

City of Scottsbluff, Nebraska

Monday, February 6, 2017

Regular Meeting

Item Reports4

Council to consider an Economic Development Assistance Agreement with Regional West Health Services and authorize the City Manager to execute the agreements as the Economic Development Program Administrator.

Staff Contact: Nathan Johnson, City Manager

ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on February ___, 2017, between the City of Scottsbluff, Nebraska (the “City”) and Regional West Medical Center (the “Applicant”).

Recitals:

a. The City has adopted an Economic Development Plan pursuant to the Nebraska Local Option Municipal Economic Development Act (the “Plan”). Pursuant to the Plan, the City has implemented an Economic Development Program (the “Program”).

b. The Applicant has made application for assistance from the Program (the “Application”);

c. The Administrator of the Program (the “Administrator”) and the City Council (the “Council”) have reviewed the Application. The Council has determined that a grant (the “Grant”) be awarded to the Applicant from the City of Scottsbluff Economic Development Fund (the “Fund”) as provided for in this Agreement.

d. The parties now desire to enter into this Agreement for the purpose of setting out the terms and conditions of the Grant.

Agreement:

1. Purpose of Grant and Application of Funds:

a. The Applicant operates a medical center in Scottsbluff (the “Hospital”) that serves patients in western Nebraska and neighboring states. The Hospital is the “hub” hospital for Trauma Region Four of the Nebraska Statewide Trauma System and manages the Trauma Region Four Transfer Center, which connects all of the Trauma Region Four critical access hospitals and EMS squads into one radio system.

b. The Applicant employs Out-of-Hospital EMS Providers and partners with Med Trans Corporation (“Med Trans”) and Valley Ambulance Services, Inc. (“Valley”) in providing Out-of-Hospital EMS Services (the “Services”) in Trauma Region Four.

c. The Grant will be used to provide funding for recruitment, education and retention of Out-of-Hospital EMS Provider employees of the Applicant, Med Trans and Valley, as provided for in the Application.

2. Amount of Grant:

The amount of the Grant awarded to the Applicant is a maximum of \$992,500. The Grant shall be payable from the Fund as follows:

- a. \$170,000 shall be payable at the Closing (the “Closing Payment”).
- b. The balance shall be paid if earned over a four-year period as provided for below.

3. Closing:

As soon as the Applicant has satisfied the conditions to the Closing, the Closing Payment shall be scheduled as a claim at the next Council meeting for which the matter may be reasonably scheduled. The Closing, to include delivery of the Closing payment shall then occur within 10 business days after the Council has approved the claim for the Grant.

4. Employee Definitions:

a. “Full Time Employee” shall mean a bona fide employee of the Applicant, Med Trans and/or Valley who (1) is primarily an Out-of-Hospital EMS Provider, (2) is classified by the employer as full time; and (3) subject to normal and reasonable waiting periods, is eligible for the employer’s normal fringe benefit package. This normal fringe benefit package must, at the least, include a health insurance plan with coverage offered to each employee which is, if not declined, substantially paid for by the employer.

b. “Eligible Full Time Employee” shall mean a Full Time Employee who: (1) primarily works at a location within Trauma Region Four, and (2) resides within Trauma Region Four; provided, however any Full Time Employee who does not reside within Trauma Region Four at the time that the Full Time Employee is hired, shall nevertheless be considered an Eligible Full Time Employee if the Full Time Employee moves to a residence within the required geographic area within 6 months of the hiring of the Eligible Full Time Employee.

c. “Full Time Equivalent” Employees (the “FTE’s”) shall be the number arrived at by dividing the total hours paid by the Applicant to their Eligible Full Time Employees during a Year divided by 2080 hours, and then rounded down to the nearest tenth; provided, however, the maximum hours paid that can be counted for any one Eligible Full Time Employee shall not exceed 40 hours per week. Salaried employees shall be presumed to have been paid 40 hours per week. Provided, if the maximum number of hours permitted for helicopter pilots during a Year is less than 2080 hours, then the maximum number of hours shall be substituted for 2080 in the case of pilots.

5. Job Credits:

“Job Credits” shall be determined as follows:

a. The Applicant shall receive an “Annual Job Credit” during the Term equal to the FTE’s for a Year multiplied by \$2500. A “Year” shall mean a calendar year.

b. The amount of the Annual Job Credit for the FTE’s may not exceed the “Maximum Annual Credit” as provided for below.

c. If the Applicant earns credits in excess of the Maximum Annual Credit in any one Year, the excess credits may be carried back to one or more prior Years where the Maximum Annual Credit was not earned, as long as the Maximum Annual Credit is not exceeded for any one Year. Excess credits may not be carried forward.

d. As long as the Applicant is not in default of this Agreement, the Applicant shall receive payment for Job Credits for FTE's as follows:

(1) The Closing Payment represents 68 FTE's for the 2016 Year.

(2) The Applicant can earn payment for Job Credits for FTE's in future Years (each, an "Additional Payment") as follows:

<u>Year</u>	<u>Maximum Annual Credit</u>
2018	\$182,500
2019	\$197,500
2020	\$212,500
2021	\$230,000

e. In order to receive an Additional Payment, the Applicant shall within 60 days of the end of each Year, provide to the Administrator a report in form and substance acceptable to the Administrator which calculates the Annual Job Credit for the Year (the "Annual Report"). Upon receipt of the Annual Report, the Administrator shall conduct a preliminary review of the Annual Report, and based upon that review, the amount of the Additional Payment earned shall be scheduled as a claim at a Council meeting within 30 days of receipt of the Annual Report. Delivery of an Additional Payment shall then be made within 10 days after the Council has approved the claim.

6. Representations and Warranties of the Applicant:

The Applicant represents and warrants the following, all of which shall survive the Closing:

a. The Applicant is a non-profit corporation organized, existing, and in good standing under the laws of Nebraska. The Applicant has full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. The Applicant's execution, delivery and performance of this Agreement has been authorized by all necessary action on the part of the Applicant. This Agreement, and each agreement and instrument delivered by the Applicant pursuant to it, is the legal and binding obligation of the Applicant, enforceable against the Applicant in accordance with its terms.

b. No representation or warranty made by the Applicant in this Agreement contains or will contain any untrue statement of any material fact, or omits or will fail to state any material fact known to the Applicant that are required to make the statements not misleading.

c. The execution and performance of this Agreement will not violate any provision of law, or conflict with or result in any breach of any of the terms or conditions of, or constitute a default under any indenture, mortgage, agreement or other instrument to which the Applicant is a party or by which they are bound.

All representations and warranties made by the Applicant shall survive the Closing.

7. Representations and Warranties of the City:

The City represents and warrants the following, all of which shall survive the Closing:

a. The City is a municipal corporation organized and existing under the laws of Nebraska, and has full power and authority to enter into this Agreement and carry out the transactions contemplated by this Agreement. The City's execution, delivery and performance of this Agreement has been authorized by all necessary action on the part of the City. This Agreement, and each agreement and instrument delivered by the City pursuant to it, is the legal and binding obligation of the City, enforceable against the City in accordance with its terms.

b. No representation or warranty made by the City in this Agreement contains or will contain any untrue statement of any material fact, or omits or will fail to state any material fact known to the City that is required to make the statements not misleading.

8. Certification of the Applicant:

The Applicant certifies to the City that it has not filed nor does it intend to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act for the Practice.

9. Conditions to Closing:

The City's obligation to proceed with the Closing is subject to the Applicant's fulfillment of each of the following conditions at or prior to the Closing:

a. All representations and warranties of the Applicant shall be true as of the Closing.

b. The Applicant shall have delivered to the City:

(1) Evidence of Good Standing of the Applicant from the Nebraska Secretary of State.

(2) A copy of the current and correct Articles of Incorporation and Bylaws of the Applicant certified by its secretary to be correct;

(3) Certified resolutions of the Board of Regional West Health Services authorizing the Applicant's entering into this Agreement and providing for signature authority.

(4) A Job Credit Report for the 2016 Year evidencing at least 68 FTE's.

c. The Applicant shall in all material respects have performed its obligations, agreements, and covenants contained in this Agreement to be performed by them, on, or before the Closing.

d. There shall have been no material adverse change in the operation or financial status of the Applicant and the Closing shall constitute the Applicant's representations that there has been no such material adverse change.

e. In accepting each Additional Payment under this Agreement, the Applicant is considered to have represented that the above conditions have been satisfied and are continuing to be satisfied.

10. Annual Report Review:

The Administrator shall have the right at any time to (i) require that the Annual Reports be reviewed at the Applicant's expense by a Certified Public Accountant reasonably acceptable to the Administrator, or (ii) hire, at the Administrator's own expense, an independent Certified Public Accountant or other business or financial expert, to review the books and records of the Applicant pertaining to the Annual Report and any other terms and conditions as provided for in this Agreement. If after a review or audit of the Applicant's records it is discovered that the Annual Job Credit claimed on the Annual Job Credit Report exceeds 5% of the Annual Job Credit as determined by the Administrator, then the Administrator may require the Applicant to reimburse the Fund for the actual cost of the audit.

11. Early Termination:

a. The Applicant shall have the right at any time to terminate their participation in the Program by notifying the Administrator in writing of its desire to do so.

b. The Administrator shall have the right to terminate the Applicant's participation in the Program if the Applicant is in default of any of the terms and conditions of this Agreement, which default is not cured within 30 days of written notice by the Administrator.

c. In the event of a termination as described in this paragraph, then the Applicant shall have no further right to receive Annual Payments.

12. Default:

The Applicant shall be in default if any of the following happen:

- a. Failure to comply with any of the terms of this Agreement to include an assignment not permitted under this Agreement.
- b. Any warranty, representation or statement made or given to the City by the Applicant proves to have been false in any material respect when made or given.
- c. Dissolution or liquidation of any the Applicant, the termination of existence, insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors, or bankruptcy of the Applicant.
- d. The Applicant ceases to conduct business or moves the Hospital outside of the zoning jurisdiction of the City.
- e. The Applicant intentionally or materially misstates the Annual Job Credit on an Annual Report. A material misstatement shall be considered to have occurred if the Annual Job Credit claimed on the Annual Report exceeds 5% of actual Annual Job Credit as reasonably determined by the Administrator.

13. Assignability:

The Administrator may assign his interest in this Agreement to any successor administrator designated by the City Council. The Applicant may not assign or transfer their interest in this Agreement without the consent of the Administrator. Assignment shall include a transfer of ownership of the Applicant.

14. Confidentiality:

It is agreed that this Agreement and its terms are public record and are not confidential. However, the City agrees to take reasonable steps to insure that any financial and proprietary information provided in connection with this Agreement by the Applicant shall remain confidential and shall not be revealed or disclosed to outside sources unless the information is public knowledge, is independently developed, or is required to be disclosed by law or legal process.

15. Notices:

Any notices or other communications between the parties shall be personally delivered, sent by certified or registered mail, return receipt requested, by Federal Express or similar service that records delivery, or by facsimile or email transmission combined with any of the above methods of notice, to the addresses set out below, or to such other address as a party may designate, from time to time, by written notice to the other. A notice shall be deemed effective upon receipt.

- a. If to the City:

City of Scottsbluff
2525 Circle Drive
Scottsbluff, NE 69361
Attention: City Manager
Fax: (308) 632-2916
Email: njohnson@scottsbluff.org

- b. If to the Applicant:

Regional West Medical Center
4021 Avenue B
Scottsbluff, NE 69361
Attention:
Fax:
Email:

16. Miscellaneous:

a. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, and may only be modified by a writing signed by both of the parties.

b. The City's waiver of any one default shall not be a waiver of the same or any other default in the future. In addition, the City's failure to exercise any right given to it by this Agreement shall not be a waiver of any later exercise of that right.

c. The provisions of this Agreement are severable and if any provision is held to be invalid, the remainder of the Agreement shall remain in effect.

d. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute a single instrument.

e. This Agreement shall be governed by the laws of Nebraska.

f. This Agreement shall be binding on the successors and assigns of the parties.

[Signatures on Following Page]

**Signature Page to Economic Development Assistance Agreement between
the City of Scottsbluff, Nebraska and Regional West Medical Center**

City of Scottsbluff, Nebraska

Regional West Medical Center

By: _____
Economic Development
Program Administrator

By: _____
President