

ORDINANCE RECORD
COUNCIL OF THE CITY OF BRECKSVILLE

Ordinance No. 5519

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED AND RESTATED ECONOMIC INCENTIVE AND JOB PRESERVATION AGREEMENT WITH APPLIED MEDICAL TECHNOLOGY, INC., AMERICAN TECHNOLOGY, INC., AND APPLIED MEDICAL RESEARCH, INC. (AMT) 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 AMT desire to amend the original Economic Incentive and Job Preservation Agreement dated November 19, 2013; and

WHEREAS, the City has paid certain economic incentives to AMT in exchange for a contractual obligation to maintain a presence and aggregate payrolls subject to the City's Municipal Withholding Income Tax and net profits subject to the City's Corporate Tax within the City of Brecksville, for an additional number of years.

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

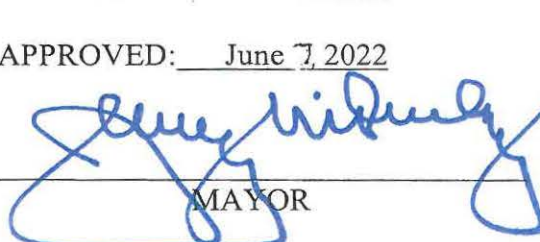
SECTION 1. The Mayor be and is hereby authorized to execute an Amended and Restated Economic Incentive and Job Preservation Agreement on behalf of the City of Brecksville with AMT relating to the creation and preservation of jobs within the City of Brecksville and the State of Ohio, a copy of such Agreement 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 maintain their businesses within the City and to maintain their payroll and net profits, 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.

PASSED: June 7, 2022

APPROVED: June 7, 2022


MAYOR


CLERK OF COUNCIL

I do hereby certify that the foregoing is a true and correct copy of Ordinance No. 5519 duly passed by the Council of the City of Brecksville, Ohio, on 6-7, 20 22 and that same was duly posted in accordance with the existing Charter of the City of Brecksville on 6-10, 20 22.

Sammy DeWos
CLERK OF COUNCIL

EXHIBIT "A"

RESTATED AND AMENDED ECONOMIC INCENTIVE AND JOB PRESERVATION AGREEMENT (Non-Tax Incentive)

This Restated and Amended Economic and Job Preservation Agreement (hereinafter "Agreement") is made this ___ day of _____, 2022, by and between Applied Medical Technology, Inc.; American Medical Technology, Inc.; and Applied Medical Research, Inc.; all Ohio Corporations with their principal place of business being 8000 and 8006 Katherine Boulevard, Brecksville, Ohio 44141 (hereinafter collectively referred to as "AMT"); and the City of Brecksville, an Ohio Municipal Corporation, with a mailing address of 9069 Brecksville Road, Brecksville, Ohio 44141 (hereinafter referred to as "City").

WHEREAS, the City and AMT Desire to restate and amend their prior Economic Incentive and Job Preservation Agreement, dated November 19, 2013, by the terms and conditions hereof; and

WHEREAS, the City, in an effort to assist AMT with construction of an approximately 107,000 sq. ft. facility on PP# 604-14-019 Katherine Boulevard, Brecksville, Ohio and to provide certain economic incentives for AMT's projected increase in operations to result from its expansion, the City has offered certain economic incentives to AMT in exchange for this contractual obligation to maintain a presence and aggregate payrolls subject to the City's Municipal Withholding Income Tax and net profits subject to the City's Corporate Tax within the City of Brecksville and the State of Ohio for an additional number of years; and

WHEREAS, in consideration for certain economic incentives, AMT is offering security for this Agreement; and

WHEREAS, the City has determined that these efforts will result in substantial benefits to the City through the creation of jobs and economic opportunities and the generation of additional tax revenues.

NOW, THEREFORE, in exchange of the mutual covenants expressed herein the parties hereto agree as follows:

Description of AMT's Business and Current Operations:

Applied Medical Technology, Inc.; American Medical Technology, Inc.; and Applied Medical Research, Inc., all currently operating their respective businesses at 8000 and 8006 Katherine Boulevard, Brecksville, Ohio, are independent, privately-owned companies dedicated to providing advancements in medical research, product development and manufacturing of health

care products, guided by the underlying theme of improving the quality of life for the patient and health care professional, through innovative concepts, products, and technologies addressing anticipated needs within specialized markets. The companies' founder, President and Chief Executive Officer is a retired surgeon with over 100 patents. AMT has continued to introduce other innovative designs and materials to advance patient comfort and their outcomes. At the time of the execution of this Agreement, AMT intends to construct an approximately 107,000 sq. ft. addition to its facility on PP# 604-14-019 which is contiguous to its current building at 8000 and 8006 Katherine Boulevard, Brecksville, Ohio (hereinafter referred to as the "Brecksville facility"). Commencing with the year 2021, AMT will have aggregate payrolls subject to the City's Municipal Withholding Income Tax and net profits earned from business, professional, or other activities conducted in the City totaling \$54,330,263. In each of the years thereafter through 2036, AMT projects that it will have aggregate payrolls subject to the City's Municipal Withholding Income Tax and net profits earned from business, professional, or other activities conducted in the City subject to the City's Corporate Tax, all as set forth below:

YEAR	AMT's Aggregate Payrolls Subject to the City's Municipal Withholding Income Tax and Net Profits Subject to the City's Corporate Tax
2021	\$54,330,263
2022	\$60,330,263
2023	\$66,330,263
2024	\$72,330,263
2025	\$78,330,263
2026	\$84,330,263
2027	\$90,330,263
2028	\$96,330,263
2029	\$102,330,263
2030	\$108,330,263
2031	\$114,330,263
2032	\$120,330,263
2033	\$126,330,263
2034	\$132,330,263
2035	\$138,330,263

1. Incentive by City - The City agrees to reimburse AMT for the approximately 107,000 sq. ft. addition and creation of new jobs at AMT's Brecksville facility in the aggregate amount (referred to as the "Incentive Amount") set forth below. This Incentive Amount is payable to AMT based upon the following conditions, formula, and terms:

a. AMT's right to the Incentive Amount herein commences as of January 1, 2021, and continues every year thereafter so long as AMT's aggregate payrolls subject to the City's Municipal Withholding Income Tax and net profits earned subject to the City's Corporate Tax as set forth above continue to be met, as measured on December 31 of each calendar year starting in 2021.

b. Starting on _____, 2022, the City shall pay to AMT the Incentive Amount annually in amounts equal to:

1) 40% of the City's Municipal Withholding Income Tax paid for AMT's aggregate payrolls subject to the City's Municipal Withholding Income Tax in each year of this Agreement. Such percentage to be calculated on the actual City's Municipal Withholding Income Tax received in each year from AMT, *plus*

2) 40% of the City's Corporate Tax paid on the net profits earned by AMT from business, professional or other activities conducted in the City subject to the City's Corporate Tax in each year of this Agreement. Such percentage to be calculated on the actual City's Corporate Tax received in each year from AMT.

c. AMT shall receive its annual Incentive Payment from the City based on the actual amount of the City's Municipal Withholding Income Tax and paid by the City to AMT within thirty (30) days of AMT's filing of its annual withholding reconciliations with the Regional Income Tax Agency (RITA) in the year following the year that said actual City's Municipal Withholding Income Tax was paid.

d. AMT shall receive its annual Incentive Payment from the City based on the actual amount of the City's Corporate Tax paid on the net profits earned by AMT from business, professional, or other activities conducted within the City, and paid by the City to AMT within thirty (30) days of AMT's final returns being filed with AMT expressly and specifically hereby waiving any and all rights to amend said returns on the issue of the City's Corporate Tax paid on said net profits.

2. Commitment by AMT – In consideration of the Incentive Payments by the City set forth above, AMT agrees to maintain their businesses within the City, for a period of at least fifteen (15) years, ending on December 31, 2037 (hereinafter "Compliance Period"), subject to termination as set forth in Section 2(a) below, to achieve and maintain the above listed payrolls subject to the City's Municipal Withholding Income Tax and achieve and maintain their net profits earned from business, professional or other activities in the City subject to the City's Corporate Tax at the level necessary to equal the incentive granted hereunder, subject to the City making the remaining payments on AMT's special assessment for Permanent Parcel Number 604-14-019.

3. Non Compliance Process – The City and AMT agree that if AMT fails to operate within the City for each of the years 2021 through 2035 at the level necessary to achieve the incentive granted hereunder and the City's remaining assessment payments to be made as set forth above, AMT shall promptly meet with the City to discuss ways that AMT will increase their level of operations and/or their net profits earned from business, professional, or other activities in the City so that in the subsequent year AMT not only meets such level, but makes up any deficiency or deficiencies in the payrolls subject to the City's Municipal Withholding Income Tax and/or in the net profits earned from business, professional, or other activities in the City subject to the City's Corporate Tax that has previously occurred. The City and AMT agree that the intent and goal is that AMT maintain at least the above listed payrolls subject to the City's Municipal Withholding Income Tax and/or the net profits subject to the City's Corporate Tax necessary to achieve the incentive granted hereunder and the City's other payments made as set forth above as projected and paid in each year, but if that is not achieved on an annual basis, AMT shall increase its operations (subject to force majeure) and/or its said net profits to assure that the total incentive and City's remaining assessment payments to be made as set forth above for the Compliance Period, shall be achieved. AMT and the City agree that the process to address AMT's compliance is as follows: AMT is required to timely submit to the City all City tax filing information and the City will review annually such information for compliance with this Agreement. The City will only make annual incentive payback and special assessment payments to AMT in years in which AMT pays to the City at least seventy-five percent (75%) of their projected City Income Tax (based on the chart identified above). If in subsequent years AMT makes sufficient City tax payments to cover the previous shortfall, the payment of incentive payback and special assessment will be made by the City. If AMT fails to meet seventy-five percent (75%) of their projected City Income Tax for three (3) consecutive calendar years, AMT will be required to meet with the Mayor and City Council to present a plan for 1) meeting their Agreement commitment, 2) making agreed upon modifications to the Agreement commitment, or 3) AMT will make plans to exit from the Agreement.

4. Proof of Level of Operations – AMT agrees to provide to the City such proof as may be reasonably required by the City, including but not limited to copies of Corporate Tax returns and payroll records for operations occurring at AMT'S Brecksville facility, to demonstrate that AMT is maintaining both their payroll subject to the City's Municipal Withholding Income Tax and their net profits subject to the City's Corporate Tax within the City of Brecksville.

5. Authority to Sign – AMT 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. AMT represents that this Agreement has been approved by formal action of the duly authorized representatives of both parties.

6. Assignment or Transfer – AMT agrees that this Agreement is not transferable 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 AMT, whether in connection with a change in control of AMT or otherwise, to any parent, subsidiary or affiliate of AMT if such parent, subsidiary or affiliate is owned by Dr. George Picha and/or his spouse, children (including stepchildren and adopted children), grandchildren, parents or siblings (a “Family Member”) or by a trust or other estate planning vehicle created for the primary benefit of Dr. George Picha and/or his Family Members. If any proposed transfer or assignment is to any other unrelated third party, this Agreement shall terminate unless the City is willing to negotiate otherwise.

7. 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 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.

8. Binding Agreement – This Agreement shall be binding on each of the parties and their respective successors and assigns only as set forth above in Section 6.

9. 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:
 - (1) To the City:
 - (2) To Applied Medical Technology, Inc.:
 - (3) To American Medical Technology, Inc.:
 - (4) To Applied Medical Research, Inc.:

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

- 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 phrases, 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.

10. Katherine Boulevard Assessment – In addition to the AMT incentive contained herein, the Katherine Boulevard assessment on Permanent Parcel Number 604-14-019 (not to exceed \$444,223) shall be paid when due by the City so long as AMT is not in default hereunder, and so long as AMT meets the seventy-five percent (75%) requirement in Paragraph 3. above. If AMT is in default hereunder, or does not meet the seventy-five percent (75%) requirement in Paragraph 3. above, AMT shall pay the assessment when due. Notwithstanding anything to the contrary herein, any monies received by the City from any third party as payment for said assessment, or for part thereof, shall be credited to AMT.

(Signatures on following page)

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.

Applied Medical Technology, Inc.:

By: _____
Dr. George Picha, President and CEO

American Medical Technology, Inc.:

By: _____
Dr. George Picha, President and CEO

Applied Medical Research, Inc.:

By: _____
Dr. George Picha, President and CEO

The City of Brecksville:

By: _____
Jerry N. Hruby, Mayor

Approved as to Form:

David J. Matty, Director of Law
City of Brecksville

This Agreement has been authorized by the Council of the City of Brecksville by Ordinance No. _____, adopted on the _____ day of _____, 2022

Tammy Tabor, Clerk of Council

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

SS:

NOTARY PUBLIC

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Dr. George Picha, President and CEO, who is the duly authorized officer of the said American Medical Technology, Inc., who, after first being duly cautioned according to law, acknowledged that he has the power to bind the aforesaid corporation to the terms and conditions of the foregoing instrument and that he did sign the foregoing instrument and that the same is his free act and deed and the corporate act and deed of the said American Medical Technology, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____
Ohio this ____ day of _____ 2022

Notary Public

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

SS:

NOTARY PUBLIC

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Dr. George Picha, President and CEO, who is the duly authorized officer of the said Applied Medical Research, Inc., after first being duly cautioned according to law, acknowledged that he has the power to bind the aforesaid corporation to the terms and conditions of the foregoing instrument and that he did sign the foregoing instrument and that the same is his free act and deed and the corporate act and deed of the said Applied Medical Research, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____
Ohio this ____ day of _____ 2022

Notary Public

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

SS:

NOTARY PUBLIC

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Jerry N. Hruby, the duly elected and acting Mayor of the City of Brecksville, who, after first being duly cautioned according to law, acknowledged that he did sign the foregoing instrument on behalf of the City of Brecksville after being first duly authorized by appropriate councilmanic action, and that the same is his free act and deed and the act and deed of the said City of Brecksville.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____
Ohio this ____ day of _____ 2022

Notary Public