

RESOLUTION NO.: 2019-R93 (AMENDED OCTOBER 22, 2019)
SPONSOR: MAYOR NEUGEBAUER
INTRODUCED: OCTOBER 08, 2019 ASSIGNED TO: Planning

A RESOLUTION AUTHORIZING A MUNICIPAL ECONOMIC DEVELOPMENT GRANT AGREEMENT WITH SURGERE, INC., AND DECLARING AN EMERGENCY.

WHEREAS, Surgere, Inc. will relocate and expand its operation to 3500 Massillon Road, Green, Ohio 44685; and

WHEREAS, the City of Green has encouraged the development of vacant or underutilized industrial and office real property where occupancy results in new jobs within the City and/or preserve jobs in the City of Green; and

WHEREAS, the Project will create employment opportunities and improve the economic welfare of the people of the City of Green; and

WHEREAS, to facilitate the relocation and expansion of Surgere, Inc., the City of Green agrees to make annual Municipal Economic Development Grant payments to the Company from sources identified in the Municipal Economic Development Grant Agreement ("Grant Agreement") between the City of Green and Surgere, Inc., a copy of which is attached and incorporated herein as **AMENDED** Exhibit "A"; and

WHEREAS, the Mayor of the City of Green has investigated Surgere's request and recommends that Green City Council authorize the execution of the Municipal Economic Development Grant Agreement because Surgere, Inc. is qualified by its financial responsibility and business experience to preserve employment opportunities and to improve the economic climate of the City of Green.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, STATE OF OHIO, THAT:

SECTION ONE:

Green City Council finds and determines that the Project is consistent with the purposes of Section 13 of Article VIII of the Ohio Constitution to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio.

SECTION TWO:

Green City Council agrees that the City may make grant payments to Surgere, Inc. pursuant to the Grant Agreement attached as **AMENDED** Exhibit "A" to assist the company in financing the Project and in furtherance of the purposes in Section 13 of Article VIII of the Ohio Constitution. Green City Council authorizes the Mayor to execute the Grant Agreement to provide a municipal economic development grant for a period of five (5) years associated with relocating ~~51~~ ⁵² full-time employees and creating an additional ~~109~~ ¹⁰⁸ new permanent full-time positions with a total payroll of Fourteen Million Two Hundred Thousand Dollars (\$14,200,000.00) within a period of five (5) years.

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SECTION THREE:

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in an open meeting of this Council and any deliberations of this Council and any of its committees that resulted in those formal action were in meetings open to the public, in compliance with all legal requirements.

SECTION FOUR:

Green City Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety, and welfare of the citizens of Green. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: October 22, 2019

Nichole Baldinger
~~Molly Kapeluck~~, Clerk of Council Interim

Bob Young
Bob Young, Council President

APPROVED: October 23, 2019

Gerard M. Neugebauer
Gerard M. Neugebauer, Mayor

ENACTED EFFECTIVE: October 22, 2019

ON ROLL CALL: Babbitt Aye Dyer Aye Humphrey Aye Shaughnessy Aye
Speight Aye Yeargin Aye Young Aye Adopted 7-0

Suburbanite publication on October 25 and November 1, 2019

Nichole Baldinger
~~Molly Kapeluck~~, Clerk Interim

**CITY OF GREEN
MUNICIPAL ECONOMIC DEVELOPMENT GRANT AGREEMENT**

This Grant Agreement ("Grant Agreement") is made and entered into by and between the **City of Green, Ohio**, a chartered political subdivision of the State of Ohio, with its administrative offices located at 1755 Town Park Blvd., PO Box 278, Green, Ohio 44232-0278 ("City") and **Surgere, Inc.**, an Ohio corporation whose offices are located at 5399 Lauby Road, Suite 200, Green, Ohio 44720 ("Company"). The City and the Company are collectively referred to herein as the ("Parties").

WITNESSETH:

WHEREAS, the City has encouraged the development of existing vacant industrial and office real property where occupancy results in new employment opportunities for the City; and

WHEREAS, the Company is in the business of information technology and software development in the packaging and supply chain management space and currently operates from its headquarters in the City at 5399 Lauby Road, Suite 200; and

WHEREAS, the Company wishes to expand its operations in the City to 3500 Massillon Road ("Project Site") and has made a request of the City for assistance through the form of an economic development grant; and

WHEREAS, the Mayor has investigated the request of the Company and has recommended City Council's approval of this Grant Agreement because the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities and improve the economic climate of the City; and

WHEREAS, the City desires to provide the Company with an incentive consistent with the purposes of Section 13 of Article VIII of the Ohio Constitution to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio and the City; and

WHEREAS, City Council has enacted Resolution 2019-R93 authorizing the execution of this Grant Agreement to provide an economic development grant to The Company based on The Company's income taxes withheld on wages earned at the Project Site as more fully defined hereinafter.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Grant Agreement and the benefit to be derived by the Parties from the execution of this Grant Agreement, the Parties agree as follows:

Section I: Definitions.

A. "Confidential Information" means income tax withholding forms or reports, tax returns and other substantiating evidence used pursuant to Section 718.13 of the Revised Code; provided,

however, Confidential Information shall not include information that became known to the City prior to the Company's disclosure of such information.

B. "Date of Initial Operations" means the date stated in the Grant Agreement in which the Company's facility and equipment is in a condition sufficient to allow for the commencement of Company activities at the Project Site.

C. "Related Member" means a person that with respect to the taxpayer during all or any portion of the taxable year is a Related Entity, is a component member as defined in Section 1563(b) of the Internal Revenue Code, or is a person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code.

D. "Related Entity" means one of the following:

- i) An individual stockholder or a member of the stockholder's family enumerated in Section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty (50) percent of the value of the taxpayers' outstanding stock;

- ii) A stockholder or a stockholder's partnership, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, estates, trusts, and corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty (50) percent of the value of the taxpayers' outstanding stock;

- iii) A corporation or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation, if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least fifty (50) percent of the value of the corporation's outstanding stock.

E. "Full-Time Permanent Employee" means an individual who is employed by the Company for at least thirty-five hours (35) hours a week.

F. "Part-Time Permanent Employee" means an individual who is employed by the Company for less than thirty-five hours (35) hours a week.

G. "Retained Employees" means the Employees employed by the Company within the City of Green before the Date of Initial Operations and who remain employed by the Company within the City of Green after the Date of Initial Operations.

H. "New Employee" means a Full-Time Permanent Employee first employed by the Company after the established Date of Initial Operations; except, New Employee does not include:

- 1. Any Employee of the Company who was previously employed in this state by a Related Member of the Company and whose employment was shifted to the Company;

2. An Employee of the Company who is employed in a position that was relocated to the Project Site from other operations in this state or from operations of a Related Member of the Company in this state and the position was not refilled; or

3. A child, grandchild, parent or spouse (other than a spouse who is legally separated from the individual) of any individual who is an Employee of the Company and who has a direct or indirect ownership interest of at least five (5) percent in the profits, capital or value of the Company. Such ownership interest shall be determined in accordance with Section 1563 of the Internal Revenue Code and the regulations prescribed.

4. An individual who is hired to fill a position that was in existence on June 30, 2019.

I. "Tax Year" means the calendar year for which taxes are charged.

J. "Collection Year" means the calendar year in which taxes are collected.

K. "Grant Year" means the Tax Year in which a municipal economic development grant is received by the Company.

L. "Municipal Income Tax" means an annual tax that is imposed by the City on income at the current rate as defined in Chapter 880 of City's Codified Ordinances.

M. "New Payroll Withholding Tax" means the total amount of Municipal Income Tax withheld by the Company from the compensation of New Employees during the applicable Tax Year.

N. "Reconciliation of City of Green Income Tax Withheld from Wages Form" means the form submitted by the Company showing the amount of payroll taxes withheld and paid during the applicable Tax Year to the City.

O. "Grant Payment" means the payment made by the City to the Company from non-tax revenues as determined by the City based on a percentage of City of Green Annual Municipal Income Tax Withholding Receipts derived from job creation and retention from the Company as laid out in Section III below.

P. "Non-Tax Revenues" as used in this Grant Agreement means all monies of the City, which are not monies raised by taxation, to the extent available for the purpose of making the Grant Payment required, including, but not limited to the following:

- i) Grants from the United States of America and the State;
- ii) Payments in lieu of taxes now or hereafter authorized by State statute to the extent pledged to pay debt charges on City indebtedness;
- iii) Fines and forfeitures which are deposited in the City's General Fund;
- iv) Fees deposited in the City's General Fund for services provided and from properly imposed licenses and permits;
- v) Investment earnings on the City's General Fund;

- vi) Investment earnings on other funds of the City that are granted to the City's General Fund;
- vii) Proceeds from the sale of assets which are deposited in the City's General Fund;
- viii) Gifts and donations; and
- ix) All rental payments which are deposited in the City's General Fund.

Section II: Company's Determinations.

The Company established its headquarters in Green, Ohio and has continued to grow since its formation in 2004.

The Company shall expand its information technology and software development operations and related employee services currently located at 5399 Lauby Road, Suite 200, Green, OH 44720 to 3500 Massillon Road, Green, OH 44685. The expansion shall include acquiring via lease and remodeling 3500 Massillon Road, Green, Ohio 44685.

Section III: Job Retention and Creation Requirements.

A. Retention

The Company, during the Grant Term (as defined in Section IV hereinbelow), shall retain employment levels as they existed as of July 1, 2019 ("Retained Employees"). The Retained Employees may work out of the Company's facility located at 5399 Lauby Road, Suite 200, Green, OH 44720 and/or the Project Site as Company may determine, from time to time, in its sole discretion. The Company, as of July 1, 2019, has at its current location in Green: Fifty-One (51) Full-Time Permanent Employees with an annual payroll of approximately Four Million Six Hundred Thousand Dollars (\$4,600,000.00).

B. New Job Creation

The company is committed to hiring, within a five (5) year period, beginning July 1, 2019 and concluding five (5) years thereafter, at least one-hundred nine (109) New Employees at the Project Site with an anticipated total employee of 160 and annual total payroll of fourteen-million two-hundred thousand dollars (\$14,200,000).

Section IV: Grant Percentage & Term.

For each Tax Year during the Grant Term, the City shall pay to The Company, as a Grant Payment from Non-Tax Revenues, a sum equal to Fifty Percent (50%) of the New Payroll Withholding Taxes paid on the final net annual payroll derived from each New Employee hired by the Company during the Grant Term and a sum equal to Twenty-Five Percent (25%) of the Retained Payroll Withholding Taxes paid on the final net annual payroll derived from Retained Employees employed by the Company during the Grant Term with an anticipated total payroll of Four Million Six Hundred Thousand Dollars (\$4,600,000.00). The Grant Payment shall be paid for each Tax Year that occurs during the Grant Term.

The Grant Payment shall be paid for Tax Years 2020-2024. The Grant Term shall begin in Tax Year 2020 (January 1, 2020) and terminate at the end of Tax Year 2024 (December 31, 2024) with the final Grant Payment for Tax Year 2024 being paid to the Company in Tax Year 2025 so long as the Company maintains its current levels of employment within the City of Green and delivers

on its projected job creation of a total of at least one hundred nine (109) New Employees by December 31, 2024.

The following chart contains The Company's annual job growth projections and is provided as an example and for illustrative purposes only and is not binding upon The Company:

Job Creation

Grant Year	Tax Year	Grant Payment Year	Anticipated Employment Level	Anticipated Payroll Investment	Municipal Income Tax Rate	Payroll Withholding Taxes Due by Company	Grant Payment Percentage	Annual Grant Payment to Company
1	2020	2021	69	\$ 6,108,000.00	2%	\$ 122,160.00	50%	\$ 61,080.00
2	2021	2022	81	\$ 7,178,800.00	2%	\$ 143,576.00	50%	\$ 71,788.00
3	2022	2023	94	\$ 8,356,680.00	2%	\$ 167,133.60	50%	\$ 83,566.80
4	2023	2024	109	\$ 9,652,348.00	2%	\$ 193,046.96	50%	\$ 96,523.48
5	2024	2025	109	\$ 9,652,348.00	2%	\$ 193,046.96	50%	\$ 96,523.48
								\$ 409,481.76

Retention

Grant Year	Tax Year	Grant Payment Year	Anticipated Employment Level	Anticipated Payroll Investment	Municipal Income Tax Rate	Payroll Withholding Taxes Due by Company	Grant Payment Percentage	Annual Grant Payment to Company
1	2020	2021	51	\$ 4,600,000.00	2%	\$ 92,000.00	25%	\$ 23,000.00
2	2021	2022	51	\$ 4,600,000.00	2%	\$ 92,000.00	25%	\$ 23,000.00
3	2022	2023	51	\$ 4,600,000.00	2%	\$ 92,000.00	25%	\$ 23,000.00
4	2023	2024	51	\$ 4,600,000.00	2%	\$ 92,000.00	25%	\$ 23,000.00
5	2024	2025	51	\$ 4,600,000.00	2%	\$ 92,000.00	25%	\$ 23,000.00
								\$ 115,000.00

Section V: Grant Payment.

The Grant Payments shall be paid annually to the Company following the end of each Tax Year that occurs during the term of the Grant Period within ninety (90) days of the receipt of the Company's Annual Report, Reconciliation of City of Green Income Tax Withheld from Wages Form and any supporting documentation requested by the City from the Company (with the Grant Payment for Tax Year 2024 to be made in 2025). The Company's Annual Report will be considered tentative and subject to audit by the City of Green Finance Department. Any obligation of the City created by or arising out of this Grant Agreement shall not be a general debt on its part nor give rise to any pecuniary liability of the City, but shall be payable solely from non-tax revenue

sources as determined by the City. The Grant Payment(s) due shall be made by check payable to the Company and addressed to the Company's President, William Wappler.

Date of Initial Operations at the Project Site shall be January 1, 2020.

Section VI: Company's Operation.

The Company shall continue to maintain its operations at the Project Site for the same number of Calendar Years as the term of the Grant ("Continuation Period"). The Continuation Period will begin January 1, 2025 and end on December 31, 2029.

Section VII: Effect of Failure to Maintain Operations.

If the Company fails to maintain operations at the Project Site for the Continuation Period, the Company may be required to payback, at the City's sole, absolute discretion, in whole or in part, any grant monies received. In determining the portion of any Grant to be repaid, the City shall consider the effect of market conditions on the Company's Project.

Section VIII: Reporting.

A. Annual Reports

The Company shall be required to provide Annual Reports to the City, which shall be on forms provided by the City and shall include any information reasonably required by the City to evaluate the Company's compliance with this Grant Agreement. The Annual Report shall specify, at a minimum, the number of New Employees, the annual payroll of the New Employees, the average wage of the New Employees, the Payroll Withholding Taxes withheld in connection with the New Employees, and any other information the City deems appropriate to perform its duties. The Company's Annual Report to the City shall be certified as accurate and complete as evidenced by the original signature of an authorized officer of the Company. Annual Reports are due to the City of Green Planning Department, no later than March 1 of each calendar year.

At the signing of this agreement, the Company shall provide to the City of Green a listing of current employees names, job titles, home addresses, average hours worked per week, date of initial employment and their annual wages to determine the base benchmark.

Each year the Company shall provide, at a minimum to the City of Green Finance Department and the City of Green Planning Department, a copy of their Reconciliation of City of Green Income Tax Withheld from Wages Form showing the amount of payroll taxes withheld and paid during the applicable Tax Year to the City. The Company shall also provide a listing containing each employee's name, average hours worked per week and wages for that year.

In the event that the City determines the Company has submitted an Annual Report containing erroneous data or data not supported by the records established and maintained under this Grant Agreement, the City may, after providing written notice, require the Company to resubmit corrected Annual Reports for the Tax Year(s) in which such Annual Report(s) were filed.

B. Continuation Reports

No later than March 1 of each calendar year following a Continuation Period year, the Company shall submit to the City written notice that includes, but is not limited to, the total number of

Retained and New Employee levels, Retained and New Employee annual payroll levels, Retained and New Employee average wage rates, and any other information demonstrating that the Company maintains substantial operations at the Project Site. The Continuation Report shall be itemized by Retained/Transferred and New Employees and management employees and shall be certified as accurate and complete as evidenced by the original signature of any authorized officer of the Company.

Section IX: Non-Compliance and Termination.

In the event that the Company fails to achieve and/or maintain the minimum amounts required, or if the Company materially fails to fulfill any other obligation under this Grant Agreement the City shall give written notice of such failure(s) to the Company. The notice shall provide the Company with a detailed description of the alleged failure(s) and a thirty (30) day period from Company's receipt of the written notice to cure any and all defaults described in the notice.

If upon expiration of the thirty (30) day notice period, the Company has failed to cure the alleged default(s) described in the notice, the City may unilaterally and prospectively reduce the percentage and term of the Grant or the City may immediately terminate the Grant Agreement in its entirety.

Section X: Amendments or Modifications.

Either party may at any time during the Term of this Grant Agreement request amendments or modifications, but such changes or amendments shall not be effective until reduced to writing and executed by the Parties. Requests for amendment(s) or modification(s) to this Grant Agreement shall be in writing and shall specify the requested change(s) and the justification of such change(s). The Parties shall review the request for modification(s) in terms of legislation, regulations, and goals relating to the Project. Should the Parties consent to modification(s) of the Grant Agreement, an amendment shall be created, approved, and executed in the same manner as the original Grant Agreement. Such amendment(s) shall not be effective until a written amendment is signed by all Parties. Notwithstanding the above and pursuant to Ohio Revised Code Section 122.17(E) and Ohio Administrative Code Section 122:7-1-08, the City may amend the terms of the Grant Agreement, in appropriate circumstances, without the consent of the Company and without a written amendment executed by all Parties.

Section XI: Records, Access and Maintenance.

The Company is required to establish and maintain all relevant supporting documentation used in the generation of this Grant Agreement and its reporting requirements for at least four (4) years beyond the last Calendar Year of the Continuation Period. The Company shall make available for examination all of its records with respect to matters covered by this Grant Agreement including, but not limited to, records of personnel and conditions of employment and shall permit the City and appropriate state agencies or officials to audit, examine, and make excerpts or transcripts from such records at reasonable times and upon reasonable advance written notice. The Company shall maintain and organize its records in such form so that, in case of a review of its records or an audit, it is able to verify and document the information it provides in its Annual and Continuation Reports pursuant to this Grant Agreement. The Company shall make available, during normal business hours, company records for review and verification by the City and any appropriate state agency

or official as often as the City or the appropriate state agency or official may reasonably deem necessary.

The Parties further agree that records required by the City with respect to any questioned costs, audit disallowances, litigation, or dispute between the City and the Company shall be maintained for the time needed for the resolution of the question and that in the event of early termination of this Grant Agreement, or if for any other reason the City shall require a review of the records related to the Project, the Company shall, at its own cost and expense, segregate all such records related to the Project from its other records of operation.

Section XII: Audits and Inspections.

Final determination of the number of New Employees created, Payroll Withholding Taxes received, and findings as to all other matters pertaining to compliance with this Grant Agreement shall be made by the City. The Company authorizes the City, including, but not limited to, the Mayor, Finance Department, Law Department and/or Planning Department to review and inspect its City of Green Income Tax Division records as necessary.

Section XIII: Forbearance Not a Waiver.

No act of forbearance or failure to insist on the prompt performance by the Company of its obligations under this Grant Agreement, either express or implied, shall be construed as a waiver by the City of any of its rights under this Grant Agreement.

Section XIV: Equal Employment Opportunity.

The Company will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, veteran status, disability or age. The Company will incorporate the requirements of this Section in all of its respective employment applications, hiring practices, and contracts.

Section XV: Conflict of Interest.

No personnel of the Company, any subcontractor of the Company, or public official, who exercises any functions or responsibilities in connection with the review or approval of the Grant Agreement shall, voluntarily or involuntarily, acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of their functions or responsibilities with respect to this Grant Agreement. Any such person who, prior to or after the execution of this Grant Agreement, acquires any personal interest, involuntarily or voluntarily, in the Company shall immediately disclose their interest to the City and the Company in writing. Thereafter, such person shall not participate in any action affecting this Grant Agreement unless the Parties determine that, in light of the personal interest disclosed, their participation in any such action would not be contrary to the public interest.

Section XVI: Governing Law.

This Grant Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to matters of validity, construction, effect, and performance.

Section XVII: Adherence to State, Local and Federal Laws, Regulations.

This Grant Agreement shall be governed by and construed in accordance with the laws of the City of Green, without giving effect to any choice or conflict of law provisions or rules that would cause the application of the laws of any other jurisdiction.

The Company also agrees to comply with all applicable federal, state, and local laws related to the Project. The Company accepts full responsibility for payments of all unemployment compensation, insurance premiums, worker's compensation premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by the Company. In the event of a dispute arising out of this Grant Agreement, the Parties agree to continue in good faith to discuss and attempt to resolve the issues of the dispute through negotiation. If litigation ensues, the Parties may use any and all Confidential Information necessary to support its case despite the provisions of Section XX.

Section XVIII: Outstanding Liabilities.

The Company does not owe:

- A. Any delinquent taxes to the United States Federal Government, State of Ohio, the City of Green or a political subdivision of the State;
- B. Any moneys to the State of Ohio or a state agency for the administration or enforcement of any environmental laws of the State; and
- C. Any other moneys to the State of Ohio, a state agency, the City of Green or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

Section XIX: Falsification of Information.

The Company affirmatively covenants that it, any parent corporation of the Company, and any other Related Entity or Member has made no false statements to the City in the process of obtaining this Grant. If the Company, any parent corporation of the Company, or other Related Entity or Member has knowingly made a false statement to the City to obtain this Grant, the Company shall be required to return all benefits immediately pursuant to Ohio Revised Code Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency, the City of Green or a political subdivision pursuant to Ohio Revised Code Section 9.66(C)(1).

Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code 2921.13(E)(1), which is punishable by a fine of not more than \$1,000.00 and/or a term of imprisonment of not more than one hundred eighty (180) days.

Section XX: Confidentiality.

The Parties agree:

- A. Not to disclose Confidential Information of the other party or its agents, to third Parties (excluding a party's agents or representatives);
- B. Not to use the Confidential Information except for enforcement of or in furtherance of the purposes of this Grant Agreement; and

C. The Confidential Information of a party is and shall remain the property of the disclosing party.

However, Confidential Information as it means in this Grant Agreement, shall not preclude the City from releasing any information as required by law.

Section XXI: Forum and Venue.

All actions regarding this Grant Agreement shall be forumed and venued in a court of competent subject matter with jurisdiction in Summit County, Ohio.

Section XXII: Indemnification.

The Company agrees to hold the City harmless from any and all liabilities or claims caused by or resulting from the Company's performance of the obligations or activities in furtherance of the Project. The Company agrees to reimburse the City for all costs incurred in defending itself against any such claims or legal actions.

Section XXIII: Entire Grant Agreement.

This Grant Agreement, its exhibits, and any documents referred to herein sets forth the complete understanding of the Parties and merges and supersedes any and all other discussions, grant agreements, representations, and understandings, either oral or written, between the Parties with respect to the subject matter of this Grant Agreement.

Section XXIV: Notices.

All notices, consents, demands, requests, and other communications, which may be or are required to be given hereunder, shall be in writing and shall be deemed duly given if personally delivered, sent by facsimile with confirmation, regular United States mail, Private Carrier, or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth in this Section or to such other address as the Parties may designate in writing.

If to the City of Green:

City of Green

Attention: Gerard M. Neugebauer, Mayor

P.O. Box 278

1755 Town Park Blvd.

Green, Ohio 44232-0278

Phone: (330) 896-6602

E-mail: gneugebauer@cityofgreen.org

With a copy to:

City of Green Planning Department

Attention: Wayne L. Wiethe, Director of Planning

P.O. Box 278

1755 Town Park Blvd.

Green, Ohio 44232-0287

Phone: (330) 896-6614

E-mail: wwiethe@cityofgreen.org

If to Surgere, Inc.:
Surgere, Inc.
Attention: William Wappler, President & CEO
5399 Lauby Road, Suite 200
Green, Ohio 44720
Phone: (330) 966-3746
E-mail: William.wappler@surgere.com

Section XXV: Assignment.

This Grant Agreement nor any rights, duties, or obligations described shall be assigned or transferred by the Company without the express, legislative approval of the City. Such consent shall not be unreasonably withheld. The City acknowledges that it would be unreasonable to withhold 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 City, to the City's reasonable satisfaction, its financial ability, business experience and intentions to continue its operations at 3500 Massillon Road in the City 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 Grant Agreement.

Section XXVI: Successor in Interest.

Where the City has consented in writing to an assignment as described in Section XXV, each and all of the terms and conditions of this Grant Agreement shall extend, bind, and inure to the benefit of not only the Company, but to its successors and assigns.

Section XXVII: Severability

Provisions of this Grant Agreement shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision(s) of this Grant Agreement are held to be prohibited by or invalid under applicable law, the provision(s) shall be ineffective only to the extent of the prohibition or invalidity, without invalidating the remaining provisions of this Grant Agreement.

Section XXVIII: Counterparts

This Grant Agreement may be signed in any number of counterparts, each of which constitute an original, but all of which constitute one Grant Agreement.

Section XIX: Pronouns.

The use of any gender pronoun shall be deemed to include all the other genders, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

Section XXX: Headings.

Section headings contained in this Grant Agreement are inserted for convenience only and shall not be deemed to be a part of this Grant Agreement.

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed and effective as of the date signed by the Mayor of the City of Green.

Surgere, Inc.

By: _____

Printed Name: William Wappler

Title: President & CEO

Date: _____

City of Green

By: _____

Printed Name: Gerard M. Neugebauer

Title: Mayor

Date: _____

Approved as to form:

William G. Chris, Director of Law, Interim