

# **City of Scottsbluff, Nebraska**

**Monday, May 20, 2019**

**Regular Meeting**

## **Item Reports2**

**Council to consider approval of the request to modify the  
Economic Development Assistance Agreement for Pioneer Animal  
Clinic, LLC.**

**Staff Contact: Nathan Johnson, City Manager**

## **AMENDMENT TO ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT**

This “Amendment” is made this \_\_\_\_ day of May 2019 by and between the City of Scottsbluff, Nebraska (the “City”) and Pioneer Animal Clinic, L.L.C. (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”) and the Application was approved for recommendation by the City Economic Development Application Review Committee (the “Committee”).

c. The City Council (the “Council”) followed the Committee’s recommendation and approved an “Economic Development Assistance Agreement” (the “Agreement”) between the City and the Applicant, dated February 23, 2018.

d. The Applicant’s build-out and construction contemplated under the Agreement was delayed, and final pay out of the loan under the Agreement was not made until April 2019. The Applicant, therefore, was not to begin full business operations at a new facility until April 2019. The Agreement contemplated all draws on the loan being made by December 2019 and full operations at the new facility as of January 1, 2019.

e. The Applicant applied to the Committee for an amendment to the Agreement in order to address construction and business delay. The Committee approved for recommendation to the Council an amendment to the Agreement.

f. Wherefore, the parties enter into this Amendment for the purposes of setting forth the terms and condition of the amendment to the Agreement.

### **Amendment:**

1. The paragraph entitled “Amount of Loan” is hereby amended as follows:

#### **“Amount of Loan:**

The Loan shall be in the maximum amount of \$700,000 and shall be disbursed from the City’s Economic Development Fund (the “Fund”) to the Applicant as provided for below. The Loan shall be represented by a promissory note (the “Note”) to be signed at the Loan Closing in the form of the attached “Exhibit A”. The Note shall carry interest from May 1, 2019 (the “Loan Interest

Date”), at which time the actual amount advanced to Applicant under the Note shall carry interest at the Applicable Federal Mid-Term rate for the month of the Loan Closing and shall be repaid over 108 equal monthly payments of principal and interest. The first payment shall be due July 1, 2019, and each additional payment due on the same day of each subsequent month until the Note is paid in full.”

2. The paragraph entitled “Job Credits” is hereby amended as follows:

**“Job Credits:**

As long as the Applicant is not in default of the Note, this Agreement, or any other document entered into pursuant to this Agreement, the Applicant shall be eligible for credit against the balance due under the Note for Job Credits earned during a Year for the first 5 Years. A “Year” shall mean the 12-month period ending on each June 30, with the first Year beginning July 1, 2019. “Annual Job Credits” shall be calculated as follows:

The Applicant is eligible to receive a “Base Annual Job Credit” during a Year equal to the FTE’s for a Year multiplied by \$2,000.

If at the end of a Year, (1) the Annual Report (as provided for below) indicates that the Applicant has any FTE’s that have average earnings for the Year of at least (i) \$14 per hour in the case of hourly employees, or (ii) \$29,120 in the case of salaried employees, and (2) such employees are eligible for the Applicant’s fringe benefit plan, then the Applicant may earn additional job credits (the “Additional Annual Credits”) as calculated on a per employee basis based on the following table:

<u>Additional Credit</u>	<u>Hourly Rate (Based on 2080 hours)</u>	<u>Annual Salary</u>
\$400	\$14.00 to \$17.99	\$29,120 to \$37,439
\$800	\$18.00 to \$21.99	\$37,440 to \$45,759
\$1,200	\$22.00 to \$25.99	\$45,760 to \$54,079
\$1,600	\$26.00 to \$29.99	\$54,080 to \$62,399
\$2,000	\$30.00 and above	\$62,400 and above

In calculating the hourly rate or salary rate for purposes of the above table, the Applicant is entitled to add the hourly equivalent or annual cost of the following fringe benefits provided to the applicable employee by the Applicant:

401k Plan, profit sharing or equivalent retirement benefits, health insurance, and life and disability insurance.

For purposes of this Agreement, Annual Job Credit shall mean the total of the Base Annual Job Credits and the Additional Annual Credit.

The amount of the Annual Job Credit may not exceed 10% of the total Advances per Year (the "Maximum Annual Credit"). 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.

In order to receive Annual Job Credits, the Applicant must file an Annual Report as provided for below. Annual Job Credits shall be applied against the principal balance of the Note as prepayments, which prepayments shall not alter the amount of the monthly payment due under the Note. If at any time, the Annual Job Credits exceed the balance of the Note, then the City shall refund the excess to the Applicant."

3. In consideration of this Amendment, the Applicant agrees to execute:
  - a. An Amended and Restated Promissory Note, the form of which is attached to this Amendment as "Exhibit A."
  - b. An Amendment to Guaranty, the form of which is attached to this Amendment as "Exhibit B."
4. Except as modified in this Amendment, all terms and conditions of the Agreement remain in full force and effect, and shall not be amended by this Amendment.
5. This Amendment may be executed in one or more counterparts, each of which shall be considered an original, but which together shall constitute a single instrument.
6. The provisions of this Amendment are severable and if any provision is held to be invalid, the remainder of the Amendment shall remain in effect.

*[Signature Page Follows]*

**Signature Page to Amendment to Economic Development Assistance Agreement between  
the City of Scottsbluff, Nebraska and Pioneer Animal Clinic, L.L.C.**

City of Scottsbluff, Nebraska

Pioneer Animal Clinic, L.L.C.

\_\_\_\_\_  
Economic Development  
Program Administrator

By: \_\_\_\_\_  
Kimberly Walker, Member

By: \_\_\_\_\_  
Joel K. Robbins, Member

Consent and Agreement to the terms of the Amendment to Economic Development Assistance  
Agreement:

Pioneer Properties, LLC

By: \_\_\_\_\_  
Kimberly Walker, Member

By: \_\_\_\_\_  
Joel K. Robbins, Member