ORDINANCE 2024-46

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AMENDMENT TO A DEVELOPMENT AND INCENTIVE AGREEMENT WITH THE OHIO STATE UNIVERSITY.

WHEREAS,   the City of Powell has previously entered into a Development and Incentive Agreement ("Agreement") with the Powell Community Improvement Corporation and The Ohio State University ("OSU") in anticipation of OSU's development of a medical campus; and

WHEREAS,   the parties to that Agreement wish to amend the Agreement to simplify its terms and clarify the incentives for the development of the medical campus.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF POWELL, COUNTY OF DELAWARE, STATE OF OHIO AS FOLLOWS:

<u>Section 1</u>:   That the City Manager is hereby authorized to enter into an amendment to the Development and Incentive Agreement relating to certain job creation incentive payments, in a form similar to the amendment attached hereto as Exhibit A.

<u>Section 2</u>:   It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of Council and that all deliberations of Council and any of the decision-making bodies of the City of Powell which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the City of Powell, Delaware County, Ohio.

_____   12/3/24
Tom Counts   Date
Mayor

Elaine McCloskey   12/3/2024
Elaine McCloskey   Date
City Clerk

EFFECTIVE DATE: January 2, 2025

This legislation has been posted in accordance with the City Charter on this date _12/4/2024_ .

E McCloskey   City Clerk

City Council
Tom Counts, Mayor

Leif Carlson   David Lester   Christina Drummond   Heather Karr   Ferzan Ahmed   Tyler Herrmann

OSU Annual Tax Incentive

Payment Schedule

Term	Calendar Year	Base Withholdings	Target Withholdings	Subject to Incentive	Tax Rate=2%; 50/50 Split 10-Years: No Cap		Tax Rate=2%; 50/50 Split 15-Years: $500K Cap	
					City	OSU	City	OSU
1	2026	$ 100,000	$ 423,866.79	$ 323,866.79	$ 161,933.39	$ 161,933.39	$ 161,933.39	$ 161,933.39
2	2027	$ 100,000	$ 797,123.26	$ 697,123.26	$ 348,561.63	$ 348,561.63	$ 348,561.63	$ 348,561.63
3	2028	$ 100,000	$ 850,278.90	$ 750,278.90	$ 375,139.45	$ 375,139.45	$ 375,139.45	$ 375,139.45
4	2029	$ 100,000	$ 907,487.67	$ 807,487.67	$ 403,743.83	$ 403,743.83	$ 403,743.83	$ 403,743.83
5	2030	$ 100,000	$ 969,058.60	$ 869,058.60	$ 434,529.30	$ 434,529.30	$ 434,529.30	$ 434,529.30
6	2031	$ 100,000	$ 1,013,054.70	$ 913,054.70	$ 456,527.35	$ 456,527.35	$ 456,527.35	$ 456,527.35
7	2032	$ 100,000	$ 1,059,278.09	$ 959,278.09	$ 479,639.05	$ 479,639.05	$ 479,639.05	$ 479,639.05
8	2033	$ 100,000	$ 1,107,841.54	$ 1,007,841.54	$ 503,920.77	$ 503,920.77	$ 507,841.54	$ 500,000.00
9	2034	$ 100,000	$ 1,158,863.52	$ 1,058,863.52	$ 529,431.76	$ 529,431.76	$ 558,863.52	$ 500,000.00
10	2035	$ 100,000	$ 1,212,468.49	$ 1,112,468.49	$ 556,234.24	$ 556,234.24	$ 612,468.49	$ 500,000.00
11	2036	$ 100,000	$ 1,251,683.00	$ 1,151,683.00	$ 1,151,683.00	$ -	$ 651,683.00	$ 500,000.00
12	2037	$ 100,000	$ 1,292,279.83	$ 1,192,279.83	$ 1,192,279.83	$ -	$ 692,279.83	$ 500,000.00
13	2038	$ 100,000	$ 1,334,307.69	$ 1,234,307.69	$ 1,234,307.69	$ -	$ 734,307.69	$ 500,000.00
14	2039	$ 100,000	$ 1,377,817.04	$ 1,277,817.04	$ 1,277,817.04	$ -	$ 777,817.04	$ 500,000.00
15	2040	$ 100,000	$ 1,422,860.09	$ 1,322,860.09	$ 1,322,860.09	$ -	$ 822,860.09	$ 500,000.00
Grand Total					$ 10,428,608.43	$ 4,249,660.78	$ 8,018,195.20	$ 6,660,074.00
							Variance	$ (2,410,413.22)

Notes:

The Base Withholding represents the estimated annual payroll withholding taxes that will be collected in the current calendar year in respect to OSU's employees which contribute payroll withholdings to Powell currently.

The incentive payment will be equal to the actual withholdings for the preceding calendar year minus an amount equal to the base withholdings for the preceding year multiplied by the agreed-upon incentive rate.

After reviewing RITA's tax documentation, payment will be issued by the first Friday of May. Powell will determine whether OSU is in full compliance. A final determination will be submitted to OSU by April 15th along with the calculated incentive payment.

No incentives attributable to outparcels or construction jobs.
Target withholdings are net of refunds.

FIRST AMENDMENT TO
DEVELOPMENT AND INCENTIVE AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AND INCENTIVE AGREEMENT (this "Amendment") is entered into so as to be effective on the last date of signature below by a party hereto, by and between the **Powell Community Improvement Corporation** (d.b.a. the Powell Development Corporation) (the "CIC"), an Ohio community improvement corporation organized and existing under Chapter 1724 of the Ohio Revised Code, the **City of Powell**, an Ohio charter municipal corporation ("City"), and **The Ohio State University**, an instrumentality of the State of Ohio ("University"). CIC, City, and University may be referred to herein individually as a "Party" and together as the "Parties".

W I T N E S S E T H:

WHEREAS, the Parties entered into a Development and Incentive Agreement (the "Agreement") on or about June 21, 2019, that outlined various development incentives, income tax withholding items, and related items; and

WHEREAS, due to a variety of circumstances, including the City's income tax restructuring, which was approved by the voters in 2021, the Parties seek to amend the Agreement through this Amendment; and

WHEREAS, University and its Wexner Medical Center desire to develop a medical campus consisting of one or more buildings and associated improvements from which an ambulatory care facility, medical offices, and other related uses will operate (the "Project"), to be located on certain real property that is now located within the City and is generally located to the northeast of the intersection of Sawmill Parkway and Home Road, and is more particularly described and depicted in **Exhibit A**, which is attached hereto and incorporated herein by reference (the "Project Premises"); and

WHEREAS, in connection with the development of the Project, University anticipates that it will create a substantial number of new jobs and amount of new payroll within the City; and

WHEREAS, the City desires to provide an annual rebate payment to University for certain payroll created as a result of the Project; and

WHEREAS, the City desires to provide for this reimbursement pursuant to the terms of this Agreement.

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NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the parties hereby agree as follows:

1.   **Definitions.**   Capitalized terms are defined throughout this Agreement for purposes of convenience and context. In addition, the capitalized terms below shall have the following meanings:

(a)   "Project Jobs" means, with respect to Project Phase 1 (as defined below), jobs related to construction of the Project or the operation of one or more components of the Project, and requiring the withholding of City income taxes from individuals performing work for an employer (i.e., University and/or affiliated or unaffiliated third parties) located on the Project Premises.

(b)   "Project Job Withholdings" means withholdings of City income taxes from wages paid for Project Jobs, calculated based on an income tax rate of 2% generally charged with respect to employees within the City.

(c)   "Project Job Incentive Term" means:

(i)   For Project Phase 1, the period of time commencing on January 1st of the calendar year immediately following the calendar year in which the aggregate payroll from Project Jobs first reaches $25,000,000.00 or greater, and ending on the date that is 10 years later; and

(d)   "Project Phase 1" means the development and construction of a minimum of 150,000 square feet of gross building square footage and associated site improvements within the portion of the Project Premises that is labeled as "Project Phase 1" in **Exhibit B**, which is attached hereto and incorporated herein by reference.

(e)   "Subsequent Project Phase" means any phase of development and operation of the Project which involves the construction and operation of new buildings and related improvements in addition to those constructed and operated as part of Project Phase 1.

(f)

2.   **Agreement Regarding University Income Tax Rebate Payment.** The City agrees to make annual payments to University as an incentive for University to develop and operate the Project on the Project Premises. In furtherance of this commitment, the City and University hereby agree as follows:

(a)   Payment of Taxes and Operation of Project. University shall pay all applicable taxes associated with the Project, but only to the extent University is required to pay such taxes under applicable law, including but not necessarily limited to Job Withholdings collected by University for employees University or its affiliates. During all periods of time when University is eligible to

receive or is receiving the University Job Incentive Payment (as such term is defined in Section 2(b)(i) below, University shall keep and maintain the Project Premises (or cause the Project Premises to be kept and maintained), including all facilities and any personal property located thereon, in good repair and operating condition (subject to modifications or interruptions during any periods of construction of the Project) and in compliance with all applicable laws.

        (b)   <u>Rebate Payments to University</u>. The City shall make payments to University as follows:

        (i)   <u>University Jobs Incentive Payment – Project Phase 1</u>. Subject to any limitations and timing provisions set forth in this Agreement and during the University Job Incentive Term applicable to Project Phase 1, University shall receive an annual payment in an amount equal to 50% of the Project Job Withholdings for Project Phase 1. OSU currently withholds and pays to the City income taxes unrelated to the Project. The 50% of the Project Job Withholdings shall not include the income taxes already being paid to the City prior to the Project. The annual payment to be made to University pursuant to this subsection and pursuant to the next subsection shall be referred to herein as the "<u>University Job Incentive Payment</u>".

        (ii)   <u>University Job Incentive Payment – Subsequent Phases</u>. The Parties shall negotiate any Job Incentive Payments for Subsequent Phases in a separate agreement.

3.   <u>**Agreement Regarding Outparcel User Income Tax Offset Payment**</u>. The Parties agree to address additional income tax offset payments for the outparcels at a future date.

4.   <u>**Reporting and Calculation.**</u> The University agrees to file all necessary and appropriate income tax withholding forms and documents with the Regional Income Tax Agency ("<u>RITA</u>") and to provide a copy to the City's Finance Director within a reasonable amount of time following the date of the filing with RITA. University also agrees to file or caused to be filed W-3 reconciliation forms with the City documenting any of its withholdings (and withholdings by others if necessary to obtain an Incentive Payment) by February 28th of each year; provided, however, that the failure to timely file such forms with the City shall not affect the right to receive any payment due to it hereunder but instead shall cause the payment not to be due until thirty (30) days after the filing of all applicable W-3 reconciliation forms.

        The University shall compute the withholding taxes paid to the City for each applicable calendar year from the Project Premises and shall provide the City with that information and supporting documents. The City shall have the right to audit and confirm this information. Once such computation is complete, the City shall deliver a written summary of the same to University no later than April 1st of the year following the calendar year for which such calculations are being made. Payment of the University Jobs Incentive Payment shall be made to the relevant entity by the City no later than May 15th of the year following the calendar year for which the relevant payment has been calculated; provided, however, that this annual obligation of payment is subject to and contingent upon the appropriation and receipt of funds necessary for the performance of this Agreement from Powell City Council with respect to each year.

(a)

6. **Miscellaneous.**

(a)   Amendment; Waiver. No amendment or waiver of any provision of this Amendment shall be effective against any party hereto unless in writing and signed by that party.

(b)   Enforceability. If any provision of this Amendment is or becomes invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability shall not effect the remainder of this Amendment and the remainder of this Amendment shall be construed and enforced as if such invalid, illegal or unenforceable portion were not contained herein, provided and to the extent such construction would not materially and adversely frustrate the original intent of the parties hereto as expressed herein. This Amendment supersedes and shall control over any inconsistent provisions in the Agreement.

(c)   Successors and Assigns.   In addition to the beneficiaries described in Section 3(b) above, this Amendment shall inure to the benefit of, and be binding upon, each of CIC, City and University and their respective successors and assigns. This Amendment shall be assignable by University to an affiliated public or private entity of the University without the express written approval of the CIC and the City. This Amendment shall not otherwise be assignable without the express written approval of the City.

(d)   Warranties and Representations. Each party to this Amendment represents and warrants to each other party as follows:

(i)   It has the full right, power and authority to enter into this Amendment and to carry out its obligations hereunder, and the execution and delivery of this Amendment and the performance of its obligations hereunder have been duly and validly authorized by all necessary action.

(ii)   This Amendment has been duly executed and delivered by it, and it constitutes a valid and binding obligation, enforceable against it in accordance with its terms.

(e)   Notices. All notices and other communications hereunder shall be sufficiently given and shall be deemed given when personally delivered or when mailed by registered or certified mail, postage prepaid, addressed the appropriate party at its address indicated as follows:

If to the CIC or the City:

City of Powell
47 Hall Street
Powell, Ohio 43081
Attn: City Manager

If to University: _____
_____
_____

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or such different address of which notice shall have been given in accordance with this Amendment.

(f)   This Amendment will be governed by the laws of the State of Ohio without regard to conflicts of laws principles.

(g)   The City and the CIC acknowledge that, (i) as an instrumentality of the State of Ohio, University is subject to the Ohio Public Records Act (Section 149.43 of the Ohio Revised Code, as amended) and (ii) the University has a statutory obligation to provide all public records upon request, unless such records are specifically exempted from disclosure pursuant to the Ohio Public Records Act.

[No further text on this page; signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the dates written below.

POWELL COMMUNITY IMPROVEMENT CORPORATION

By: _____

Print Name:_____

Its: President

Date:_____

By: _____

Print Name:_____

Its: Treasurer

Date:_____

City:

CITY OF POWELL, OHIO,
an Ohio municipal corporation

By: _____
      Andrew White, City Manager

Date:_____

Approved as to Form:

By:_____
      Yazan S. Ashrawi, Law Director

University:

THE OHIO STATE UNIVERSITY,
an instrumentality of the State of Ohio

By: _____

      Michael Papadakis, Interim Senior Vice
      President for Business and Finance & Chief
      Financial Officer

Accepted By:

The Ohio State University, on behalf of its Wexner
Medical Center

By: _____

      David P. McQuaid, FACHE, CEO of The OSU
      Health System, and COO OSU Wexner Medical
      Center

[Exhibits to be attached to final form of Agreement]