

# **City of Scottsbluff, Nebraska**

**Monday, May 7, 2018**

**Regular Meeting**

## **Item Reports8**

**Council to consider the approval of Bluffs Physical Therapy LB840  
Economic Development Application.**

**Staff Contact: Starr Lehl, Economic Development Director**

## **ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT**

This Agreement is made on April 24, 2018, between the City of Scottsbluff, Nebraska (the “City”) and Bluffs Physical Therapy, LLC (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 Economic Development Application Review Committee (the “Committee”) have reviewed the Application and recommended to the City Council (the “Council”) that a grant (the “Grant”) and a loan (the “Loan”) be made to the Applicant from the City of Scottsbluff Economic Development Fund (the “Fund”) as provided for in this Agreement. The City Council has approved the Committee’s recommendation.

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

### **Agreement:**

#### **1. Purpose of Assistance:**

The Applicant is opening a physical therapy clinic in Scottsbluff (the “Clinic”). The proceeds of the Grant and the Loan shall be used to make improvements to the Clinic space, to purchase equipment for the Clinic, and to provide working capital.

#### **2. Amount of Grant and Loan:**

The Grant and the Loan shall be disbursed from the Fund at the Closing (as provided for below) as follows:

a. The Grant shall be in the amount of \$20,000 (the “Grant Amount”).

b. The Loan shall be in the amount of \$30,000 and shall be represented by a promissory note (the “Note”) to be signed at the Closing in the form of the attached “Exhibit A”. The Note shall be interest free until July 1, 2018 (the “Note Interest Date”), at which time the Note shall carry interest at the Applicable Federal Mid-Term rate for the month of the Closing and shall be repaid over 5 equal annual payments of principal and interest. The first payment shall be due on

July 1, 2019, with each additional payment due on the same day of each subsequent Year until the Note is paid in full.

### **3. Closing:**

As soon as the Applicant has satisfied the conditions to Closing (as provided for below), the Grant Amount and the Note Amount shall be scheduled as a claim at a City Council meeting. The "Closing" shall then occur within 10 business days after the Council meeting where the claim is approved.

### **4. Possible Grant Repayment:**

The Grant Amount shall be subject to repayment (the "Repayment") to the City if the Applicant does not fully earn the Job Credits (as provided for below). In connection with the calculation of the Job Credits:

a. The effective date of this Agreement for Job Credit calculation purposes shall be July 1, 2018 (the "Job Credit Effective Date").

b. The term of this Agreement for Job Credit calculation purposes shall begin on the Job Credit Effective Date and shall continue for 5 years from the Job Credit Effective Date (the "Term").

c. A "Year" shall mean the 12-month period ending as of the day prior to each annual anniversary of the Job Credit Effective Date.

### **5. Employee Definitions:**

a. "Full Time Employee" shall mean a bona fide employee of the Applicant who (1) is classified by the Applicant as full time; and (2) subject to normal and reasonable waiting periods, is eligible for the employer's normal fringe benefit package. The normal fringe benefit package must, at the least, include a health insurance plan which provides for employee coverage substantially paid for by the Applicant.

b. "Eligible Full Time Employee" shall mean a Full Time Employee who: (1) primarily works in the City, and (2) resides within 60 miles of the corporate limits of the City; provided, however any Full Time Employee who does not reside within 60 miles of the corporate limits of the City at the time that the Full Time Employee is hired by the Applicant, 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 total of (i) the number of Eligible Full Time Employees which are paid based on a salary, plus (ii) with respect to hourly Eligible Full Time Employees, the number arrived at by dividing the total hours paid by the

Applicant to its hourly 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 hourly Eligible Full Time Employee shall not exceed 2080 hours.

**6. Job Credits:**

“Job Credits” shall be calculated as follows:

a. The Applicant shall receive an “Annual Job Credit” during the Term equal to the FTE’s multiplied by \$2000.

b. The amount of the Annual Job Credit may not exceed \$4,000 per Year (the “Maximum Annual Credit”).

c. In the event that 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

**7. 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 limited liability company 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 have 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 it is bound.

d. The Applicants principal source of revenue is from the sales of services in interstate commerce.

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

## **8. 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.

## **9. 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 Business. In the event that the Applicant files such an application, it shall advise the City in writing, and the City shall have the option to review the status of the Loan, to include determining that the balance of the Loan is due and payable if the Applicant is awarded incentives under the Nebraska Advantage Act.

## **10. 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 Certificate of Organization and Operating Agreement of the Applicant certified by the members (the "Members") to be correct;

(3) Certified resolutions of the Members authorizing this Agreement and providing for signature authority.

c. In order to secure the Loan and the Repayment, the Applicant shall have delivered to the City the following:

(1) A guaranty (the “Guaranty”) of the Michael Moravec and Lisa Moravec. The Guaranty shall be in the form of the attached “Exhibit B”.

(2) A Security Agreement covering the Applicant’s equipment. The Security Agreement shall be in the form of the attached “Exhibit C”. The Security Agreement shall be second in priority to a lien held by Platte Valley Bank.

d. 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.

e. 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.

f. In requesting the disbursement of the Loan, the Applicant is considered to have represented that the above conditions have been satisfied and are continuing to be satisfied.

#### **11. Annual Reports:**

In order to obtain Job Credits, the Applicant shall annually, 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”). 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 Practice 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 10% 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.

#### **12. Default:**

The Applicant shall be in default in this Agreement and the Note if any of the following happen:

a. Failure to comply with any of the terms of this Agreement, the Note, the Security Agreement or the Guaranty 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 of 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 the Business or moves the Business outside of the City.

### **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 its interest in this Agreement without the consent of the Administrator. Assignment shall include a transfer of ownership of the Applicant which results in the Members owning less than 51% of the ownership interests 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, 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

- b. If to the Applicant:

Bluffs Physical Therapy, LLC  
3210 Avenue B, Suite A  
Scottsbluff, NE 69361  
Attention: Michael Moravec

**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.

*[Signature page to follow]*



**Signature Page to Economic Development Assistance Agreement between  
the City of Scottsbluff, Nebraska and Bluffs Physical Therapy, LLC**

City of Scottsbluff, Nebraska

Bluffs Physical Therapy, LLC

By: \_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Michael Moravec, Member