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: Marsha I. Grigsby, City Manager

Date: August 12, 2013

Initiated By: Michael A. Clarey, Economic Development Administrator

Re: Ordinance 72-13 - Economic Development Agreement with ProspeX LLC

Background

Staff has been in discussions with ProspeX, LLC regarding the retention, expansion, and local relocation of the company's office and workforce. ProspeX is currently located at 7001 Post Road, recently purchased by Ohio University. Economic Development staff has worked closely with the company to find a new location. The company has identified multiple locations of approximately 5,000 square feet. The company's expansion plans include the addition of 27 new jobs and retention of 25 jobs in Dublin. This expansion project is in competition with other localities in Central Ohio.

ProspeX is a business services firm assisting companies grow their sales through demand/lead generation, sales training, and management training.

The Economic Development Agreement proposed by Economic Development to ProspeX includes:

1.) Three-year performance incentive of 15% on new withholdings, which is capped at $15,500 for the term of the agreement. Based on the company's payroll projections, in addition to the retained withholdings of approximately $117,000, it is estimated the City will net approximately $45,371 on new withholdings over the term of this agreement. The company must execute at least a five-year lease agreement for a building located in Dublin.

2.) Location Grant of $2,500 payable upon company gaining occupancy permit for a building leased under a five-year fully executed agreement.

Recommendation

Staff recommends Council passage of Ordinance 72-13 at the second reading/public hearing on August 12, 2013. Please contact Michael Clarey with any questions.

RECORD OF ORDINANCES

Dayton Legal Blank, Inc. Form No. 30043

Ordinance No. 72-13 Passed _____, 20____

AN ORDINANCE AUTHORIZING THE PROVISION OF CERTAIN INCENTIVES TO PROSPEX, LLC TO INDUCE IT TO RETAIN AN OFFICE AND ASSOCIATED OPERATIONS AND WORKFORCE WITHIN THE CITY, 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 create and preserve jobs and employment opportunities within the City; and

WHEREAS, ProspeX, 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 to retain an 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 certain 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 and retain an office and associated operations and workforce, all within the City, which will result in the creation of new jobs and employment opportunities and the preservation of existing jobs and employment opportunities, 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 for the retention of an office and associated operations and workforce within the City, which will result in the creation of new jobs employment opportunities and the preservation of existing jobs and employment opportunities, 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.

RECORD OF ORDINANCES

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.

Signed:

_____
Mayor - Presiding Officer

Attest:

_____
Clerk of Council

Passed: _____, 2013

Effective: _____, 2013

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "*Agreement*") is made and entered into this _____ day of _____, 2013, 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 PROSPEX, LLC, an Ohio limited liability company (the "*Company*" and together with the City, the "*Parties*"), 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 create and preserve jobs and 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 retain an office and associated operations and workforce within the City; and

WHEREAS, pursuant to Ordinance No. 72-13 passed on _____, 2013 (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 retention of an office and associated operations and workforce within the City, which will result in the creation of new jobs and employment opportunities and the preservation of existing jobs and employment opportunities 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 and retain its operations and workforce, all within the City;

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

Section 1. <u>Company's Agreement to Lease a Facility and Retain Its Operations and Workforce Within the City</u>. 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 retention of an office and associated operations and workforce within the City, all consistent with the terms of this Agreement. The Company expects to create twenty-seven (27) new employee positions within the City by December 31, 2017. The average annual wage of these new employees is estimated to be Seventy-Seven Thousand Eight Hundred and 00/100 Dollars ($77,800.00), with total estimated payroll withholdings of approximately Fifty-Four Thousand Four Hundred Sixty and 00/100 Dollars ($54,460.00) over the term of this Agreement. The Company also expects to retain

twenty-five (25) existing employee positions within the City. The average annual wage of these existing employees is estimated to be Seventy-Seven Thousand Eight Hundred and 00/100 Dollars ($77,800.00), with total estimated payroll withholdings of approximately One Hundred Sixteen Thousand Seven Hundred and 00/100 Dollars ($116,700.00) over the term of this Agreement. The Company agrees that the City's obligations to remit 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 for a period of at least five (5) years (from _____, 20___ to _____, 20___) and (b) such other conditions as are set forth 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 retention of an 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) Location Incentive.

(i) Incentive Payment to the Company. The Company agrees to execute a lease for a minimum term of five (5) years (the "*Lease*") within the City for the retention of an office and associated operations and workforce within the City. In consideration of the Company's agreement to execute the Lease and to retain that office and create additional employment opportunities and retain existing employment opportunities within the City, the City agrees to provide to the Company a Location Incentive (the "*Location Incentive*") in the aggregate amount of Two Thousand Five Hundred and 00/100 Dollars ($2,500.00), payable to the Company within thirty (30) days following the occurrence (to the City's reasonable satisfaction) of (A) the Company's execution of the Lease and provision to the City of documentation in support thereof and (B) the issuance of a certificate of occupancy for the premises leased by the Company, which certificate will not be unreasonably withheld by the City.

(ii) Forfeiture of Right to Receive Incentive Payments. The Company agrees and acknowledges that the Location Incentive provided for in subsection 2(b)(i) is being made by the City to the Company in consideration for the Company's agreement to execute a lease within the City for the retention of an office and associated operations and workforce within the City and to create additional employment opportunities and retain existing employment opportunities, all within the City. The Company further agrees that if the requirements of subsection 2(b)(i) are not satisfied, the City shall not be obligated to remit the Location Incentive to the Company as required by subsection 2(b)(i).

(c) Workforce Creation Incentive.

(i) Calculation of Actual Payroll Withholding Taxes. On or before March 15 of each of the years 2015 through 2017, the City shall calculate the actual payroll withholding taxes collected and received during the then preceding calendar year and in respect of that

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 in respect of any calendar year shall be determined based solely upon the amount of payroll withholding tax payments actually received by the City from the Company 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) Annual Incentive Payments to the Company. If the actual payroll withholding taxes collected and received by the City pursuant to subsection 2(c)(i) during the then preceding calendar year and in respect of that preceding calendar year from all Employees, net of refunds (such amount being referred to as the "*Actual Withholdings*"), equal or exceed the Target Withholdings (as defined in subsection 2(c)(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(e)), an amount equal to the product of (A) the difference between (1) an amount equal to the Actual Withholdings for that preceding calendar year minus (2) an amount equal to the Base Withholdings for that preceding calendar year, multiplied by (B) fifteen percent (15%) (with each such product being referred to as an "*Annual Incentive Payment*"); *provided, however*, that (1) the City shall not be required pursuant to this subsection 2(c) to remit an Annual Incentive Payment to the Company in excess of the Annual Cap (as defined in subsection 2(c)(iv)) in any calendar year, and (2) the aggregate amount of all Annual Incentive Payments remitted pursuant to this subsection 2(c) by the City to the Company shall not exceed Fifteen Thousand Five Hundred and 00/100 Dollars ($15,500.00).

(iv) Base Withholdings, Target Withholdings and Annual Cap. The Base Withholdings, Target Withholdings and Annual Cap for each of the calendar years 2014 through 2016 shall be:

Calendar Year	Base Withholdings	Target Withholdings	Annual Cap
2014	2013 Actual WH	$ 7,803 plus 2013 Actual WH	$ 2,500
2015	2013 Actual WH	17,168 plus 2013 Actual WH	5,000
2016	2013 Actual WH	28,405 plus 2013 Actual WH	8,000

For purposes of this subsection 2(c)(iv), "2013 Actual WH" shall be (in each of the calendar years 2014 through 2016) an amount determined by the City (which amount shall be reasonably computed by the City) to be the amount of actual payroll withholding taxes collected and received by the City during calendar year 2013 and in respect of calendar year 2013 from all Employees, net of refunds.

(v) Forfeiture of Right to Receive Workforce Creation Incentive Payment. The Company agrees and acknowledges that Annual Incentive Payments provided for in subsection 2(c) are being made by the City to the Company in consideration for the Company's agreement to execute a lease within the City for the retention of an office and associated operations and workforce within the City and to create additional employment opportunities and retain existing employment opportunities, all 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(c)(iv), the City shall not be obligated to make an Annual Incentive Payment to the Company for the calendar year in respect of which the Target Withholdings requirement was not satisfied. Failure to satisfy 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.

(d) 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.

(e) 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; (viii) rental income which is deposited in the City's General Fund; and (ix) gifts and donations.

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) Economic Development Assistance Certification. The Company has made no false statements to the City in the process of obtaining approval of the incentives described in this Agreement. If any representative of the Company has knowingly made a false statement to the City to obtain the incentives described in this Agreement, the Company shall be required to immediately return all benefits received under this Agreement pursuant Ohio Revised Code Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any State agency or a political subdivision pursuant to Ohio Revised Code Section 9.66(C)(1). The Company acknowledges that any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by a fine of not more than $1,000 and/or a term of imprisonment of not more than six months

(f) Entire Agreement. This Agreement constitutes the entire Agreement between the Parties on the subject matter hereof and supersedes all prior negotiations, agreements and understandings, both written and oral, between the Parties with respect to such subject matter. This Agreement may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

(g) 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.

(h) 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.

(i) 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.

(j) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to its principles of conflicts of laws. 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.

(k) 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.

(l) 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.

(m) 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:	ProspeX, LLC _____ Dublin, Ohio 4301__ 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.

(n) No Waiver. No right or remedy herein conferred upon or reserved to any Party is intended to be exclusive of any other right or remedy, and each and every right or remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of any event of default hereunder. The failure of any Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to the Parties hereto may be exercised from time to time and as often as may be deemed expedient by the parties hereto, as the case may be.

(o) 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.

(p) 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.

(q) 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: Marsha I. Grigsby

Title: City Manager

Approved as to Form:

By:_____

Printed: Stephen J. Smith

Title: Director of Law

PROSPEX, 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 during Fiscal Year 2013 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: _____, 2013

_____

Angel L. Mumma
Director of Finance/Deputy City Manager
City of Dublin, Ohio