




Office of the City Manager
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Memo

To: Members of Dublin City Council
From: Dana L. McDaniel, City Manager 
Date: January 5, 2017
Initiated By: Colleen Gilger, CEcD, Economic Development Director
Rachel S. Ray, AICP, Economic Development Administrator
Re: Ordinance 05-17 – Economic Development Agreement with DENSO International America, Inc.

Background

Economic Development staff has been in discussions with DENSO International, a global supplier of advanced automotive technology, systems, and components, regarding a retention and expansion project. The company currently leases a 10,100-square-foot office space located at 260 Cramer Creek Court. This project will result in the renewal of the company's existing lease and the retention of 37 employees to Dublin, and the addition of 13 new employees by 2022 at a nearby expansion site of approximately 5,300 square feet. This retention and expansion project is primarily in competition with Southfield, MI, where the DENSO International American headquarters are located and where operations for many of DENSO's original equipment manufacturer (OEM) customers are supported.

DENSO has maintained its Dublin office for 15 years, where it supports one of its largest customers, Honda Manufacturing and Honda R&D. The Dublin office is a unique arrangement for DENSO, where it provides engineering, commercial project management, new model project management, just-in-time delivery support, and advanced R&D program management, among other functions. Over the next five years, DENSO anticipates the scope and complexity of their business in Ohio to grow, which has increased the need for additional staff and infrastructure in the Columbus Region.

The proposed Economic Development Agreement is a five-year, 12% Performance Incentive on withholdings collected on its employees (2017-2021), that is capped at \$53,000 for the term of the agreement. The company will also use a \$10,000 location grant to offset the costs of renovating the expansion office facility. In consideration, DENSO agrees to add 13 new employees in Dublin by the end of 2022 and execute minimum seven-year leases for both the existing office and expansion office (or another office facility located within Dublin corporate limits). The company must reach predetermined annual withholdings targets to qualify for these performance incentives.

Based on the company's payroll projections, it is estimated that the City will net approximately \$547,640 in income tax withholding revenue over the seven-year term of this project.

Recommendation

Staff recommends Council passage of Ordinance 05-17 at the second reading/public hearing on January 23, 2017. Please contact Rachel Ray at 614-410-4630 with any questions you may have.

RECORD OF ORDINANCES

Ordinance No. 05-17

Passed _____, 20____

AN ORDINANCE AUTHORIZING THE PROVISION OF CERTAIN INCENTIVES TO DENSO INTERNATIONAL AMERICA, INC. TO INDUCE IT TO LEASE A FACILITY TO RETAIN AND EXPAND AN OFFICE AND ITS ASSOCIATED OPERATIONS AND WORKFORCE, ALL 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, DENSO International America, Inc. (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 and expand an office and its associated operations and workforce, all 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 to retain and expand an office and its associated operations and workforce, all within the City, which will result in the retention of existing and creation of new 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 for the retention and expansion of an office and its associated operations and workforce, all within the City, which will result in the retention of existing and creation of new 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

Ordinance No. 05-17

Passed Page 2 of 2, 20

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: _____, 2017

Effective: _____, 2017

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the “*Agreement*”) is made and entered into this ____ day of _____, 2017 (the “*Effective Date*”), 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 DENSO INTERNATIONAL AMERICA, INC., a Delaware corporation (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 lease a facility to retain and expand an office and its associated operations and workforce, all within the City; and

WHEREAS, pursuant to Ordinance No. 05-17 passed on _____, 2017 (the “*Ordinance*”), the City has determined to offer the economic development incentives described herein to induce the Company to lease a facility for the retention and expansion of an office and its associated operations and workforce, all within the City, which will result in the retention of existing and creation of new 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 to retain and expand an office and its associated operations and workforce, all 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 to Retain and Expand an Office and its Associated Operations and Workforce Within the City.

(a) In consideration for the economic development incentives to be provided by the City herein, the Company agrees that it will lease a facility to retain and expand an office and its associated operations and workforce, all within the City, all consistent with the terms of this Agreement. The Company expects to retain thirty-seven (37) existing employee positions to the City. The Company also expects to create thirteen (13) new employee positions within the City by December 31, 2022. The total estimated payroll withholdings for the retained and new employee

positions is estimated to be Six Hundred Ten Thousand Six Hundred Forty and 00/100 Dollars (\$610,640.00) over the term of this Agreement.

(b) The Company agrees that the City's obligations to remit payments pursuant to Section 2 of this Agreement shall be contingent upon (i) 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 minimum term of seven (7) years (from 2017 through 2023) (the "*Lease Agreement*") and (ii) such other conditions as are set forth in Section 2; *provided, however*, and notwithstanding any provision herein to the contrary, if the Company shall, after having acted in good faith, fail to execute the Lease Agreement within the period set forth in subsection 3(r)(i), (iii) this Agreement will terminate without such failure constituting a breach by the Company, (iv) the City's obligation to remit the Location Incentive Payment and any Annual Incentive Payments will be terminated and (v) the Company will owe no penalties to the City as a result of such failure.

Section 2. City's Agreement to Provide Incentives.

(a) General. In consideration for the Company's agreement to execute the Lease Agreement to lease a facility and retain and expand its associated operations and workforce, and to retain existing and create new jobs and employment opportunities, all within the City, the City agrees to provide economic development incentives to the Company in accordance with this Section.

(b) Location Incentive.

(i) Location Incentive Payment to the Company. The Company agrees to execute the Lease Agreement to retain and expand an office and its associated operations and workforce, all within the City. In consideration of the Company's agreement to execute the Lease Agreement and to retain and expand that office and retain and create employment opportunities within the City, the City agrees to provide to the Company a location incentive payment (the "*Location Incentive Payment*") in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00), payable to the Company within thirty (30) days following the occurrence of (A) the Company's execution of the Lease Agreement and provision to the City of documentation in support thereof and (B) the occupancy of the space described in the Lease Agreement to locate the Company's office and associated operations and workforce within the City in a manner consistent with this Agreement.

(ii) Forfeiture of Right to Receive Location Incentive Payment. The Company agrees and acknowledges that the Location Incentive Payment 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 the Lease Agreement and retain and expand an office and its associated operations and workforce, and to retain and create 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 Payment to the Company as required by this subsection 2(b).

(c) Workforce Creation Incentive.

(i) Calculation of Actual Payroll Withholding Taxes. On or before March 15 of each of the years 2018 through 2022, 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) Employer Identification Number. The Company’s Federal Employer Identification Number is 38-2651421. The Company agrees that if the Federal Employer Identification Number changes at any time during the term of this Agreement, the Company will notify the City of such change, including the new Federal Employer Identification Number, within thirty (30) days of the occurrence of such change.

(iv) 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)(v)) 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 Actual Withholdings for that preceding calendar year multiplied by (B) twelve percent (12%) (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)(v)) 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 Fifty-Three Thousand and 00/100 Dollars (\$53,000.00).

(v) Target Withholdings and Annual Cap. The Target Withholdings and Annual Cap for each of the calendar years 2017 through 2021 shall be as follows:

<u>Calendar Year</u>	<u>Target Withholdings</u>	<u>Annual Cap</u>
2017	\$72,560	\$9,000
2018	82,560	10,500
2019	86,560	11,000
2020	89,160	11,000
2021	91,800	11,500

(vi) Forfeiture of Right to Receive Workforce Creation Incentive Payment. The Company agrees and acknowledges that the 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 the Lease Agreement to retain and expand an office and its associated operations and workforce, and to retain and create jobs and 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)(v), 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 Nontax 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 nontax revenues and on a subordinated basis to the payment of debt service charges as may hereafter be payable on securities of the City which are payable from the City's nontax 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 nontax 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 and inure to the benefit of the Parties and their respective successors and permitted assigns.

(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.

(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 City or Company 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, 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: DENSO International America, Inc. – Ohio Office
260 Cramer Creek Court
Dublin, Ohio 43017
Attention: Bryan Starr, Senior Manager

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.

(r) Term of Agreement. This Agreement shall become effective as of the Effective Date and shall continue until the earlier of (i) the One Hundred Eightieth (180th) day following the Effective Date provided that as of that day the Company shall have theretofore failed to satisfy the requirements of subsection 1(b) or (ii) the later of (A) the day on which the Location Incentive

Payment which the City is obligated to pay hereunder is received by the Company or (B) the day on which the final Annual Incentive Payment which the City is obligated to pay hereunder is received by the Company.

(s) Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason 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: _____ Dana L. McDaniel _____

Title: _____ City Manager _____

Approved as to Form:

By: _____

Printed: _____ Jennifer D. Readler _____

Title: _____ Director of Law _____

DENSO INTERNATIONAL AMERICA, INC.

By: _____

Printed: _____ Bryan Starr _____

Title: Senior Manager, DENSO Sales & Marketing Division

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 2017 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: _____, 2017

Angel L. Mumma
Director of Finance
City of Dublin, Ohio