

ORDINANCE NO. 2018-34
INTRODUCED BY: Mayor Bodnar

**AN EMERGENCY ORDINANCE
AUTHORIZING AND DIRECTING
THE MAYOR AND PRESIDENT OF COUNCIL
TO ENTER INTO AN ECONOMIC DEVELOPMENT
INCENTIVE GRANT AGREEMENT BETWEEN THE
MAYFIELD COMMUNITY IMPROVEMENT CORPORATION,
MAYFIELD VILLAGE, OHIO AND PREEMPTIVE SOLUTIONS LLC**

WHEREAS, the promotion of economic development, including the retention of businesses in the Village, has been and continues to be a significant goal of the Village; and

WHEREAS, to accomplish this goal, the Village and the Mayfield Community Improvement Corporation (“MCIC”) have created an Economic Development Incentive Program (“Program”) through which the Village awards economic development incentive grants to designated companies in the Village; and

WHEREAS, the MCIC was first incorporated in December 1983, and continues in good standing as an Ohio not-for-profit corporation, known as a community improvement corporation, under Title XVII, Chapters 1724 and 1702 of the Ohio Revised Code; and

WHEREAS, the MCIC acts as the designated agency and instrumentality of the Village for the purpose of promoting industrial, commercial, distribution and research development in the Village pursuant to Ohio Revised Code Section 1724.10; and

WHEREAS, PreEmptive Solutions LLC (“the Company”) is a developer of software protection applications, and is exploring expansion of its operations at 767 Beta Drive, and represents that it is unlikely to remain in Mayfield Village without any financial assistance from the Village; and

WHEREAS, the Company further represents that with the provision of financial assistance under an Incentive Grant Agreement, it is more likely to remain in the Village and will occupy approximately 8,200 square feet at 767 Beta Drive, resulting in the retention of twenty-seven (27) employees and the addition of a projected twenty-three (23) employees in the Village within five years generating approximately Ninety Eight Thousand Dollars (\$98,000) in annual income tax revenue for the Village.

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 enter into an Incentive Grant Agreement with the Company to award the Company an economic development incentive grant based on the Company's representations concerning job creation and annual income tax revenue generated by the Company; and

WHEREAS, the Village wishes to authorize an economic development incentive grant ("Incentive Grant") in an amount equal to Thirty Percent (30%) of the Company's income taxes withheld on wages earned at 767 Beta Drive in the Village and/or paid to the Village in excess of Forty-Two Thousand Dollars (\$42,000.00) based upon the Company's final net annual payroll during the five (5) calendar years beginning January 1, 2019 and concluding December 31, 2023 ("Term"); and

WHEREAS, the MCIC, in its role as the designated agency for the Village, will be the administrator of the terms of the Incentive Grant Agreement and as the administrator will conduct an annual review and assessment of the Company's compliance with the terms of the Incentive Grant Agreement; and

WHEREAS, all income tax revenue considered under the Incentive Grant Agreement will be income taxes withheld and/or paid directly to the Village for wages earned at 767 Beta Drive in the Village and collected and reported by the Regional Income Tax Authority ("RITA") on the Company's final net annual payroll.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF MAYFIELD VILLAGE, OHIO, THAT:

SECTION 1. Council authorizes the Mayor and President of Council to enter into an Economic Development Incentive Grant Agreement with PreEmptive Solutions LLC and the Mayfield Community Improvement Corporation, substantially similar to the copy of the Agreement attached as Exhibit "A" and incorporated by reference, for the purpose of advancing, encouraging, and promoting the industrial, economic, commercial, and civic development in the Village.

SECTION 2. Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the health, safety and welfare of the residents of Mayfield Village, Ohio and to allow PreEmptive Solutions LLC to move forward with its expansion forthwith. It shall, therefore, take effect immediately upon the passage by the affirmative vote of not less than five (5) members elected to Council and approval by the Mayor or otherwise at the earliest time allowed by law.

JOSEPH M. SAPONARO
Council President

First Reading: _____ 2018
Second Reading: _____ 2018
Third Reading: _____ 2018
PASSED: _____ 2018

BRENDA T. BODNAR, Mayor

APPROVED AS TO FORM:

ANTHONY J. COYNE, ESQ.
DIRECTOR OF LAW

ATTEST: _____
MARY E. BETSA, MMC
Clerk of Council

ECONOMIC DEVELOPMENT INCENTIVE GRANT AGREEMENT

This Economic Development Incentive Grant Agreement ("Incentive Grant Agreement") is entered into this 2 day of November, 2018 ("Effective Date") by and between Mayfield Village, Ohio, a chartered political subdivision of the State of Ohio, having an address of 6622 Wilson Mills Road, Mayfield Village, Ohio 44143 ("Village"), the Mayfield Community Improvement Corporation, an Ohio not-for-profit corporation established as an agency of the Village as permitted by law and having an address of 6621 Wilson Mills Road, Mayfield Village, Ohio 44143 ("MCIC"), and PreEmptive Solutions LLC, an Ohio limited liability company, having a current address of 767 Beta Drive, Suite A, Mayfield Village, Ohio 44143 ("Company"). (The Village, MCIC, and the Company are collectively referred to herein as the ("Parties")).

PREAMBLE

WHEREAS, the promotion of economic development, including the retention of businesses in the Village, has been and continues to be a significant goal of the Village; and

WHEREAS, to accomplish this goal, the Village and the MCIC have created an Economic Development Incentive Program ("Program") to award economic development incentive grants to designated companies in the Village; and

WHEREAS, the MCIC was first incorporated in December 1983, and continues in good standing as an Ohio not-for-profit corporation, known as a community improvement corporation, under Title XVII, Chapters 1724 and 1702 of the Ohio Revised Code; and

WHEREAS, the MCIC acts as the designated agency and instrumentality of the Village for the purpose of promoting industrial, commercial, distribution and research development in the Village pursuant to Ohio Revised Code Section 1724.10; and

WHEREAS, the Company is a developer of software protection applications, and is exploring expansion of its operations, and represents that it is unlikely to remain in Mayfield Village without any financial assistance from the Village; and

WHEREAS, the Company further represents that with the provision of financial assistance under this Incentive Grant Agreement, it is more likely to remain in the Village and will occupy approximately 8,200 square feet at 767 Beta Drive, resulting in the retention of twenty-seven (27) employees and the addition of a projected twenty-three (23) employees within five years generating approximately Ninety Eight Thousand Dollars (\$98,000.00) in annual income tax revenue for the Village based upon a projected final net annual payroll of Four Million Nine Hundred Thousand Dollars (\$4,900,000.00); 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 enter

into this Incentive Grant Agreement with the Company to award the Company an economic development incentive grant based on the Company's representations concerning job creation and annual income tax revenue generated by the Company; and

WHEREAS, the Village wishes to authorize an economic development incentive grant ("Incentive Grant") in an amount equal to Thirty Percent (30%) of the Company's income taxes withheld on wages earned at 767 Beta Drive in the Village and/or paid to the Village in excess of Forty-Two Thousand Dollars (\$42,000.00) based upon the Company's final net annual payroll during the five (5) calendar years beginning January 1, 2019 and concluding December 31, 2023 ("Term"); and

WHEREAS, the MCIC, in its role as the designated agency for the Village, will be the administrator of the Incentive Grant provided by this Incentive Grant Agreement and as the administrator will conduct an annual review and assessment of the Company's compliance with the terms of this Incentive Grant Agreement; and

WHEREAS, all income tax revenue considered under this Incentive Grant Agreement will be income taxes withheld and/or paid directly to the Village for wages earned at 767 Beta Drive in the Village and collected and reported by the Regional Income Tax Agency ("RITA") on the Company's final net annual payroll.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the Parties hereby agree as follows:

SECTION I – REPRESENTATIONS OF THE VILLAGE

The Village makes the following representations:

1. It is a political subdivision, duly organized and validly existing under the laws of the State of Ohio and its Charter.
2. It has performed all acts required of it as a condition to signing and delivering this Incentive Grant Agreement.
3. It is not in violation of any laws of Ohio or its Charter, to an extent that would impair its ability to carry out its obligations under this Incentive Grant Agreement.
4. It has the power to enter into and perform its obligations under this Incentive Grant Agreement.
5. Its Village Council has duly authorized the signing, delivery, and performance of this Incentive Grant Agreement.

SECTION II – REPRESENTATIONS OF THE COMPANY

The Company makes the following representations and warrants and agrees that it shall be responsible for and comply with all of the following during the Term of this Incentive Grant Agreement:

1. The Company is duly organized, validly existing and in good standing under the laws of the State of Ohio.
2. The Company has performed all necessary and proper corporate action required to enter into this Incentive Grant Agreement, including having the Incentive Grant Agreement duly authorized by its Managing Member.
3. The Company is not in violation of any laws of Ohio to an extent that would impair its ability to carry out its obligations under this Incentive Grant Agreement.
4. The Company shall not change its use of the property in a way that fails to conform to the Village's Ordinances or other laws.
5. Subject to Section V(3) below, the Company shall not close or otherwise cease operations in the Village during the Term of this Incentive Grant Agreement.
6. For each calendar year of the Term of this Incentive Grant Agreement, the Company shall generate a minimum income tax revenue of Forty-Two Thousand Dollars (\$42,000.00) ("MITR") in order to be eligible for the Incentive Grant payment. Only income tax revenue generated by the Company, from its location at 767 Beta Drive, as income taxes withheld and/or paid directly to the Village for wages earned in the Village based upon its final net annual payroll within the Village, and collected and reported by RITA, will be considered under this Incentive Grant Agreement. For purposes of clarity, the Company's final net annual payroll shall include all wages paid by the Company to W-2 employees, owner/employees not subject to W-2 withholding and contract employees whose wages are reported on IRS Form 1099. The Company must submit documentation to the MCIC of tax payments made to the credit of the Village that are not in the form of W-2 withholding, which may include but not be limited to individual tax returns and other forms of proof of income tax payments made to RITA for wages earned at 767 Beta Drive. The sufficiency of that documentation will be determined as part of MCIC annual review.
7. The Company shall timely provide to the Village and the MCIC any information reasonably required by the Village and MCIC to evaluate the Company's compliance with this Incentive Grant Agreement. In addition, the Company shall inform the MCIC as soon as it becomes aware of any inability of the Company to

generate the requisite MITR for any calendar year of the Term of this Incentive Grant Agreement.

8. The Company shall utilize the Incentive Grant provided under this Incentive Grant Agreement only for lawful purposes that promote the development and economic viability of the Company and its operations in the Village.
9. The Company acknowledges that this Incentive Grant Agreement does not create or act as an extension of credit to the Company by either the Village or the MCIC, and that this Incentive Grant Agreement does not delegate governmental powers to the Company. The Company further acknowledges that this Incentive Grant Agreement does not create a lien on the Village's money, property or other assets, and that this Incentive Grant Agreement does not restrict any future right of action by the legislative authority of the Village as may be prohibited by law.
10. The Company will cooperate with and provide any reasonable assistance, but not financial assistance, requested by the Village and the MCIC if this Incentive Grant Agreement is challenged or threatened to be challenged.

SECTION III – RESPONSIBILITIES OF THE MCIC

1. The MCIC shall act in its capacity as the designated agency of the Village and shall administer the terms of this Incentive Grant Agreement. In administering the terms of this Incentive Grant Agreement the MCIC shall, among other things, receive, review and issue a recommendation to the Village where appropriate concerning any notice or other document received from the Company. The MCIC shall also forward any required notices or information to the Company, including any information received by the Village or the MCIC from RITA concerning the Company.

2. In addition, excluding the first year of this Incentive Grant Agreement, at the beginning of each year, but in no event later than the first (1st) quarter, the MCIC shall perform an annual review and assessment of the Company's compliance with the terms of this Incentive Grant Agreement for the prior calendar year. Such annual review shall include a review and determination of whether the Company has generated the requisite MITR for the preceding calendar year of the Term. Upon completion of such annual review, the MCIC shall issue a notice of its determination to the Village and the Company.

3. Within sixty (60) days of a default or a termination of this Incentive Grant Agreement, the MCIC shall perform a review and assessment of the Company's compliance with the terms of this Incentive Grant Agreement and provide the Village with a report setting forth the same.

SECTION IV – ISSUANCE AND PAYMENT OF GRANT

1. As of the Effective Date set forth above, and subject to Sections II(6) above and V(2) below, the Village authorizes an Incentive Grant in an amount equal to Thirty Percent (30%) of the Company's income taxes withheld on wages earned in the Village at its 767 Beta Drive location only and/or paid to the Village based upon its final net annual payroll. The Incentive Grant payments shall be granted and calculated based on the Company's annual performance during the five (5) calendar years beginning January 1, 2019 and concluding December 31, 2023, subject to the provisions of Section IV(2) below.

2. The initial Incentive Grant payment for the 2019 calendar year shall be made by April 15, 2020, provided the Company files its Reconciliation of Return of Income Tax Withheld with RITA by February 28, 2020. The initial Incentive Grant payment, as well as subsequent Incentive Grant payments, shall be made out of the economic development or other appropriate fund maintained by the Village in the form of a check issued by the Village Director of Finance to the Company and shall be made payable to the Company.

3. After the initial Incentive Grant payment is made, four (4) additional annual Incentive Grant payments shall be made by April 15th of each subsequent year for each prior calendar year provided the Company files its Reconciliation of Return of Income Tax Withheld with RITA by February 28th of said year. If the Company requests an extension of time to file its Reconciliation, the Village will make the Incentive Grant payment within three (3) months of the extended filing date. It is the responsibility of the Company to advise the Village's Finance Director and MCIC of the filing extension.

SECTION V – TERMINATION, MODIFICATION, DEFAULTS AND REMEDIES

1. Unless otherwise terminated earlier, this Incentive Grant Agreement shall automatically terminate five (5) years after the initial Incentive Grant payment is made as set forth in Section IV above.

2. During the Term, in the event the Company fails to generate the MITR for a calendar year of the Term, the Incentive Grant Agreement shall not be terminated but no Incentive Grant payment shall be awarded for that calendar year.

3. In the event the Company moves substantially all of its operations out of the Village or terminates its operations in the Village altogether during the Term of this Incentive Grant Agreement, this Incentive Grant Agreement shall automatically terminate and the Village shall have the right, but not the obligation, to require the Company to refund and pay directly to the Village or its authorized agency the Incentive Grant payments in an amount equal to all the Incentive Grant payments awarded under this Incentive Grant Agreement as of the date the Company moves substantially all of its operations out of the Village or terminates its operation in the Village altogether. Upon termination of the Incentive Grant Agreement hereunder, no further Incentive Grant payments shall be made by the Village to the Company. Upon demand by the Village for a refund, the Company shall within sixty (60) days of such demand, forward

such amount to the Village. In no event shall the liability of the Company under this Incentive Grant Agreement exceed the amount of the Incentive Grant payments actually received by the Company pursuant to this Incentive Grant Agreement. Notwithstanding the foregoing, in the event the Company is forced to vacate its premises located in the Village through no fault of the Company (e.g., casualty or other force majeure events), then the Village may proceed to suspend further Incentive Grants or terminate this Incentive Grant in accordance with the terms and conditions set forth herein but shall not proceed against the Company to refund and pay back any prior Incentive Grants that it lawfully received.

4. If the Company defaults in the performance of its obligations under this Incentive Grant Agreement, the Village and/or the MCIC shall serve written notice of such default on the Company and demand the default be cured. Except for a failure by the Company to generate the MITR for a calendar year of the Term, if any such default continues for a period of sixty (60) or more days after the Company receives written notice of such default, then the Village and MCIC may terminate this Incentive Grant Agreement and pursue any rights and remedies as are set forth in this Incentive Grant Agreement and as may otherwise be available at law.

5. If the Village or MCIC defaults in the performance of their respective obligations under this Incentive Grant Agreement, the Company shall serve written notice of such default and demand the default be cured. If any such default continues for a period of sixty (60) or more days after the Company gives the Village and MCIC written notice of such default, then the Company may terminate this Incentive Grant Agreement and pursue any rights and remedies as set forth in this Incentive Grant Agreement and as otherwise are available at law.

SECTION VI – LIABILITY OF OFFICERS AND AGENTS

This Incentive Grant Agreement is not intended to subject any official, officer, agent, or employee of the Village, the MCIC, or the Company to personal liability or accountability by reason of the execution or performance of this Incentive Grant Agreement.

SECTION VII – NON-ASSIGNMENT

The Company shall not pledge, mortgage, grant a security interest in, assign, or collaterally assign this Incentive Grant Agreement, or any rights, privileges, or claims under this Incentive Grant Agreement, to any person or entity, without the express written approval of the Village, which shall not be unreasonably withheld. The Village acknowledges that it would be unreasonable to withhold consent in the event of a proposed transfer of 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 at 767 Beta Drive 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 Incentive Grant Agreement.

SECTION VIII – REOPENER PROVISION

In the event that the Company fails to generate the requisite MITR for any year of the Term of this Agreement, the Village and the MCIC may elect to consult with the Company on potential appropriate restructuring of the Incentive Grant, provided that such adjustment does not increase the Incentive Grant to which the Company would otherwise be entitled.

SECTION IX – BINDING EFFECT

Upon execution, this Incentive Grant Agreement shall be binding upon, and shall inure to the benefit of the Parties and the respective successors and assigns of each. The Parties hereto represent and warrant that they have full authority to execute this Incentive Grant Agreement on behalf of the Party for which they execute.

SECTION X – FORBEARANCE NOT A WAIVER

No act of forbearance or failure of the Parties to insist on the prompt performance of any obligations under this Incentive Grant Agreement, either express or implied, shall be construed as a waiver by the Parties of any rights of the Parties under this Incentive Grant Agreement or applicable law. Notwithstanding the foregoing, any and all claims by a Party under this Agreement must be asserted no later than April 1, 2025, unless otherwise agreed to in writing by the Parties.

SECTION XI – SURVIVAL

Any provision of this Incentive Grant Agreement which, by its nature, is intended to survive the expiration or other termination of this Incentive Grant Agreement shall so survive.

SECTION XII – SEVERABILITY

Whenever possible, each provision of this Incentive Grant Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Incentive Grant Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of the provisions of this Incentive Grant Agreement.

SECTION XIII – GOVERNING LAW

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

SECTION XIV – FORUM AND JURISDICTION

The Parties submit to the non-exclusive jurisdiction of any federal or state court sitting in Cuyahoga County, Ohio, in any action or proceeding arising out of or related to this Incentive Grant Agreement. Nothing in this Incentive Grant Agreement shall limit the right of the Village or the MCIC to bring any action or proceedings in the courts of any other jurisdiction. Any actions or proceedings by the Company against the Village or the MCIC involving, directly or indirectly, any matter in any way arising out of or related to this Incentive Grant Agreement shall be brought only in a court in Cuyahoga County, Ohio.

SECTION XV – ENTIRE INCENTIVE GRANT AGREEMENT

This Incentive Grant Agreement constitutes the entire agreement of the Parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, understandings and arrangements concerning such subject matter.

SECTION XVI – MODIFICATION

By the mutual consent of the Parties, this Incentive Grant Agreement may be modified whenever such modifications are deemed necessary. Any such modifications to this Incentive Grant Agreement shall be by written amendment signed by the Parties.

SECTION XVII – NOTICES

All notices that may be proper or necessary to be served shall be in writing and sent by regular U.S. mail, postage prepaid, or certified mail, return receipt requested, to the following addresses, or to such other address as either party may designate in writing for such purpose:

If to the Company, to:

Gabriel Torok
PreEmptive Solutions LLC
767 Beta Drive, Suite A
Mayfield Village, OH 44143

If to the Village, to:

Mayfield Village
c/o Economic Development Manager
6622 Wilson Mills Road
Mayfield Village, OH 44143

With a copy to:

Mayfield Village
c/o Mayor
6622 Wilson Mills Road.
Mayfield Village, OH 44143

If to the MCIC, to:

MCIC
c/o President
6621 Wilson Mills Road
Mayfield Village, OH 44143

Any such notice properly served shall be effective on the date actually received.

SECTION XVIII – EXECUTION

This Incentive Grant Agreement may be executed in any number of counterparts, all of which together shall be considered a single instrument.

IN WITNESS WHEREOF, the Village, the MCIC, and the Company have hereunto caused this Incentive Grant Agreement to be executed by their duly authorized representatives as of the Effective Date set forth above.

– Remainder of page intentionally left blank –

On behalf of the Company:

Gabriel Torok
Company Officer's Signature

2 Nov 2018
Date

Gabriel Torok, CEO
Name and Title (Print)

On behalf of the Village:

Brenda T. Bodnar, Mayor
Mayfield Village, Ohio

Date

Joseph M. Saponaro, Council President
Mayfield Village, Ohio

Date

On behalf of the MCIC:

Joseph M. Saponaro, President
Mayfield Community Improvement Corporation

Date

Approved as to legal form:

Anthony J. Coyne, Esq.
Mayfield Village Director of Law