

RECORD OF ORDINANCES

Ordinance No. 22-10

Passed _____, 20____

AN ORDINANCE AUTHORIZING THE PROVISION OF CERTAIN INCENTIVES TO INVENTRIO, LLC TO INDUCE IT TO LOCATE ITS MAIN OFFICE AND ASSOCIATED OPERATIONS AND 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, Inventrio, LLC (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 incentives provided in the proposed Economic Development Agreement (as described below), the Company is desirous of leasing a facility within the City for the location of its main office and associated operations and 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 incentives to the Company, as described in the proposed Economic Development Agreement; and

WHEREAS, this Council has determined to offer the economic development incentives, 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 lease a facility within the City and locate its main office and associated operations and 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 lease a facility within the City and locate its main office and associated operations and 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 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

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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.

Signed:

Mayor - Presiding Officer

Attest:

Clerk of Council

Passed: _____, 2010

Effective: _____, 2010



CITY OF DUBLIN

Office of the City Manager

5200 Emerald Parkway • Dublin, OH 43017-1090

Phone: 614-410-4400 • Fax: 614-410-4490

Memo

To: Dublin City Council

From: Terry Foegler, City Manager *TF/Sg*

Date: May 20, 2010

Initiated By: Colleen Gilger, Economic Development Administrator

Re: Ordinance 22-10 - Economic Development Agreement with Inventrio

Summary

Staff has been in discussions with Inventrio regarding the possible location of the company's headquarters and workforce to leased space at Metro Center. The company is currently reviewing lease options for this operation both in Dublin and in other central Ohio locations.

Inventrio is a relatively new software development company, aimed at providing innovative solutions to complex problems in healthcare. Inventrio first began at The Ohio State University Medical Center where its staff developed secure exchanges of medical information among providers, payers, pharmacies, pharmaceutical companies, government entities, and other organizations involved in supporting healthcare. Exchanging this information requires integration of multiple systems, including electronic medical records, clinical trial management systems, tissue banking systems, picture archiving, communication systems, payer systems, patient billing and more. For example, Inventrio has created a health care integration platform (caGrid) for securely exchanging and translating health and research information over multiple systems. CaGrid is the premier health information exchange platform being used today and serves as the core platform for the National Cancer Institute's Cancer Biomedical Informatics Grid.

The Economic Development Agreement proposed by Economic Development to Inventrio in consideration for executing a five-year lease in Dublin and creating 20 jobs includes a three-year, 10 percent Performance Incentive on withholdings collected, which is capped at \$22,500 for the term of the agreement. The company would have to reach predetermined annual withholdings targets to qualify for performance incentives.

The City estimates it will pay Inventrio approximately \$12,000 in incentives and net approximately \$108,000 in withholdings over the three-year agreement, should Inventrio grow according to expectations.

Recommendation

Staff recommends Council passage of Ordinance 22-10 at the second reading/public hearing on June 14, 2010. Please contact Colleen Gilger with any questions you may have.

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 INVENTRIO, LLC (the "*Company*" and collectively with the City, the "*Parties*"), a Delaware limited liability company, 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 incentives provided in this Agreement, the Company desires to locate its main office and associated operations and workforce within the City; and

WHEREAS, pursuant to Ordinance No. 22-10 passed on _____, 2010 (the "*Ordinance*"), the City has determined to offer the economic development incentives described herein to induce the Company to lease a facility within the City for the location of its main office and associated operations and workforce within the City, which will result in the creation of new 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 lease a facility within the City and locate its operations and workforce within the City;

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

Section 1. Company's Agreement to Lease a Facility and Locate Its Operations and Workforce Within the City. In consideration for the economic development incentives to be provided by the City herein, the Company agrees that it will lease a facility within the City for the location of its main office and associated operations and workforce within the City pursuant to this Agreement. The Company expects to create twenty (20) employee positions within the City by December 31, 2013. The average annual wage of these employees for this period is estimated to be One Hundred Thirty-Two Thousand and 00/100 Dollars (\$132,000.00), with total estimated payroll withholdings of approximately One Hundred Twenty Thousand and 00/100 Dollars (\$120,000.00) over the term of this Agreement. The Company agrees that the City's obligations to remit any

payments pursuant to Section 2 of this Agreement shall be contingent upon (a) the Company delivering to the City a fully executed copy of an agreement evidencing the Company's lease of a facility within the City and (b) the Company's satisfaction of the Actual Withholdings requirements in Section 2.

Section 2. City Agreement to Provide Incentives.

(a) General. In consideration for the Company's agreement to lease a facility within the City for the location of its main office and associated operations and workforce within the City, the City agrees to provide economic development incentives to the Company in accordance with this Section.

(b) Workforce Creation Grant.

(i) Calculation of Actual Withholdings. On or before March 15 of each of the years 2012 through 2014, 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*"), meet or exceed 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) ten percent (10%) (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, and (2) the aggregate of all Annual Incentive Payments remitted pursuant to this subsection 2(b) by the City to the Company shall not exceed Twenty-Two Thousand Five Hundred and 00/100 Dollars (\$22,500.00).

(iv) Target Withholdings and Annual Cap. The Target Withholdings and Annual Cap for each of the calendar years 2011 through 2013 shall be:

<u>Calendar Year</u>	<u>Target Withholdings</u>	<u>Annual Cap</u>
2011	\$26,000	\$5,000
2012	40,000	7,500
2013	54,000	10,000

(v) 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 lease a facility within the City and locate its operations and workforce within the City. The Company further agrees that if the Target Withholdings requirement is not met for any given calendar 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. 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: Inventrio, LLC

Attention: _____

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

INVENTRIO, LLC

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

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