

ORDINANCE RECORD
COUNCIL OF THE CITY OF BRECKSVILLE

Ordinance No. 5226

**AN ORDINANCE AUTHORIZING THE MAYOR
TO EXECUTE AN AMENDED AND RESTATED
ECONOMIC INCENTIVE AND JOB PRESERVATION
AGREEMENT WITH LUBRIZOL ADVANCED
MATERIALS, INC. CONCERNING THE GRANTING
BY THE CITY OF CERTAIN INCENTIVES TO
CREATE AND PRESERVE JOBS WITHIN
THE CITY OF BRECKSVILLE;
AND DECLARING AN EMERGENCY**

WHEREAS, the City of Brecksville and Lubrizol Advanced Materials, Inc. desire to amend the original Economic Incentive and Job Preservation Agreement entered into on October 8, 2014; and

WHEREAS, the City has offered certain economic incentives to Lubrizol in exchange for a contractual obligation to maintain a presence and Minimum Level of Operation within the city of Brecksville in the State of Ohio for a certain number of years.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Brecksville, County of Cuyahoga, and State of Ohio, that:

SECTION 1. The Mayor be and is hereby authorized to execute an Amended and Restated Economic Incentive and Job Preservation Agreement on behalf of the City of Brecksville with Lubrizol Advanced Materials, Inc. relating to the creation and preservation of jobs and expansion of its facilities within the City of Brecksville and the State of Ohio, a copy of such Agreement is attached hereto, expressly made a part hereof by reference and marked Exhibit "A."

SECTION 2. The Council hereby appropriates sufficient funds to effectuate the provisions contained in Section 1 hereof, and the Director of Finance is hereby authorized to transfer the funds necessary to complete this expenditure from the available, non-tax revenue, funds of the City. The Director of Finance be and is hereby further authorized to issue the fiscal officer's certificate necessary to make the expenditures as described in Section 1 hereof and is further directed to issue vouchers of this City in the amounts and for the purposes as expressed in Section 1 hereof, said amounts to be charged to the appropriately designated Fund.

SECTION 3. The Council declares this Ordinance to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, the reason for the emergency is the Company's need to proceed with capital improvements, said Ordinance shall be in full force and effect immediately upon its adoption by this Council and approval by the Mayor, otherwise, from and after the earliest period allowed by law.

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COUNCIL OF THE CITY OF BRECKSVILLE

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PASSED: February 5, 2019

APPROVED: February 5, 2019


MAYOR


CLERK OF COUNCIL

I do hereby certify that the foregoing is a true and correct copy of Ordinance No. 5226 duly passed by the Council of the City of Brecksville, Ohio, on 2-5, 20 19 and that same was duly posted in accordance with the existing Charter of the City of Brecksville on 2-8, 20 19.


CLERK OF COUNCIL

AMENDED AND RESTATED ECONOMIC INCENTIVE AND JOB PRESERVATION
AGREEMENT

WHEREAS, the City of Brecksville (hereinafter referred to as "City", and Lubrizol Advanced Materials, Inc. (hereinafter referred to as "Lubrizol"), desire to amend the original Economic Incentive and Job Preservation Agreement entered into as of the eighth of October 2014; and

WHEREAS, the City has offered certain economic incentives to Lubrizol in exchange for this contractual obligation to maintain a presence and Minimum Level of Operation within the City of Brecksville in the State of Ohio for a certain number of years:

NOW THEREFORE, in exchange for the mutual covenants expressed herein the parties hereby agree as follows:

1. Description of Lubrizol's Business and Operations - Lubrizol is an existing business operating in the City and will be making capital improvements to its facility during the term of the Agreement. Additionally, Lubrizol may add employees to expand their operations which will result in additional payroll taxation by the City. Lubrizol agrees that the level of payroll taxation for the Withholding Income Tax year 2014 will be considered hereinafter collectively referred to as Lubrizol's "Minimum Level of Operation."

2. Incentive by City - The City agrees to reimburse Lubrizol annually for certain expansion of jobs and expansion of its Brecksville facilities by sharing withholding income tax revenues as follows: The City of Brecksville will reimburse Lubrizol one hundred percent (100%) of the additional withholding income taxes generated in excess of the 2014 Minimum Level of Operations in years 2015 through 2024 inclusive. This incentive shall be paid to Lubrizol within thirty days (30) after their filing

of their annual withholding reconciliation. Upon the approval of the Finance Director and Mayor of the City as to the sufficiency of the submitted documentation, reimbursement shall be made. Further, The City of Brecksville agrees to waive all permit fees issued by our Building Department with the exception of any outside Structural Engineer that may be required to review Lubrizol's plans. And further, The Brecksville Planning Commission and City Council will expedite the approval process in a reasonable time for said expansions without unnecessary delays.

3. Commitment and Agreement by Lubrizol - In consideration of the payment by the City, Lubrizol agrees to maintain its Minimum Level of Operation and business within the City of Brecksville for a period of at least twenty (20) years from the first day of January 2015, its presence and operation in the City of Brecksville at 9921 Brecksville Road, Brecksville, Ohio 44141 (hereinafter the "Commencement Date").
4. Penalty for Non-Compliance - The City and Lubrizol agree that if Lubrizol ceases to operate within the City at the Minimum Level of Operation defined above, which is equal to at least one hundred percent (100%) of the Minimum Level of Operation, Lubrizol shall reimburse to the City under the following formula:
 - a. If Lubrizol ceases to maintain at least one hundred percent (100%) or greater of the Minimum Level of Operation as defined within the twenty (20) years after the Commencement Date, Lubrizol will be notified by the City of Brecksville and there shall be a cure period for one year which will allow Lubrizol to reach its Minimum Level of Operation by the close of the subsequent year. Lubrizol will forego any future benefits until the company achieves at least one hundred percent (100%) or greater of the Minimum Level of Operation. Should Lubrizol not cure the shortfall within two years then Lubrizol shall reimburse the City a percentage of the most recent benefit payment based on the

initial year of default according to the following schedule:

| Year of Default | Repayment of prior year benefits received |
|-----------------|---|
| 1 | 100% |
| 2 | 95% |
| 3 | 90% |
| 4 | 85% |
| 5 | 80% |
| 6 | 75% |
| 7 | 70% |
| 8 | 65% |
| 9 | 60% |
| 10 | 55% |
| 11 | 50% |
| 12 | 45% |
| 13 | 40% |
| 14 | 35% |
| 15 | 30% |
| 16 | 25% |
| 17 | 20% |
| 18 | 15% |
| 19 | 10% |
| 20 | 5% |

For example, if Lubrizol's receives a benefit of \$25,000 for exceeding the Minimum Level of Operations for Year 3, and in Year 4 Lubrizol does not meet the Minimum Level of Operations and is unable to reach the Minimum Level of Operations by the end of Year 5, then Lubrizol will reimburse the City 90% of the benefit received for Year 3 or \$22,500.

b. In the event of some unforeseen calamity (force majeure) the City of Brecksville will negotiate with Lubrizol a settlement for the period in which Lubrizol is not compliant with the Minimum Level of Operation. It is the intent of this Agreement to bring the City of Brecksville and Lubrizol together to negotiate in good faith said settlement due to an unforeseeable catastrophic event or economic downturn at no deliberate act creating said force majeure by Lubrizol. Section 4a shall be in effect until December 31, 2034 unless otherwise agreed to through negotiations and

thereafter written agreement between Lubrizol and the City of Brecksville.

5. Proof of Level of Operation - Lubrizol agrees to provide to the City such proof as may be reasonably required by the City, including but not limited to copies of payroll tax returns and payroll records to demonstrate that Lubrizol is maintaining its agreement with the City of Brecksville.
6. Reimbursement of Funds - In the event the City determines that Lubrizol has failed to meet its obligation as specified in Paragraphs 4 hereof: Lubrizol agrees to pay the City the amount or that portion of the amounts of the reimbursement paid to or expended on behalf of Lubrizol by the City as provided in paragraph 2 hereof within thirty (30) days of the date written notice is provided by the City to Lubrizol of such determination.
7. Authority to Sign - Lubrizol and the City acknowledge that this Agreement must be approved by formal action of the Council of the City and as a condition for the Agreement to take effect. This Agreement takes effect upon such City Council approval and the execution by the parties hereto.
8. Assignment or Transfer - Lubrizol agrees that this agreement is not transferrable or assignable without the express, written approval of the City. The City acknowledges that it would be unreasonable to withhold such consent in the event of a proposed transfer or assignment by Lubrizol to any parent, subsidiary or affiliate of Lubrizol or to any other 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 and intentions to continue its Minimum Level of Operation in a manner similar to that of Lubrizol in all pertinent respects.
9. Choice of Law - This Agreement shall be governed and interpreted in

accordance with the laws of the State of Ohio and the parties hereto agree that any dispute or any other matter arising out of the interpretation or operation of this Agreement shall be determined in a Court of competent jurisdiction located within the State of Ohio and County of Cuyahoga.

10. Binding Agreement - This Agreement shall be binding on each of the parties and their respective successors and assigns.

11. Miscellaneous - (a) Any notice or communication required or permitted to be given under this Agreement by either party to the other shall be deemed sufficiently given if delivered personally or mailed by United States registered or certified mail postage prepaid and addressed as follows:

(i) To the City:
Office of the Mayor
City of Brecksville
9069 Brecksville Road

Brecksville, Ohio 44141

(ii) To Lubrizol:
Jeffrey Vavruska
The Lubrizol Corporation
29400 Lakeland Blvd.

Wickliffe, Ohio 44092

Any party may change its address for notice purposes by providing written notice of such address to the other parties.

(b) This Agreement may only be amended by written instrument executed by all parties.

(c) This Agreement is signed by the parties as a final expression of

all the terms, covenants and conditions of their agreement and as a complete and exclusive statement of its terms, covenants and conditions and is intended to supersede all prior agreements and understandings concerning the subject matter of this Agreement.

(d) This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

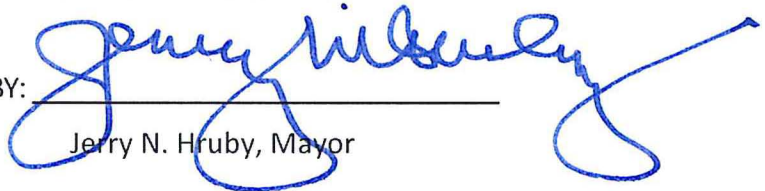
(e) The invalidity or unenforceability of any one or more phases, sentences, clauses, or sections in this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part thereof.

IN WITNESS WHEREOF the parties hereto, by and through their duly authorized representatives, have executed this Agreement on behalf of the corporate entities identified herein, on the date first written above.

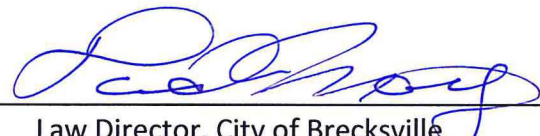
**LUBRIZOL ADVANCED MATERIALS, INC., A
DELAWARE CORPORATION**

BY: 
Jeffrey Vavruska, Assistant Treasurer

THE CITY OF BRECKSVILLE

BY: 
Jerry N. Hruby, Mayor

Approved as to Form:

BY: 
Law Director, City of Brecksville
