



CITY OF DUBLIN.

**Office of the City Manager**

5200 Emerald Parkway • Dublin, OH 43017-1090

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# Memo

**To:** Dublin City Council  
**From:** Terry Foegler, City Manager TF/Sgo  
**Date:** March 18, 2010  
**Initiated By:** Colleen Gilger, Economic Development Administrator  
**Re:** Ordinance No. 15-10 - Authorizing an Economic Development Agreement with Medco Health Solutions

## Summary

Staff has been in discussions with Medco regarding the possible retention of the company's workforce and call center pharmacy at 5151 Blazer Parkway. The City is extremely proud to have Medco's call center pharmacy as part of our community. This call center employs over 870 employees over three shifts. The company currently is reviewing lease options for this operation both at its current Dublin location and in other central Ohio locations.

The Economic Development Agreement proposed by Economic Development to Medco in consideration of renewing a 10-year lease at its current Dublin facility and retaining its existing workforce includes a five-year, 15% Performance Incentive on withholdings collected, which is capped at \$600,000 for the term of the agreement. The company would have to reach predetermined annual withholdings targets to qualify for performance incentives. Additionally, a sixth "bonus" year is proposed, and Medco would be eligible only if the company reaches each of the previous five annual targets as well as a sixth year target. The one-time bonus payment equates to a 15% incentive, capped at \$120,000.

The City estimates it will pay Medco approximately \$578,072 in incentives and net approximately \$3,275,744 in withholdings over the agreement term should Medco grow according to expectations. Over the complete 10-year lease term, the City expects to net \$8,256,690.

## Recommendation

Staff recommends Council adoption of Ordinance 15-10 at the second reading/public hearing on April 12, 2010. Please contact Colleen Gilger with any questions you may have.

# RECORD OF ORDINANCES

Ordinance No. 15-10

Passed \_\_\_\_\_, 20\_\_\_\_

**AN ORDINANCE AUTHORIZING THE PROVISION OF CERTAIN INCENTIVES TO MEDCO HEALTH SOLUTIONS OF COLUMBUS NORTH, LTD. TO INDUCE IT TO EXTEND THE LEASE TERM ON ITS FACILITY WITHIN THE CITY AND CONTINUE ITS OPERATIONS AND RETAIN ITS WORKFORCE WITHIN THE CITY OF DUBLIN, AND AUTHORIZING THE EXECUTION OF AN ECONOMIC DEVELOPMENT AGREEMENT.**

**WHEREAS**, consistent with its Economic Development Strategy (the “*Strategy*”) approved by Dublin City Council Resolution No. 07-94 adopted on June 20, 1994, and the updated strategy approved by Dublin City Council Resolution No. 30-04 adopted on July 6, 2004, the City desires to encourage commercial office development and provide for the creation of employment opportunities within the City; and

**WHEREAS**, Medco Health Solutions of Columbus North, Ltd. (the “*Company*”) recently performed a comprehensive examination of its workforce needs, and based on the results of this examination, and induced by and in reliance on the economic development incentive provided in the proposed Economic Development Agreement (as described below), the Company is desirous of extending the lease term on its existing facility within the City by 10 years and continuing its operations and retaining its workforce within the City in order to achieve the payroll withholding targets set forth in the Economic Development Agreement; and

**WHEREAS**, this Council has determined that it is necessary and appropriate and in the best interests of the City to provide for an economic development incentive to the Company, as described in the proposed Economic Development Agreement; and

**WHEREAS**, this Council has determined to offer the economic development incentive, the terms of which are set forth in a substantially final form of Economic Development Agreement presently on file in the office of the Clerk of Council, to induce the Company to extend the lease term on its existing facility within the City by 10 years and continue its operations and retain its workforce within the City, thereby improving the economic welfare of the people of the State of Ohio and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Dublin, State of Ohio, \_\_\_\_\_ of the elected members concurring, that:

Section 1. The Economic Development Agreement by and between the City and the Company, in the form presently on file with the Clerk of Council, providing for, among other things, the provision of certain economic development incentives in consideration for the Company’s agreement to extend the lease term on its existing facility within the City by 10 years and continue its operations and retain its workforce within the City, is hereby approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, is hereby authorized to execute that Economic Development Agreement, provided further that the approval of changes thereto by that official, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This Council further authorizes the City Manager, for and in the name of the City, to execute any amendments to the Economic Development Agreement, which amendments are not inconsistent with this Ordinance and not substantially adverse to this City.

Section 2. This Council further hereby authorizes and directs the City Manager, the Director of Law, the Director of Finance, the Clerk of Council, or other appropriate officers

# RECORD OF ORDINANCES

Ordinance No. 15-10

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of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Ordinance.

Section 3. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in open meetings of this Council or committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

Section 4. This Ordinance shall be in full force and effect on the earliest date permitted by law.

Passed this      day of                     , 2010.

Signed:

\_\_\_\_\_  
Mayor - Presiding Officer

Attest:

\_\_\_\_\_  
Clerk of Council

Passed:                     , 2010

Effective:                     , 2010

## ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (this “*Agreement*”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the CITY OF DUBLIN, OHIO (the “*City*”), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (the “*State*”) and its Charter, and MEDCO HEALTH SOLUTIONS OF COLUMBUS NORTH, LTD. (the “*Company*” and collectively with the City, the “*Parties*”), an Ohio limited liability company with its main office currently located at 5151 Blazer Parkway, Dublin, Ohio 43017, under the circumstances summarized in the following recitals.

### RECITALS:

WHEREAS, consistent with its Economic Development Strategy (the “*Strategy*”) approved by Dublin City Council Resolution No. 07-94 adopted on June 20, 1994, and the updated Strategy approved by Dublin City Council Resolution No. 30-04 adopted on July 6, 2004, the City desires to encourage commercial office development and provide for the retention and creation of employment opportunities within the City; and

WHEREAS, based on the results of the Company’s recent comprehensive examination of workforce needs, and induced by and in reliance on the economic development incentive provided in this Agreement, the Company is desirous of extending the lease term on its existing facility within the City and continuing its operations and retaining its workforce within the City; and

WHEREAS, pursuant to Ordinance No. 15-10 passed on \_\_\_\_\_, 2010 (the “*Ordinance*”), the City has determined to offer the economic development incentive described herein to induce the Company to extend the lease term on its existing facility within the City by 10 years and continue its operations and retain its workforce within the City, which will result in the retention of existing jobs to improve the economic welfare of the people of the State of Ohio and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, the City and the Company have determined to enter into this Agreement to provide these incentives in order to induce the Company to extend the lease on its existing facility in the City by 10 years, continue its operations and retain its workforce within the City;

NOW THEREFORE, the City and the Company covenant, agree and obligate themselves as follows:

Section 1. Company’s Agreement to Extend the Lease Term on its Facility and Continue its Operations and Retain its Workforce Within the City. In consideration for the economic development incentive to be provided by the City herein, the Company agrees that it will extend the lease term on its existing facility within the City by 10 years (through December 31, 2020) and continue its operations and retain its workforce within the City pursuant to this Agreement. The Company expects to retain approximately Eight Hundred Seventy (870) employees within the City for the term of this Agreement. The average annual wage of these employees for this period is estimated to be approximately Forty-Five Thousand and 00/100 Dollars (\$45,000), with total estimated payroll withholdings of approximately Three Million Eight Hundred Fifty-Three Thousand Eight Hundred Sixteen and 00/100 Dollars (\$3,853,816.00) over the term of this Agreement.

Section 2. City Agreement to Provide Incentives.

(a) General. In consideration of the Company's agreement to extend the lease term on its existing facility within the City by 10 years and continue its operations and retain its workforce within the City, the City agrees to provide economic development incentives to the Company in accordance with this Section.

(b) Workforce Retention Grant.

(i) Calculation of Actual Withholdings. On or before March 15 of each of the years 2012 through 2016 and 2017 (if applicable), the City shall calculate the actual payroll withholding taxes collected and received during the preceding calendar year by the City from all Employees (as defined below). For purposes of that calculation, the Company acknowledges and agrees that the total amount of actual payroll withholding taxes for any calendar year shall be determined based solely upon the amount of tax payments actually received by the City during that calendar year. The Company agrees that the determination of whether to include in such calculation any amount received by the City in respect of any calendar year but following the conclusion of that calendar year, shall be solely within the discretion of the City. For purposes of this Section 2, "*Employees*" shall include only those individuals employed by the Company and working within the City.

(ii) Information Relating to Employees. The Company agrees that, in accordance with the Dublin City Code, the annual payroll reconciliation and related W-2 forms relating to its Employees will be provided to the City prior to February 28 of each calendar year.

(iii) Incentive Payments to the Company. If the actual payroll withholding taxes collected and received by the City during the then preceding calendar year from all Employees, net of refunds ("*Actual Withholdings*"), meets or exceeds the Target Withholdings (as defined in subsection 2(b)(iv)) for that preceding calendar year, the City shall, on or before April 15 of the then current calendar year, pay to the Company, solely from nontax revenues (as defined in subsection 2(d)), an amount equal to the product of (A) an amount equal to the Actual Withholdings, multiplied by (B) fifteen percent (15%) (with such product being referred to as the "*Annual Incentive Payment*"); *provided, however*, that (1) the City shall not be required pursuant to this subsection 2(b) to remit an Annual Incentive Payment to the Company in excess of the Annual Cap (as defined in subsection 2(b)(iv)) in any calendar year, (2) the aggregate of all Annual Incentive Payments remitted pursuant to this subsection 2(b) by the City to the Company in respect of years 2011 through 2015 shall not exceed Six Hundred Thousand and 00/100 Dollars (\$600,000.00) and (3) the City shall not be obligated to remit an Annual Incentive Payment to the Company in respect of calendar year 2016 unless the requirements of subsection 2(b)(v) have been satisfied.

(iv) Target Withholdings and Annual Cap. The Target Withholdings and Annual Cap for each of the calendar years 2011 through 2016 shall be:

<u>Calendar Year</u>	<u>Target Withholdings</u>	<u>Annual Cap</u>
2011	\$740,543	\$120,000
2012	755,354	120,000
2013	770,461	120,000
2014	785,870	120,000
2015	801,588	120,000
2016	801,588	120,000

(v) Bonus Annual Incentive Payment in Respect of Calendar Year 2016. If the Company's Actual Withholdings meet or exceed the Target Withholdings for each of the calendar years 2011 through 2015, then the Company shall be eligible to receive an Annual Incentive Payment in respect of calendar year 2016 which will be calculated and paid in accordance with this Section 2, *provided* that such Annual Incentive Payment shall be subject to the Annual Cap set forth in subsection 2(b)(iv).

(vi) Forfeiture of Right to Receive Incentive Payment. The Company agrees and acknowledges that Annual Incentive Payments provided for in subsection 2(b) are being made by the City to the Company in consideration for the Company's agreement to extend the lease term on its existing facility within the City by 10 years and continue its operations and retain its workforce within the City. The Company further agrees that if the Target Withholdings requirement is not met for any given year as set forth in subsection 2(b)(iv), the City shall not be obligated to make any Annual Incentive Payment to the Company for the calendar year in respect of which the Target Withholdings requirement was not satisfied. Subject to subsection 2(b)(v), failure to meet the Target Withholdings requirement in respect of any one calendar year does not prohibit the Company from receiving an Annual Incentive Payment for any subsequent calendar year in respect of which the Target Withholdings requirement is satisfied.

(c) Method of Payment. The payments to be paid to the Company as provided in this Section 2 shall be made by the City to the Company by electronic funds transfer or by such other manner as is mutually agreed to by the City and the Company.

(d) City's Obligation to Make Payments Not Debt; Payments Limited to Non-Tax Revenues. Notwithstanding anything to the contrary herein, the obligations of the City pursuant to this Agreement shall not be a general obligation debt or bonded indebtedness, or a pledge of the general credit or taxes levied by the City, and the Company shall have no right to have excises or taxes levied by the City, the State or any other political subdivision of the State for the performance of any obligations of the City herein. Consistent with Section 13 of Article VIII, Ohio Constitution, any payments or advances required to be made by the City pursuant to this Section 2 shall be payable solely from the City's non-tax revenues. Further, since Ohio law limits the City to appropriating monies for such expenditures only on an annual basis, the obligation of the City to make payments pursuant to this Section 2 shall be subject to annual appropriations by the City Council and certification by the Director of Finance of the City as to the availability of such non-tax revenues. For purpose of this Agreement, "nontax revenues"

shall mean, all moneys of the City which are not moneys raised by taxation, to the extent available for such purposes, 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 to be used for the purposes by State statute; (iii) fines and forfeitures which are deposited in the City's General Fund; (iv) fees deposited in the City's General Fund from properly imposed licenses and permits; (v) investment earnings on the City's General Fund and which are credited to the City's General Fund; (vi) investment earnings of other funds of the City that are credited to the City's General Fund; (vii) proceeds from the sale of assets which are deposited in the City's General Fund; and (viii) rental income which is deposited in the City's General Fund; and (ix) gifts and donations.

(e) Applicable City Payroll Tax Rate. For purposes of calculating the Actual Withholdings in each calendar year under this Section 2, the City's payroll tax rate shall be assumed to be two percent (2%).

### Section 3. Miscellaneous.

(a) Assignment. This Agreement may not be assigned without the prior written consent of all non-assigning Parties.

(b) Binding Effect. The provisions of this Agreement shall be binding upon the successors or assigns of the Parties.

(c) Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(d) Day for Performance. Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or legal holiday, then such time for performance shall be automatically extended to the next business day.

(e) Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

(f) Events of Default and Remedies. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by any Party hereto, such defaulting Party shall, upon written notice from any non-defaulting Party, proceed immediately to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the defaulting Party shall upon written notice from any non-defaulting Party commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the defaulting Party.

(g) Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(h) Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the City or the Company other than in his or her official capacity, and neither the members of the legislative body of the City nor any official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the City and the Company contained in this Agreement.

(i) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Company, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Franklin County, Ohio.

(j) Legal Authority. The Parties respectively represent and covenant that each is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. The Parties further respectively represent and covenant that this Agreement has, by proper action, been duly authorized, executed and delivered by the Parties and all steps necessary to be taken by the Parties have been taken to constitute this Agreement, and the covenants and agreements of the Parties contemplated herein, as a valid and binding obligation of the Parties, enforceable in accordance with its terms.

(k) Limit on Liability. Notwithstanding any clause or provision of this Agreement to the contrary, in no event shall City or the Company be liable to each other for punitive, special, consequential, or indirect damages of any type and regardless of whether such damages are claimed under contract, tort (including negligence and strict liability) or any other theory of law.

(l) Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, notices shall be addressed to:

(i) the City at: City of Dublin, Ohio  
5800 Shier Rings Road  
Dublin, Ohio 43016-7295

Attention: Economic Development Director

(ii) the Company at: Medco Health Solutions of Columbus North, Ltd.  
5151 Blazer Parkway  
Dublin, Ohio 43017  
Attention: President

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices; certificates, requests or other communications shall be sent.

(m) Recitals. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

(n) Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

(o) Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

*(remainder of page intentionally left blank – signature page follows)*

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

**CITY OF DUBLIN, OHIO**

By: \_\_\_\_\_

Printed: Terry Foegler

Title: City Manager

Approved as to Form:

By: \_\_\_\_\_

Printed: Stephen J. Smith

Title: Director of Law

**MEDCO HEALTH SOLUTIONS OF COLUMBUS  
NORTH, LTD.**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**FISCAL OFFICER'S CERTIFICATE**

The undersigned, Director of Finance of the City under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: \_\_\_\_\_, 2010

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Marsha I. Grigsby  
Deputy City Manager/Director of Finance  
City of Dublin, Ohio