

**AGREEMENT**  
**FOR JOB CREATION AND ECONOMIC DEVELOPMENT IN**  
**WINSTON-SALEM**  
**FORSYTH COUNTY, NORTH CAROLINA**  
**December 28<sup>th</sup>, 2018**

This Agreement (“**Agreement**”) is entered into, effective as December ~~27~~<sup>28</sup> 2018, by and among Cook Winston-Salem LLC, a North Carolina limited liability company, and Wilson-Cook Medical, Inc., a North Carolina corporation, (collectively referred to herein as the “**Company**”) and the City of Winston-Salem, North Carolina (“**City**”) for an economic development project that involves the upfit of a new location in Whitaker Park, located in the North Ward, Winston-Salem, North Carolina (the “**Site**”).

**Recitals:**

- A. The City is vitally interested in the economic welfare of its citizens and the creation and maintenance of sustainable jobs for its citizens and therefore wishes to provide the necessary conditions to stimulate investment in the local economy and promote business resulting in the creation and/or retention of a substantial number of jobs at competitive wages, and to encourage economic growth and development opportunities which the City has determined will be made possible pursuant to the Project (as defined herein).
- B. The Company, which researches, designs, manufactures and sells medical devices that are used to perform minimally invasive medical procedures, is currently located in a facility off of 4900 Bethania Station Road where the Company has reached full capacity. The Company is seeking new space to modernize and transform its operations and manufacturing and allow the flexibility to purpose-build for efficiency and product lines.
- C. The Company has proposed to make a capital investment of at least \$55 million in the upfit of a certain building(s) and real property (including related improvements, as shown on **Exhibit A** the “**Facility**”) in Whitaker Park. The Facility and the created and retained jobs referred to herein shall constitute the “**Project**.” The Company and City expect that the Project will include taxable buildings and equipment having an initial aggregate taxable value of at least \$55 million) by December 31, 2022 at said Facility. It is estimated that the annual property tax revenues from the Project will be approximately \$328,570.
- D. Along with the Facility at the Site, the Company will create and retain the jobs referred to herein. The City expects the Company to create at least 50 Qualified Jobs (as defined herein) by June 30, 2033 at said Facility as a result of the Project with an average wage of \$38,000 per year, plus benefits and to retain for the full 10 year Incentive Grant Period (defined herein) 650 jobs annually in Winston-Salem.
- E. The City recognizes that the Project will bring direct and indirect benefits to the City including job creation and job retention, local economic diversification and stimulus, and the promotion of business and have offered economic development incentives (the “**Local Incentives**”) to induce the Company to locate the Project at the Site.

- F. The Company fully intends to establish, through the Project, an important presence in the City by relocating to the City large number of employees, utilizing local contractors including subcontractors and making a substantial investment in the Facility for the Project and in the training and development of those employees. The City hereby acknowledges that the terms of this Agreement, including specifically the Local Incentives and other assistance described in this Agreement, constitute a dispositive inducement to the Company to locate the Project at the Site. Similarly, the Company hereby acknowledges that its decision to locate the Project at the Site resulted from the City's offer of Local Incentives and other assistance described in this Agreement.

Now, therefore, for and in consideration of the mutual covenants and agreements set forth herein, the parties hereby agree as follows:

**I. Upfit of Facility and Capital Investment**

*A. Facility-Whitaker Park*

The Company has decided to locate the Facility in Whitaker Park which is located in Winston-Salem, North Carolina. The Site is designated as the Subject Property on the map attached hereto and incorporated herein as Exhibit A. The Company will undertake the upfits set forth in Exhibit B, attached hereto and incorporated herein.

*B. Timetable for Upfits*

The Company and City agree that timely upfits of the Facility is critical to the success of the Project. It is anticipated that the Facility will be renovated by December 31, 2022. The Company shall provide the City quarterly reports regarding work performed at the Site and the renovation schedule, as it may be revised from time to time. In the event it does not appear that the Facility will be finished by December 31, 2022, the Company shall appear before the City Council at least thirty (30) days in advance of the projected completion date to explain the delay and the revised renovation schedule. The Company shall renovate and maintain the Facility in compliance with all applicable local and state codes. Failure to renovate and maintain the Facility in compliance with said codes shall impact payment of the Annual Incentive Grant (as defined below), delaying such until the Facility has been brought into compliance with all applicable codes. Once compliance has been achieved and verified by the appropriate City, or State department, payment of the Annual Incentive Grant shall be made within thirty (30) days of said verification, provided all other requirements have been meet.

*C. Capital Investment*

The Company shall have made a cumulative capital investment in the Facility at the Site of \$55,000,000 based upon the schedule attached hereto and incorporated herein as Exhibit C. Said schedule and compliance therewith is a critical component of the City's provision of Annual Incentive Grants as set forth below. While it is anticipated by the Company and City that the Project will include taxable buildings and equipment having an initial aggregate taxable value of at least \$55,000,000, the Company is hereby required to maintain the buildings and equipment as taxable and to maintain a minimum tax value of \$22,500,000 ("Minimum

**Required Tax Value**”). If failure to maintain the Minimum Required Tax Value impacts the viability of the Project for the City, the City shall have the right to proportionately reduce the amount of the Annual Incentive Grant and suspend future payments until it reevaluates the terms of the deal for appropriate modifications.

**II. Local Economic Development Incentives — Related to Capital Investment and Job Creation.** In further consideration of the Company’s agreement to locate the Project at the Site, the City will provide the following Local Incentives to the Company.

A. *Annual Incentive Grants* —

For a period of ten (10) years (hereinafter the “**10-year Incentive Grant Period**”), commencing after all of the following have occurred: (1) renovation of the Facility by Company; (2) one or more certificates of occupancy evidencing that Company may operate within a portion of the Facility; (3) *intentionally deleted*; (4) the initial investment by Company in the Facility of at least \$55,000,000 in the Facility; and (5) the first payment of the property taxes on the constructed Facility, the City will provide annual economic development cash incentive grants to the Company in an amount not to exceed \$246,428 annually from the City (the “**Annual Incentive Grants**”) as shown in **Exhibit D**, attached hereto and incorporated herein, (such amounts for each year being referred to herein as the “**Maximum Annual Grants**” for such year and the cumulative amount of the Maximum Annual Grants, as shown in **Exhibit D**, and the cumulative amount being referred to herein as the “**Maximum Total Grants**”). The Maximum Total Grants shall not exceed \$2,464,275.00 as shown in **Exhibit D**.

B. *Restrictions on Annual Incentive Grants-*

The Annual Incentive Grants, also referred to as Maximum Annual Grants and Maximum Total Grants, shall be subject to the following restrictions:

- (a) The amount of the Annual Incentive Grant for any year shall be subject to reduction as described in Paragraphs II.G. and II.H. below;
- (b) The cumulative amount of the Annual Incentive Grants paid to the Company shall not exceed the Maximum Total Grants;
- (c) In no event will the Annual Incentive Grants, for any year, exceed the yearly amounts set forth in **Exhibit D**. Despite the annual amounts shown In **Exhibit D** said Annual Incentive Grants shall not exceed 75% of the annual City property taxes paid by Company on the Project.
- (d) If the Company ceases operations, as defined in Paragraph III.B. below, at the Facility at any time during such 10-year incentive grant period, all future Annual Incentive Grant payments hereunder, if any, will immediately cease, and the Company would be required to return all payments made by the City up to that point in accordance with Paragraph III.B below.

C. *Payment of Annual Incentive Grants-*

All Annual Incentive Grants shall be paid in the manner permitted by North Carolina law and shall be expended only in accordance with N.C.G.S. 158-7.1 and other applicable provisions of federal, state and local laws. In no event shall any such payment be made except from lawfully available funds, nor shall payment be made if the Company has outstanding property taxes with respect to the Project, or other amounts owed to the City, then due (in which case payment shall be made after such obligations are discharged following written notice of such delinquency to the Company). If all conditions set forth herein have been timely satisfied, and appropriately documented by the Company as determined in the sole discretion of the City, by July 1 of each year, Annual Incentive Grants shall be paid on or before July 31 of each year during such 10-year Incentive Grant Period. If such documentation is not submitted by July 1 in any year, such Annual Incentive Grant shall be paid within 30 days of Company's submission of the required documentation. For purposes of this Paragraph II.A., unless otherwise specified, the term "year" refers to a fiscal year of the City, which begins on July 1 and ends on the following June 30.

D. *Conditions on Maximum Annual Grants-*

Notwithstanding the provisions of Paragraphs II, A., B. and C. above, the Company shall be entitled to the Maximum Annual Grants only if the following conditions have been satisfied:

- (1) The Company has invested at least \$55,000,000 in taxable capital costs in the Project consisting of building capital investments (the "**Capital Investment Condition**") within the time periods outlined in **Exhibit C**;
- (2) Beginning FY 2024 and ending FY 2033, the Company shall provide, annually, evidence that it has retained and maintained at the Facility, at least 650 existing full time jobs or full time equivalent jobs ("**Job Retention and Maintenance Condition**"). By June 30, 2033, the Company shall create and maintain 50 Qualified Jobs (as hereafter defined herein, which definition includes the requirement that the average annual wage of such jobs shall be at least \$38,000 per year, plus benefits) ("**Job Creation and Maintenance Condition**") through the end of the 10-year Incentive Grant Period (collectively the "**Job Creation, Retention and Maintenance Condition**"), all based upon the schedule attached hereto as **Exhibit E**;
- (3) The Company is not in arrears in the payment of its annual property taxes or other obligations to the City;
- (4) The Company continues operations at the Facility through the end of the 10-year Incentive Grant Period; and

- (5) The Company has complied with all other obligations herein within the time periods set forth herein, including any extensions that may have been granted by the City.

E. *Calculation of Annual Incentive Grants-*

Fifty (50%) percent the Annual Incentive Grants described in Paragraph II.A. shall be considered attributable to the Capital Investment Condition, and if that condition is not met, then the amount of the Annual Incentive Grants shall be reduced in accordance with the provisions of Paragraph II.G below. Fifty (50%) of the Annual Incentive Grants described in Paragraph IIA shall be attributable to the Job Creation, Retention and Maintenance Condition. Twenty-five (25%) percent of the Fifty (50%) percent shall be attributable to Jobs Retained and the other Twenty-five (25%) percent of the Fifty (50%) percent shall be attributable to Jobs Created. If the Company has not complied with the Job Creation, Retention and Maintenance Condition by the July 1, 2033, the Annual Incentive Grants shall be reduced in accordance with the provisions of Paragraph II.H. based upon the actual number of the 650 jobs retained and the actual number of the 50 jobs created. The Company shall submit to the City Manager, annually during such 10-year Incentive Grant Period, a written non-confidential statement containing such information as may be reasonably necessary, as determined in the sole discretion of the City, to allow the City to ascertain whether such conditions have been met.

F. *Required Documentation of Job Creation, Retention and Maintenance Portion of Annual Incentive Grants*

At a minimum, the Company, with respect to the Job Creation, Retention and Maintenance Condition, shall annually furnish the City, along with the Company's request for annual incentives, such non-confidential records and information and allow the City access to such files and records of Company as reasonably required by City in order to verify that capital investments and job creation, retention and maintenance are being met in accordance with this Agreement:

- (1) the monthly totals of eligible Full-Time and Full Time Equivalent (as defined by the U.S. Government Accountability Office, "FTE") jobs with salaries and benefits created pursuant to this Agreement including employee-only health insurance and confirmation of payment of one-half the costs of such health insurance by Company;
- (2) the monthly totals of eligible Full-Time and FTE jobs with the aforementioned benefits maintained pursuant to this Agreement including salaries in comparison with the previous year(s);
- (3) the monthly totals of eligible Full-Time and FTE jobs with the aforementioned benefits and salaries converted, if any, to part-time or some status/classification other than Full-Time or FTE with benefits including salaries for each;
- (4) the monthly totals of Full-Time and FTE jobs with or without benefits eliminated (whether by termination or layoff) during the 5-year incentive grant period including the salaries for each;

(5) monthly totals of Full-Time and FTE jobs filled by City and County residents and other demographics such as race, age, sex, race, ethnicity as may be determined by the City Council; and

(6) monthly reports on the number and time period of any layoff notices issued to employees at the Facility, all in a format sufficient for the City to conduct an analysis of such information from year to year to determine compliance with this Agreement.

The provision of said records along with compliance with the additional requirements set forth in Exhibit E, attached hereto and incorporated herein, shall be considered a component of the Job Creation, Retention and Maintenance Condition for which the Annual Incentive Grant may be reduced accordingly. The Company also agrees to allow the City to verify the company's job creation figures and wage rates and employee benefits by reviewing NCUI-101 forms submitted by the Company to the Employment Security Commission.

G. *Failure To Achieve the Capital Investment Condition—Impact on Annual Incentive Grants-*

The failure to achieve the Capital Investment Condition shall result in reduced Annual Incentive Grants to be calculated as follows:

By the end of the 10-year Incentive Grant Period defined within Paragraph II.A., the Company should have invested at least \$55 million in total capital costs in the Project. If, by December 1, 2032 the amount of taxable capital costs theretofore invested in the Project by the Company is less than \$55 million (such difference being referred to herein as the "**Capital Shortfall**"), then the Company shall repay to the City a portion of the Annual Incentive Grants attributable to the Capital Investment Condition paid to the Company to date during such incentive grant period, such portion being equal to the number obtained by dividing the Capital Shortfall by \$55 million, and multiplying by the Annual Incentive Grant attributable to the Capital Investment Condition paid for each year during the Incentive Period, provided the Annual Incentive Payment was not reduced, previously, pursuant to Paragraph 1C or another paragraph herein. For example, if by December 1, 2032 Company has only invested \$22.5 million which is one-half of that required by the Company to be invested; therefore, the Company will be required to repay to the City half of the 50% of the Annual Incentive Grant attributable to the Capital Investment Condition paid to the Company during each of years 1 through 10.

H. *Failure To Achieve the Job Creation, Retention and Maintenance Conditions-Impact on Annual Incentive Grants-*

The failure to achieve the Job Creation, Retention and Maintenance Conditions shall result in reduced Annual Incentive Grants to be calculated as follows:

If, by July 1, 2033 as described in Paragraph IID. above, the average number of Jobs Retained is less than the required 650 jobs to be retained (such difference being referred to herein as the "**Job Retention and Maintenance Shortfall**") and the average number of Qualified Jobs created and maintained is less than 50 jobs required to be created and

maintained (such difference being referred to herein as the “**Job Creation and Maintenance Shortfall**”), then the Company shall only receive a proportionate share of the Annual Incentive Grants attributable to the Job Retention and Maintenance Condition and the Job Creation and Maintenance Condition or if already paid then the Company will have to repay to the City a portion of the Annual Incentive Grants attributable to the Job Retention and Job Creation and Maintenance Condition paid to the Company during such incentive grant period, such portion being equal to the number obtained by dividing the Job Retention and Maintenance Shortfall by the Job Retention and Maintenance Requirement (650) and the Job Creation and Maintenance Shortfall by the Job Creation and Maintenance Requirement (50), and multiplying by the Annual Incentive Grant attributable to the Job Retention and Maintenance Condition or Job Creation and Maintenance Condition paid for each year during such incentive grant period. For example, if by July 1, 2033 the average number of Qualified Jobs Created and Maintained is 25, the Company will be required to repay to the City half of the twenty-five (25%) percent of the Annual Incentive Grant attributable to the Job Creation and Maintenance Condition that had been paid to the Company each of years 1 through 10.

I. *Qualified Jobs-Defined-*

As used solely for purposes of this Agreement, the term “**Qualified Jobs**” shall mean the permanent, full-time jobs (or full-time equivalent of part-time positions) that are created and maintained by the Company at the Facility as a result of the Project in satisfaction of the Job Creation and Maintenance Condition and which jobs have an average wage of \$38,000 per year, plus benefits. In recruiting and hiring for said Qualified Jobs, the Company shall comply with the Conditions set forth **Exhibit E**.

III. **Reimbursements and Refunds of Incentives-**

A. *Cessation of Operations*— If the Company ceases operations at the Facility as defined in Paragraph III.B. below, during the 10-year Incentive Grant Period, for any reason other than nonperformance by the City of its covenants under this Agreement, then, at the City’s request, the Company will reimburse/refund the City 100% the Annual Incentive Grants previously paid to the Company.

B. *Cessation of Operations Defined* - “Cessation of operations” or “ceases operations” or “cease operating” or similar variations thereof shall be defined as when more than half of the required jobs to be created and maintained by the Company on or before July 1, 2033 have been eliminated or reduced to part-time, and when more than one half of the jobs required to be retained and maintained through December 1, 2033 have been eliminated or reduced to part-time or when the Company has substantially ceased operating the Facility for the purposes contemplated by this Agreement within the 10-year Incentive Grant Period, or when the Company otherwise fails to substantially perform its material covenants under the provisions of and during the term of this Agreement, provided in no event shall the Company be deemed to have ceased operation during periods of repair or renovation, or as may arise due to casualty or condemnation.

- C. *Payment of Reimbursements and Refunds* - Unless provided earlier by agreement of the parties, the Annual Incentive Grants reimbursements/refunds must be paid within ninety (90) days after cessation of operations or failure to meet the Capital Investment or Job Creation and Maintenance Conditions or Job Retention and Maintenance Conditions as set forth in Paragraph II. If payment is not made within ninety (90) days, the City will send an invoice to the Company. A late payment penalty in the amount of ½ of 1% of the amount owed will be assessed by the City against Company if payment is not made within thirty (30) days of receipt of the invoice. Any balance not paid within sixty (60) days of receipt of the invoice will also accrue interest commencing on the 61<sup>st</sup> day at an annual rate of 6%. This Agreement shall terminate upon payment by Company of all amounts owed the City in accordance with this Agreement.

#### IV. Other Provisions-

- A. *Additional Incentives*-Except as provided in this Agreement, the City is not obligated to provide incentives to the Company related to the Project, Facility or Site.
- B. *Adverse Change* — In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be replaced with a revision which accomplishes the purposes outlined herein and shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement, not contingent thereon, shall remain in full force and effect.
- C. *Annual Report* —The Company shall furnish to the City a copy of company prepared financial statements as soon as it becomes available to the Company, but no later than three months following the Company's fiscal year end.
- D. *Applicable Law; Construction* — This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to any construction arising from the application of conflicts or choice of law principles, and without regard to any construction arising by virtue of the negotiation or the persons who drafted this Agreement. References to the City shall collectively refer to, bind and include its respective representatives, governing board, the members of such board and the successors and assigns, in each case in their official capacities.
- E. *Assignment* — The Company shall not assign this Agreement or any portion thereof without the written consent of the City nor shall the Company assign any funds due or to become due to it hereunder without the prior written consent of the City; provided however, the Company shall be permitted to assign this Agreement or any portion thereof, or any funds due or to become due to it hereunder, to any direct or indirect wholly-owned subsidiary of the Company. However, in the event of such assignment, the Company will still remain ultimately responsible and liable for the performance of the Company's obligations hereunder. Notwithstanding the foregoing, the Company shall be permitted to assign this Agreement to any subsidiary or affiliate under common control with the Company, or any successor to the Company by merger or acquisition.



- F. *Audit Right* - If the City undertakes an audit, such audit will be at the City's sole expense. Upon completion of the Facility, the Company agrees to compile and deliver to the City appropriate written documentation of the required capital investment in the Facility, which the City will be entitled to retain for so long as either chooses, and to use for such purposes in connection with this Agreement as either deems necessary.

The City reserves the right to require a certified audit or may perform the audit through the use of its staff pertaining to the Company's compliance with the Capital Investment Condition described in this Agreement and the ongoing compliance with the Job Creation and Maintenance Condition and Job Retention and Maintenance Condition described in this Agreement.

- G. *Binding Obligation*-The City and Company and their respective successors, assigns, and legal representatives accept full legal responsibility hereunder for compliance with all covenants, agreements and obligations of this Agreement.

- H. *Compliance with Law* –

(1) It is the expectation of the City that the Company will comply, and the Company agrees to comply, with all applicable federal immigration laws in its hiring and contracting practices relating to services covered by this contract involving City funds.

(2) The Company shall comply with all applicable federal, state, and local laws that may be required to carry out their respective obligations to be performed under this Agreement.

(3) The Company shall comply with all applicable employment laws, including but not limited to the Americans with Disabilities Act (ADA), the State of North Carolina Occupational/Safety and Health Act (OSHA), and the State and Federal Equal Opportunity laws, as well as the regulations promulgated thereunder.

(4) **Suspension and Debarment.** Company hereby certifies that neither it, nor its agents or subcontractors: (1) are presently debarred, suspended, proposed for suspension or debarment from contracting by any Federal or State department or agency, or (2) have been declared ineligible or voluntarily excluded from contracting by or with any Federal or State department or agency. Any contract entered into with a contractor or subcontractor that has been debarred or suspended, declared ineligible or voluntarily excluded from contracting with or by any Federal or State department or agency may be terminated at the sole discretion of the City.

(5) **E-Verify.** Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

(6) **Iran Divestment Act.** Company hereby certifies that it is not on the North Carolina State Treasurer's list of persons engaging in business activities in Iran, prepared pursuant to NCGS §147-86.58, nor will Company utilize on this Agreement any subcontractor on such list.

(7) **Divestment from Companies that Boycott Israel.** Company hereby certifies that it is not on the North Carolina State Treasurer's list of companies engaged in a boycott of Israel in violation of NCGS 147-86.80 et. seq. and that it will not utilize on this agreement any subcontractor on said list.

(8) **Public Records and Confidential Information.** All non-confidential information and documents provided by the Company to the City shall be treated as a public record under N.C.G.S. 132-1 et. seq. All information or documents provided by the Company to the City and marked as "confidential" or with a similar designation under N.C.G.S. 132-1.2 will be treated by the City as confidential and will not be disclosed to any person without the prior written consent of the Company, if it meets the criteria outlined in N.C.G.S. 132-1.2 (1)(a through d). However, the Company hereby agrees that said confidential information can be reviewed internally by city staff and any appropriate city committee involved in the process of awarding city contracts. The Company agrees to indemnify and hold harmless the City, its officers, employees, elected officials and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the Company has designated as confidential pursuant to N.C.G.S. 132-1.2.

- I. *Counterparts; Jurisdiction* — This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original. The parties submit to the exclusive jurisdiction of the State courts sitting in the County.
- J. *Default by City*-- If the City defaults on any of its obligations under this Agreement, then it shall have ninety (90) days after delivery of a written notice by Company of such default to the appropriate City representatives to cure said default. The City, where appropriate, may respond in writing to said notice of default. The City shall have a right to cure said default if the City deems it to be appropriate. If the City does not cure the default within the required time period, the Company may exercise any and all rights and remedies available herein or otherwise at law or in equity.
- K. *Events of Default by Company; Remedies.*
- (a) The following shall constitute an event of default by the Company under this Agreement (each an "Event of Default"): (i) the failure by the Company to provide any of the material information required herein within time period specified herein and if not specified within thirty (30) days of request by the City of the same; (ii) if any of the information required herein to the City proves to be materially false or misleading; (iii) failure of the Company to pay the taxes assessed and required to be paid pursuant to this Agreement;; and (iv) failure of the Company to adhere to any other material obligation in this Agreement and to the City.
- (b) Upon the occurrence of an Event of Default, the Company shall ninety (90) days after the delivery of written notice from the City of such default to cure and exercise any other rights provided herein. The City may extend the time period for compliance as allowed by law. If the Company does not cure the default within the required time period, the City may exercise any and all rights and remedies provided herein including suspension of

payments and termination of this Agreement.

- L. *Entire Agreement; Amendment; Authority* — This Agreement is the entire agreement between these parties as to the subject matter referenced herein, without regard to any prior agreements, understandings or undertakings (whether oral, written, electronic or otherwise), and no amendment may be made to this Agreement except with the prior written consent of all parties. The parties, and each person executing this Agreement on behalf thereof, represent and warrant that they have the full right and authority to enter into this Agreement, which is binding, and to sign on behalf of the party indicated, and are acting on behalf of themselves, their constituent members and the successors and assigns of each of them.
- M. *Further Action* — The parties acknowledge that the terms of the Project and the Local Incentives and other assistance described in this Agreement are subject to further actions legally necessary under North Carolina law to implement the Agreement in a lawful manner. The parties agree that if this Agreement is challenged in a court of law, they shall cooperate in defense of Agreement.
- N. *Hiring Practices* - The Company is committed to hiring, where possible, local contractors, including minority and women contractors, and for employment purposes local residents from the Winston-Salem and Forsyth County area. The Company shall post job vacancies related to the Facility with the North Carolina Employment Security Commission, the Northwest Piedmont Council of Governments, the Forsyth County Department of Social Services and the Winston-Salem Urban League until December 31, 2020 or longer if otherwise required by law. The Company will utilize the State of North Carolina Office for Historically Underutilized Business database (<https://www.ips.state.nc.us/IPS/vendor/SearchVendor.aspx?t=hobtain>) or other local resources such as the City of Winston-Salem M/WBE Program to identify Winston-Salem/Forsyth County based subcontractors and share the same with the general contractor selected to construct the Facility and establish a reasonable level of participation for Winston-Salem/Forsyth County based subcontractors including minority and women-owned businesses. The Company must require the general contractor to demonstrate good faith efforts to utilize Winston-Salem/Forsyth County based subcontractors and achieve the level of participation identified by the Company. Company will provide to the Development Director quarterly reports using the form attached as **Exhibit F** on all contracting activity. A Winston-Salem/Forsyth County based subcontractor is a person or entity legally authorized to engage in the sale or provision of goods, services construction or repair work procured in the state of North Carolina and who certifies to the City that it has maintained a physical place of business in the Winston-Salem/Forsyth County area since July 1, 2016, as determined in the sole discretion of the City, with at least one employee for whom the subcontractor has paid payroll taxes in North Carolina.
- O. *Hold Harmless* - The Company and City shall operate as independent contractors, and the City shall not be responsible for any acts or omissions of Company or the employees of the Company. The Company agrees to hold the City harmless from and against any claims, expenses (including attorney's fees), costs or liability for negligent acts or omissions or the willful misconduct of the Company or the Company's employees, officers and agents.

P. *Notice:*

Notices hereunder shall be deemed to be given if in writing and when (a) personally delivered; (b) three business days after being deposited in the United States Mail, postage prepaid, registered or certified, return receipt requested, or (c) one business day after being deposited with an overnight commercial courier (such as, but not limited to, Federal Express), at the following addresses:

For notice to the CITY:

Lee Garrity  
City Manager, City of Winston-Salem  
101 N. Main Street  
Winston-Salem, NC 27101

WITH COPY TO:

City Attorney  
101 N. Main Street, Suite 132  
Winston-Salem, NC 27101

For notice to COMPANY:

Wilson-Cook Medical, Inc.  
Cook Winston-Salem, LLC  
4900 Bethania Station Road  
Winston-Salem, NC 27105  
Attn.: \_\_\_\_\_

WITH COPIES TO:

Cook Group Incorporated  
Attn: Jason Rager  
P.O. Box 1608  
750 Daniels Way  
Bloomington, IN 47402-1608 (P.O. Box)  
Bloomington, IN 47404 (physical address)

And

Bell, Davis & Pitt, PA  
Attn. Leigh C. Bagley  
100 N. Cherry Street, Suite 600  
Winston-Salem, NC 27101

- Q. *Relationship of Entities* — Nothing contained herein will be construed as establishing an employment relationship, partnership, joint venture, or agency agreement among the Parties.

- R. *Severability* — If any court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, then (a) such holding shall not invalidate or render unenforceable any other provision of this Agreement, unless such provision is contingent on the invalidated provision; and (b) the remaining terms hereof shall, in such event, constitute the parties' entire agreement.
- S. *Statutory Authority*. - N.C.G.S. 158-7.1 authorize the execution of this Agreement by the City upon approval of the governing bodies following a public hearing. The resolution of the WS City Council is attached hereto and incorporated herein as **Exhibit G**.
- T. *Termination* - Termination of this Agreement by the City may occur for reasons described herein or in attachments hereto. This Agreement shall also terminate on December 1, 2033 provided all payments due and obligations set forth herein have been satisfied.
- U. *Waiver of Default* - Failure of a party to this Agreement to exercise any right, remedy, power or privilege hereunder shall not operate as a waiver of any current or future default. Further, a waiver of one provision of this Agreement is not a waiver of all or future provisions of this Agreement.
- V. *Residential Uses. Workforce Housing*. If the Project is modified in any manner to include residential uses, the Company shall include workforce/affordable housing. At least 5% of the total units must be leased to households who incomes are 50-80% of the area median income and at least 5% of the total units must be leased to households whose incomes are 80-120% of the area median income for at least 15 years. If for some reason, these percentages cannot be supported by the proposed financing for the residential uses, the Developer may suggest for the City's consideration other combinations that still support affordable housing as a part of the overall project. Failure to make a good faith effort, as determined by the City, may impact the Company's ability to obtain future funding from the City on other projects.
- W. *Community Development Employment Efforts*. The Company shall make a good faith effort to employ for at least 6 months individuals that live in the City's Neighborhood Revitalization and Strategy Area (NRSA) or other low-to-moderate-income persons living outside of the NRSA with similar barriers to employment or persons with employment barriers such as a criminal record and pay said individuals at least \$12.50 per hour. Failure to make a good faith effort, as determined by the City, may impact the Company's ability to obtain future funding from the City on other projects.

In Witness Whereof, the parties have caused this Agreement to be executed effective as of the date first written above.

COMPANY:

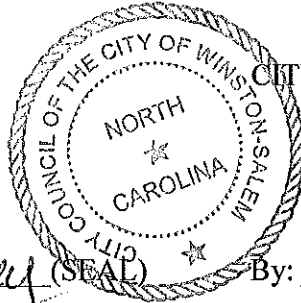
COOK WINSTON-SALEM, LLC

*BARRY SLOWEY*

By: *B. Slowey* (SEAL)  
*President*

WILSON-COOK MEDICAL, INC.

By: *B. Slowey* (SEAL)  
*President*



CITY OF WINSTON-SALEM

ATTEST:

*Sandra Keeney* (SEAL)  
Secretary

By: *Evan Raleigh* (SEAL)  
*Acting City Manager*

Approved as to form and legality.

This instrument has been preaudited in the Manner required by the Local Government Budget and Fiscal Control Act.

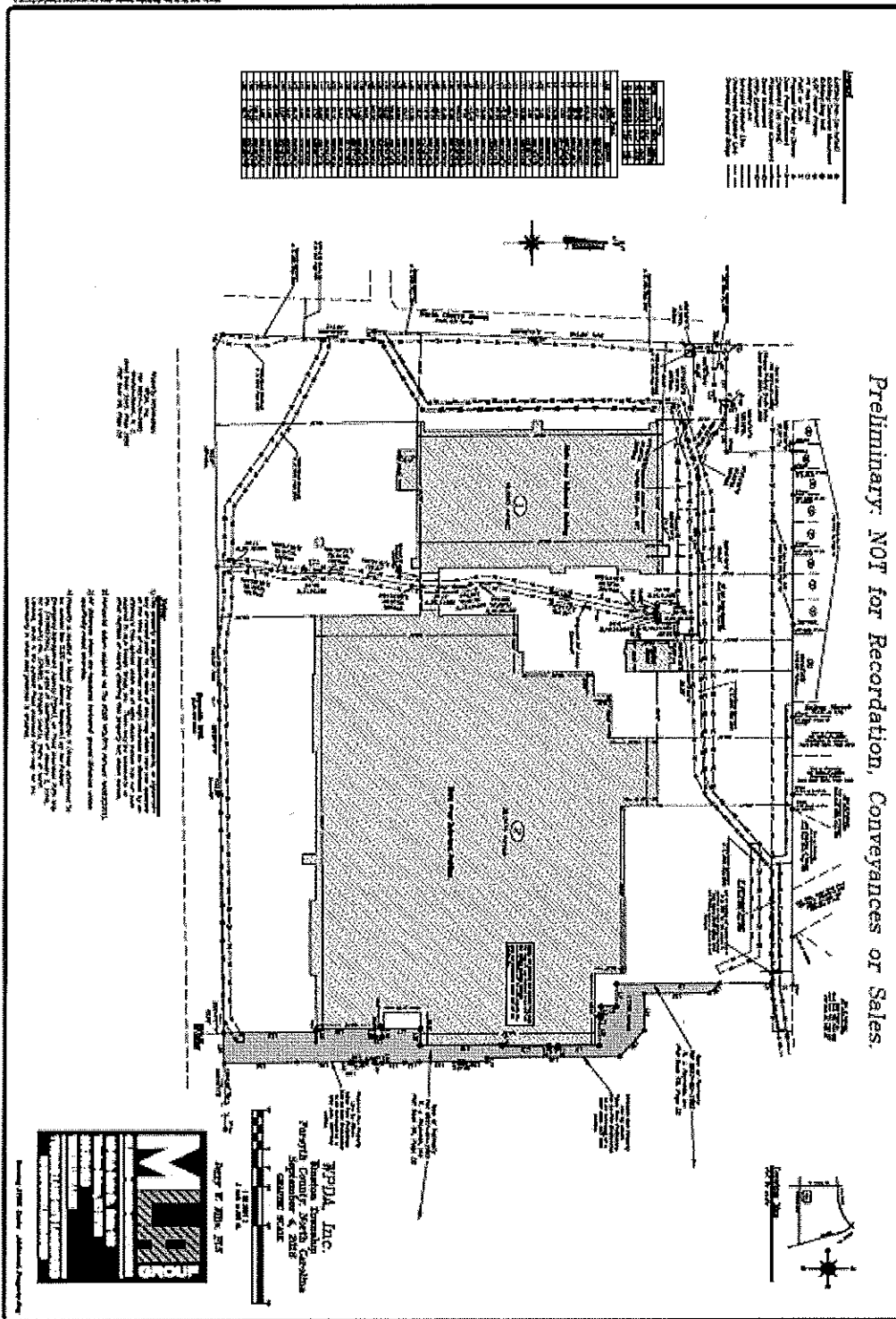
This the *27<sup>th</sup>* day of *December*, 2018.

This the *28<sup>th</sup>* day of *December*, 2018.

*Angela J. Carmon*  
Angela J. Carmon,  
City Attorney

*Lisa Saunders*  
Lisa Saunders  
Chief Financial Officer

# EXHIBIT A-Map of the Project Site



Preliminary: NOT for Recordation, Conveyances or Sales.

Exhibit B-Description of the unfits/renovations

[See attached plans]



**Exhibit C**

INVESTMENT SCHEDULE

**Capital Investment Schedule**

	<u>Annual Investment</u>	<u>Cumulative Investment</u>
End of Year 1 =	\$55,000,000	\$55,000,000
End of Year 2 =	-0-	\$55,000,000
End of Year 3 =	-0-	\$55,000,000
End of Year 4 =	-0-	\$55,000,000
End of Year 5 =	-0-	\$55,000,000
End of Year 6 =	-0-	\$55,000,000
End of Year 7 =	-0-	\$55,000,000
End of Year 8 =	-0-	\$55,000,000
End of Year 9 =	-0-	\$55,000,000
End of Year 10 =	-0-	\$55,000,000

**Exhibit D**

**MAXIMUM INCENTIVE GRANT SCHEDULE**

Assistance Description: \$2,464,275 grant disbursed over 10-year period, beginning in FY 23-24.

Year 1: not to exceed \$246,428  
Year 2: not to exceed \$246,428  
Year 3: not to exceed \$246,428  
Year 4: not to exceed \$246,428  
Year 5: not to exceed \$246,428  
Year 6: not to exceed \$246,428  
Year 7: not to exceed \$246,428  
Year 8: not to exceed \$246,428  
Year 9: not to exceed \$246,428  
Year 10: not to exceed \$246,428

**Total:** not to exceed \$2,464,275

MAXIMUM TOTAL GRANT \$2,464,275

## EXHIBIT E-Job Creation, Retention and Maintenance Schedules

- |                  |  |
|------------------|--|
| 1. FY 2023-2024  | 650 Jobs Retained  |
| 2. FY 2024-2025  | 650 Jobs Retained  |
| 3. FY 2025-2026  | 650 Jobs Retained  |
| 4. FY 2026-2027  | 650 Jobs Retained  |
| 5. FY 2027-2028  | 650 Jobs Retained  |
| 6. FY 2028-2029  | 650 Jobs Retained  |
| 7. FY 2029-2030  | 650 Jobs Retained  |
| 8. FY 2030-2031  | 650 Jobs Retained  |
| 9. FY 2031-2032  | 650 Jobs Retained  |
| 10. FY 2032-2033 | 650 Jobs Retained and Fifty (50) Qualified Jobs shall be created by June 30, 2033. |

**Exhibit F**

**QUARTERLY REPORT**

This Affidavit shall be completed by the General Contractor for Cook Winston-Salem, LLC, A North Carolina Corporation for this Project on a quarterly basis and provided to the City of Winston-Salem M/WBE Program Administrator.

I \_\_\_\_\_ do hereby certify  
(Name/Title: Authorized Representative of Contractor)

that on the \_\_\_\_\_  
(Project Name)

Project ID# \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority business enterprises and \_\_\_\_\_% with women owned businesses. Minority/Women businesses will be employed as construction subcontractors, vendors, suppliers, or providers of professional services. Such work will be subcontracted to the following firms listed below: (Attach additional sheets if required)

<u>Name and Phone Number</u>	<u>*Minority Category</u>	<u>Work Description</u>	<u>Dollar Value</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\*Minority Categories: Black/African American (B), Hispanic (H), Asian American (A), American Indian (I), Female (F), and Socially and Economically Disadvantaged (D)  
Minority businesses have to be certified by the City of Winston-Salem

The undersigned certifies that the General Contractor will enter into a formal agreement with Minority Firms for work listed in this Affidavit. The undersigned understands that failure to make a good faith effort to fulfill this commitment may impact the Economic Development Agreement between Polyvlies and the City of Winston Salem.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: \_\_\_\_\_ Name of Officer: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

State of North Carolina, County of \_\_\_\_\_


subscribed and sworn before me this \_\_\_ day of \_\_\_\_\_, 20

Notary Public

My commission expires \_\_\_\_\_

**SEAL**

**Exhibit G**

<b>City Council – Action Request Form</b>	
<b>Date:</b>	August 13, 2018
<b>To:</b>	The City Manager
<b>From:</b>	Evan Raleigh, Assistant City Manager
<b>Council Action Requested:</b>	
Approve Economic Development Assistance to Cook Medical Pursuant to N.C.G.S. 158-7.1	
<b>Strategic Focus Area:</b> Economic Vitality and Diversity	
<b>Strategic Objective:</b> Retain and Recruit Employers	
<b>Strategic Plan Action Item:</b> No	
<b>Key Work Item:</b> No	
	
<b>Summary of Information:</b>	
<p>The attached resolution authorizes the City to provide up to \$2,464,275 in economic development assistance to Cook Medical. The City's financial assistance will be used to reduce the company's capital outlay associated with the upfit of space at the company's proposed new location in Whitaker Park. The company will invest approximately \$55 million in capital devoted to the upfit of the building.</p> <p>The City's assistance is based upon an amount equal to approximately 75% of the net, new taxes generated by the project over its first ten years. It is projected that the annual property tax revenues from the project will be approximately \$328,570.</p> <p>The company is currently operating in 200,000 square feet of space spread across several facilities it owns and leases off of Hanes Mill Road in northern Winston-Salem. The company has reached capacity at its current location and is seeking new space to modernize and transform its operations and manufacturing and allow the flexibility to purpose-build for efficiency in its production lines. The company is also considering developing a greenfield site for its expansion in Stokes County.</p>	
<b>Committee Action:</b>	

<b>Committee</b>	_____	<b>Action</b>	_____
<b>For</b>	_____	<b>Against</b>	_____
<b>Remarks:</b>			

If approved, the first annual incentive payment would be made on or about July 1 following the first full year's property tax payment by the company for the new facility, machinery and equipment. Subsequent payments would be made annually thereafter on or about July 1.

Cook is a privately-owned family business founded in 1963 in Bloomington, Indiana. It designs, develops and manufactures medical devices that are used to perform minimally invasive medical procedures. Cook provides products to 135 countries and has a global workforce of more than 12,000 employees.

The project is consistent with the City's public policy justification to stimulate the local economy through the creation of new jobs and investment. In addition to the City's assistance, financial assistance is being considered by Forsyth County.

**RESOLUTION APPROVING FINANCIAL ASSISTANCE TO COOK MEDICAL**

**WHEREAS**, Cook Medical (Cook) is considering whether to keep its current operations in Winston-Salem; and

**WHEREAS**, Cook is a privately-owned family business founded in 1963 in Bloomington, Indiana; and

**WHEREAS**, Cook designs, develops and manufactures medical devices that are used to perform minimally invasive medical procedures, provides products to 135 countries and has a global workforce of more than 12,000 employees; and

**WHEREAS**, Cook has requested the City provide financial assistance to help reduce the company's capital outlay associated with the proposed project in Winston-Salem; and

**WHEREAS**, Cook Medical will invest approximately \$55 million in the upfit of its new space; and

**WHEREAS**, given the public benefit, including but not limited to the enhancement to the tax base, the City of Winston-Salem is interested in assisting Cook with its expansion efforts; and

**WHEREAS**, the project would not move forward but for the City's offering of financial assistance.

**NOW, THEREFORE, BE IT RESOVLED**, by the Mayor and City Council of the City of Winston-Salem, and in accordance with N.C.G.S. 158-7.1, that after a duly advertised public hearing, the Council hereby approves financial incentive assistance of up to \$2,464,275 from the City's Economic Development Project Fund to Cook to assist them with their expansion.

**BE IT FURTHER RESOLVED**, that the Mayor and City Council hereby authorizes



and approve the City Manager, City Attorney, and City Secretary to take such actions as may be necessary for the execution of an Economic Development Agreement with Cook or its subsidiaries.

<b>DEVELOPMENT PROJECT ANALYSIS FORM</b>	
<b>Name of recipient:</b> Cook Medical	<b>Name of Contact(s):</b> Scott Sewell, Vice President of Technology and Acquisition Development
<b>Name of Project:</b>	<b>Amount Requested/Proposed:</b> \$2,464,275
<b>Total Project Cost:</b> \$55,000,000	<b>Other Funding Sources and Amounts:</b> Forsyth County- \$2,196,937
<b>Source of City Dollars:</b> Economic Development Project Fund	<b>Proposed Use of City Dollars:</b> The financial assistance will be used to reduce the company's capital outlay associated with the proposed expansion project in Winston Salem
<b>City Property/Sales Tax Revenue Created:</b> \$3,285,700	<b># of Jobs Created:</b> N/A
<p><b>Project Description:</b> Cook is a privately-owned family business founded in 1963 in Bloomington, Indiana. It designs, develops and manufactures medical devices that are used to perform minimally invasive medical procedures. Cook provides products to 135 countries and has a global workforce of more than 12,000 employees. The company boasts a local workforce of approximately 652 employees, of which 31% are residents of Winston-Salem, 22% are African-American and 72% are women.</p> <p>The company is currently operating in 200,000 square feet of space spread across several facilities it owns and leases off of Hanes Mill Road in northern Winston-Salem. The company has reached capacity at its current location and is seeking new space to modernize and transform its operations and manufacturing and allow the flexibility to purpose-build for efficiency in its production lines. The company is also considering developing a greenfield site for its expansion in Stokes County.</p>	
<p><b>City Program being used?</b> Economic Development Direct Assistance</p>	

**Public Policy Justification/Consistency with approved plans (if so, specify which plan):**

Stimulation of the local economy through the creation of new jobs and investment.