportunity to create approximately 225 full-time jobs in the Village by March 31, 2024, with an estimated new payroll of approximately \$15,000,000 annually; and

WHEREAS, based upon the application of, and certain documentation presented to the Village by, the Company, the Company represents that and the Village believes that the Project is economically sound and will strengthen the economy of the Village; and

WHEREAS, the Village has investigated the application and documentation of the Company and recommended that Village Council approve certain incentives to the Company on the basis that the Company is qualified by financial responsibility and business experience to create employment opportunities in the Village and further support the economic climate of the Village; and

WHEREAS, the Village wishes to act under its full Home Rule powers as granted by Article XVIII, Section 3 of the Ohio Constitution, as well as its economic development powers granted under Ohio Constitution Article VIII, Section 13 and Article VIII, Section 2(p) and Section 192.064 of the Codified Ordinances of the Village; and

WHEREAS, the Village, having the appropriate authority, is desirous of providing the Company with incentives available for the development of the Project based upon the terms and conditions set forth below; and

WHEREAS, the Company is currently located in the City of Green, Summit County, Ohio and is relocating its existing employees and operations to the Village; and

WHEREAS, the Village and the City of Green are both parties to the Summit County Intergovernmental Memorandum of Understanding for Job Creation and Retention and Tax Revenue Sharing (the “County MOU”); and

WHEREAS, pursuant to Section 4 of the County MOU, the Village will be required to pay portions of the Village Income Tax (as defined herein) to the City of Green during the first five Grant Years (as defined herein) in the percentages set forth in the County MOU and as further described in Section 2 of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Job Creation. The Company shall use all commercially reasonable efforts to create the equivalent of 225 new full-time (“F/T”) job opportunities (the “New Jobs”) on a cumulative basis at the Project by the March 31, 2024. The Parties acknowledge that one (1) F/T New Job can be achieved by two or more employees working at least 40 hours per week in the aggregate. The job creation period shall commence on the Effective Date and all New Jobs shall be in place by March 31, 2024. The Company projects that the increase in the number of New Jobs to the Village will result in approximately \$15,000,000 of annual payroll in the Village when the maximum employment level is achieved no later than March 31, 2024.

2. Issuance of Job Creation Grant.

(a) The Village authorizes the below incentive grant based upon the creation of payroll from New Jobs in the Village in accordance with the schedules set forth below (the “Job Creation Grant”). The term of the Job Creation Grant shall commence on January 1, 2024 and expire on the tenth (10th) anniversary thereof.

| Grant Year | Minimum New Jobs (by March 31, 2024) | Amount of Annual Job Creation Grant as a Percentage of Village Net Income Tax Revenues on Actual Payroll up to \$15,000,000 | Amount of Annual Job Creation Grant as a Percentage of Village Net Income Tax Revenues on Actual Payroll in excess \$15,000,000 |
|--------------|--------------------------------------|---|---|
| 1 through 10 | 225 | 25% of Village Net Income Tax Revenues on Actual Payroll up to \$15,000,000 | 30% of Village Net Income Tax Revenues on Actual Payroll in excess of \$15,000,000 |

(b) If the Company does not achieve 100% of the Minimum Payroll required for the Job Creation Grant on a cumulative basis, but the Company achieves at least 50% of the Minimum Payroll required for the Job Creation Grant on a cumulative basis, then the Company will receive reduced incentives according to the Schedule set forth below:

| % of Minimum Payroll Projection Achieved | Amount of Job Creation Grant as a Percentage of Village Net Income Tax Revenues |
|--|---|
| 80-99% | 20% |
| 70-80% | 15% |
| 60-70% | 10% |
| 50-60% | 5% |

(c) If the Company fails to meet at least 50% of the Minimum Payroll in any Grant Year, then the Job Creation Grant shall not be awarded for that Grant Year.

(d) In the event that Company vacates the Project and moves substantially all of its operations out of the Village or terminates its operations in the Village altogether at any time during the first five (5) Grant Years, Company agrees to reimburse the Village as provided below for any Job Creation Grant payments received.

Reimbursement to Village if Company ceases operations in the Village:

| | |
|----------|------------------------|
| Year 1: | 100% of grant received |
| Year 2: | 75% of grant received |
| Year 3: | 50% of grant received |
| Year 4 : | 25% of grant received |
| Year 5: | 0% of grant received |

(e) For purposes of this Agreement, the following words and terms shall have the meanings set forth below:

“Actual Payroll” means, for each Grant Year, the annual payroll on which the Village Income Tax is assessed for all employees of the Company in the Village.

“Grant Year” means each tax year in which the Job Creation Grant is in effect, with the first Grant Year commencing on January 1, 2024 and ending on December 31, 2024.

“Minimum Payroll” means a cumulative Actual Payroll of \$15,000,000 in each Grant Year.

“Village Income Tax” means, for each Grant Year, the revenues generated by the levy of the Village Income Tax Rate on the Actual Payroll of the Company.

“Village Income Tax Rate” means the then current rate of taxation of income levied by the Village under Chapter 192 of the Codified Ordinances of the Village, or any successor provision.

“Village Net Income Tax Revenues” means, for each Grant Year, the Village’s portion of the Village Income Tax collected with respect to such year, after payment to the City of Green of its respective share, as represented by the following table:

| <u>Job Creation Grant Year</u> | <u>Village of Richfield</u> | <u>City of Green</u> |
|--------------------------------|-----------------------------|----------------------|
| 1 | 50% | 50% |
| 2 | 60% | 40 |
| 3 | 70% | 30 |
| 4 | 80% | 20 |
| 5 | 90% | 10 |
| 6-10 | 100% | 0 |

3. Grant Payments. Grant Year 1 projections for New Jobs must be met by March 31, 2024 and Grant Year 1 projections for Minimum Payroll must be met by December 31, 2024. The initial payment of the Job Creation Grant shall be made by the Village to the Company by April 15, 2025, provided that the Company files its Reconciliation of Return of Income Tax Withheld Form 17 by February 28, 2025 and otherwise meets the eligibility requirements in this Agreement.

Thereafter, annual payments of the Job Creation Grant shall be made by the Village to the Company by April 15th following each Grant Year, provided that the Company files its Reconciliation of Village Income Tax Withheld Form S-W3 by February 28th of following said Grant Year. If the Company requests an extension for filing of its S-W3 form, the Village will make the Job Creation Grant payment within three months of the extended filing date. It is the responsibility of the Company to advise the Director of Finance of the filing extension.

4. Payment of Taxes and Filing Reports and Returns. The Company shall pay such real and tangible personal property taxes as are charged against such property in the Village and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, all incentives granted under this Agreement are terminated beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

5. Information for Annual Review. The Company shall timely provide to the Village any information reasonably required by the Village to evaluate the Company's compliance with this Agreement. Moreover, by executing this Agreement, the Company shall provide the Village Administration with employee counts and payroll data during the duration of this Agreement. The Village Administration includes the Economic Development Coordinator, the Mayor, or Finance Director. If a public records request is made for this information, the Village, to the extent permitted by law, will notify Company of the request prior to making the document available for inspection or copying and Company shall notify the Village if it believes that any specific document or portion of a document submitted to the Village in accordance with this Agreement is exempt from the Ohio Public Records Act. The notification shall be in writing and indicate the specific document or portion of a document that Company believes is exempt from disclosure. The notification shall include the legal basis for the claimed exemption, including the applicable statutory reference and any additional information necessary to make a determination of exemption. The Village will consider the written notification in making its own independent determination of whether a specific document or portion of a document is exempt from the disclosure requirements of Ohio Revised Code Section 149.43.

6. Maintenance of Grant. The Village shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain the incentives granted under this Agreement including, without limitation, joining in the execution of all documentation and providing necessary information to maintain the incentives granted hereunder.

7. Certification as to Payment of Taxes. The Company certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which the Company is liable under Chapters 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code, or, if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, and further certifies that it has not filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has not been filed against the Company. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

8. Non-Discrimination Hiring. By executing this Agreement, the Company is committed to following non-discriminatory hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.

9. Transfer and Assignment. This Agreement is not transferable or assignable without the express, written approval of Village Council. The Village acknowledges that it would be unreasonable to withhold such consent in the event of a proposed transfer or assignment to any parent, subsidiary or affiliate of the Company 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 Village, to the Village's reasonable satisfaction, its financial ability, business experience and intentions to continue its operations in the Village in a manner similar to that of the Company in all pertinent respects and the proposed transferee and assignee acknowledges and consents, in writing, to the assignment of this Agreement.

10. Termination or Modification of Incentives.

(a) The Agreement shall terminate on the expiration of the term of the Job Creation Grant.

(b) If the Project does not proceed to full completion as specified in Section 1 of this Agreement, the Village may terminate the Agreement upon recommendation of Village Council.

(c) If the Company fails to submit required information and/or reports as set forth in Section 5 above, the Village, after sixty (60) days' notice of said default and failure to cure, may terminate this Agreement and deny future grants heretofore granted from the date of the Company's breach or default. In the case as provided in this Subsection C, the Village's termination of this Agreement may be instituted only if the Company fails to cure any breach of any term of this Agreement as determined by the Village within sixty (60) days of receiving written notice of such failure from the Village or, if cure of the breach cannot be completed within sixty

(60) days, if the Company has not made a good faith start of the cure, and/or not diligently pursued the same.

(d) If the Company fails to cure any Termination Default (defined below) within sixty (60) days after written notice of such Termination Default from the Village to the Company, the Village may, absent any legislative action, resolution or court ordered mandate to the contrary, terminate this Agreement and require repayment of and collect any and all grant payments awarded under this Agreement. Upon such termination, the Company shall, within thirty (30) days, pay directly to the Village or its authorized agent any and all grant payments awarded under this Agreement. For purposes of this Agreement, the following events shall be deemed "Termination Defaults" hereunder:

(i) The Village determines in its reasonable discretion that the Company's certification as to delinquent taxes required by this Agreement is fraudulent; or

(ii) The Company becomes delinquent in any taxes relating to this Agreement during the term of this Agreement; or

(iii) The Company vacates the Project and moves substantially all of its operations out of the Village; or

(iv) The Company terminates its operations in the Village altogether during the six (6) year period beginning on the Effective Date of this Agreement.

(e) The Company or its successor entity shall promptly notify the Village if any of the following events occur:

(i) If Control of the Company (defined below), or substantially all of its assets located at the Project site, is obtained by an unaffiliated entity or entities; or

(ii) If the Company merges with an unaffiliated entity or entities with such other entity or entities being the survivor; or

(iii) If the Company substantially restructures itself through an acquisition or divestiture or otherwise.

and if any of these events affects the ability of the Company or its successor entity to substantially perform the obligations of the Company under this Agreement and to meet the employment and payroll projections set forth herein. "Control of the Company" for the purposes of this subsection means that persons and/or entities owning a majority of the financial interest in the Company on the date of this Agreement cease to own such or cease to be shareholders of the corporation that is the Company.

(f) Each provision for modification or termination hereunder shall not affect the Company's obligations or the Village's rights under any other provision of this Agreement.

11. Notices. Any notices, statements, acknowledgements, consent approvals, certificates, or requests required to be given on behalf of either party shall be made in writing addressed as follows:

| | |
|--------------------|--|
| If to the Village: | Village of Richfield 4410 West Streetsboro Road P.O. Box 387 Richfield, Ohio 44286 Attention: Mayor |
| With a copy to: | Law Director - Village of Richfield c/o Roetzel & Andress, LPA 1375 East Ninth Street One Cleveland Center, 10 th Floor Cleveland, Ohio 44114 Attention: Benjamin G. Chojnacki, Esq. |
| If to the Company: | FedEx Custom Critical, Inc. ATTN: Joseph Kain – Tax Department 70 FedEx Parkway, 2nd Floor Vertical Collierville, TN 38017 |
| With a copy to: | FedEx Custom Critical, Inc. ATTN: Jim Hidey– Tax Department 70 FedEx Parkway, 2nd Floor Vertical Collierville, TN 38017 |

or such other address as may be noticed to the other party.

14. Conditions Precedent. The Company and the Village acknowledge that this Agreement must be approved by formal action of the legislative authority of the Village as a condition for the Agreement to take effect.

The Village of Richfield, Ohio, by Michael Wheeler, its Mayor, pursuant to Richfield Village Council Ordinance No. ___-2023, and FedEx Custom Critical, Inc., by _____, its _____, have caused this Agreement to be executed as of the Effective Date set forth above.

[signatures on following page]

VILLAGE OF RICHFIELD, OHIO

By: _____
Michael Wheeler, Mayor

The legal form and correctness of
this Agreement is approved:

Benjamin G. Chojnacki, Law Director
Village of Richfield

FEDEX CUSTOM CRITICAL, INC., an
Ohio corporation

By: _____
Name: _____
Title: _____

CERTIFICATE OF DIRECTOR OF FINANCE

The undersigned fiscal officer of the Village hereby certifies that the moneys required to meet the obligations of the Village during the year 2023 under this Agreement have been lawfully appropriated by the Council of the Village for such purposes and are in the treasury of the Village or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances.

Date: September ____, 2023

Sandy Turk, Director of Finance
Village of Richfield

