

City of Scottsbluff, Nebraska

Tuesday, September 8, 2020

Regular Meeting

Item Consent6

Approve amendments to Economic Development Agreements for COVID accommodations.

Minutes: Fusion Ranch/KYS Foods

Pioneer Animal Clinic

Webb Orthodontics

Webb Eyecare

Staff Contact: City Council

**Amendment to
Amended and Restated
Economic Development Assistance Agreement**

This “Amendment” is made on September 8, 2020 and is to the “Amended and Restated Economic Development Assistance Agreement” dated December 14, 2014 (the “Amended and Restated Agreement”) and the Economic Development Assistance Agreement dated October 6, 2011 (the “EDA Agreement”), is effective January 1, 2020, and is by and between the City of Scottsbluff, Nebraska (the “City”) and Fusion Ranch, Inc., formerly known as KYS Foods, Inc. (the “Applicant”).

RECITALS:

a. The City and the Applicant are parties to the EDA Agreement. The EDA Agreement was amended and restated with the Amended and Restated Agreement. The EDA Agreement and the Amended and Restated Agreement were made under the Economic Development Program of the City (the “Program”), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the EDA Agreement and the Amended and Restated Agreement, and for several reasons the parties now desire to enter into this Amendment for the purposes of amending the Amended and Restated Agreement.

c. The City provided a Grant to the Applicant under the EDA Agreement in the amount of \$110,000 (the “2011 Grant”), earnable through job credits under the EDA Agreement. Under the Amended and Restated Agreement, the City provided an additional Grant in the amount of \$200,000 (the “2015 Grant”), earnable through job credits under the Amended and Restated Agreement. Under the Amended and Restated Agreement, the parties consolidated the unearned, outstanding amount of the 2011 Grant with the 2015 Grant, and the total grant assistance awarded by the City became the “Grant” in the amount of \$310,000 under the Amended and Restated Agreement.

d. The “Term” to earn the Grant for the majority of the job credits (42 FTEs) expired on December 31, 2019, and it is not anticipated that the Applicant will earn any job credits for the reporting Year ending December 31, 2020.

e. As of January 1, 2020 (the “Amended Job Credit Effective Date”), the unearned, outstanding amount of the Grant is \$102,300 (the “Amended Grant”).

f. Additionally, the City provided a “Loan” to the Applicant under the Amended and Restated Agreement in the amount of \$225,000. The Loan was repayable under a Note dated January 1, 2015, the term of which included 84 equal monthly payments of principal and interest of \$2,922.56, with the first monthly payment due February 1, 2015 and each additional payment due on the first day of each month thereafter.

g. Until April of 2020, the Applicant was current on all loan Payments. The City desires to extend COVID-19 Accommodations under this Amendment to address the continued performance of the Loan. Additionally, at this time, the parties desire to extend the term in which to earn job credits against the balance of the Amended Grant.

AMENDMENT:

1. Grant.

a. The Applicant shall continue to earn an “Annual Job Credit” equal to the FTE’s (defined herein) multiplied by \$1,000.

b. The “Term” in which to earn Annual Job Credits is extended and amended to three Years from the Amended Job Credit Effective Date for all FTE’s of the Applicant existing on the Amended Job Credit Effective Date, and continuing thereafter.

c. A “Year” shall continue to mean a 12-month period ending on the day prior to each annual anniversary of the Amended Job Credit Effective Date.

d. “Job Credits” is amended under paragraph 6.b of the Amended and Restated Agreement to provide a “Maximum Annual Credit” (as that term is defined therein) of \$62,000; provided, however, that the Applicant may still carry back excess credits to on or more prior Years where the Maximum Annual Credit was not earned and excess credits may not be carried forward.

e. “Full Time Equivalent” Employees (the “FTE’s”) shall continue to be the number arrived at by dividing the total hours paid by the Applicant to their Eligible Full Time Employees during a given Year, divided by 2,080 hours, and then rounded down the nearest tenth. Salaried employees shall continue to be presumed to have been paid for 2,080 hours. However, for the “Year” ending December 31, 2020, the term “FTE’s” shall be the number arrived at by dividing the total hours paid by the Applicant to the Eligible Full-Time Employees during that Year divided by 1,560 hours and then rounded down to the nearest tenth. For such Year ending December 31, 2020, the maximum hours paid that can be counted for any Eligible FTE shall continue and shall not exceed 1,560 hours. Salaried employees meeting the definition of an FTE during the Year ending December 31, 2020 shall be presumed to have been paid 1,560 hours. This 1,560 hour modification of hours for FTE credits shall only apply to the Year beginning January 1, 2020 and ending December 31, 2020.

2. Loan.

a. The terms, conditions, and obligations of the “Promissory Note” executed as of January 1, 2020 shall be incorporated into an Amended and Restated Note effective April 1, 2020 executed by the Applicant, in the form of the attached Exhibit A, the terms of which are incorporated herein by reference.

b. The balance of the Promissory Note owed on April 1, 2020 shall become payable in 22 equal monthly payments of principal and interest, payable under the Amended and Restated Note, carrying interest at the rate set forth in the Promissory Note. Interest on the Amended and Restated Note shall be waived from April 1, 2020 to June 30, 2020. The first monthly payment due under the Amended and Restated Note shall be due and payable on October 1, 2020, and each monthly payment shall be due on the first of each month thereafter.

3. This Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator's responsibilities and authorities under of the Program. The Amendment, and those adjustments made, is intended to address business difficulties and the economic down-turn related to the COVID-19 pandemic and the unearned credits of the Grant at the end of the term under the Amended and Restated Agreement.

4. All other terms and conditions of the EDA Agreement and the Amended and Restated Agreement shall continue in full force and effect, and shall be amended only as set forth in this Amendment.

5. This Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Amendment shall be covered by the laws of Nebraska. This Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Fusion Ranch, Inc.

By: _____
Economic Development
Program Administrator

By: _____
Kai Yen Mai, President

Second Amendment to Economic Development Assistance Agreement

This “Second Amendment” to the Economic Development Assistance Agreement is made Effective April 1, 2020, and is by and between the City of Scottsbluff, Nebraska (the “City”) and Pioneer Animal Clinic, L.L.C. (the “Applicant”).

RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated February 23, 2018 (the “Agreement”). The Agreement was amended by an Amendment to Economic Development Assistance Agreement dated May 21, 2019 (the “Amendment”). The Agreement and Amendment were made under the Economic Development Program of the City (the “Program”), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Second Amendment for the purposes of amending the Agreement and the Amendment as set forth below.

SECOND AMENDMENT:

1. Assistance Modification. The “Loan” obligations in the paragraph entitled “Amount of Loan” of the Agreement and paragraph 1 of the Amendment are hereby amended as follows:

a. The balance of the Note owed on April 1, 2020 shall become payable in 99 equal monthly payments of principal and interest, payable under an Amended and Restated Note effective April 1, 2020, carrying interest at the rate set forth in the Amended and Restated Note dated May 21, 2019. Interest on the Amended and Restated Note dated May 21, 2019 shall be waived from April 1, 2020 to June 30, 2020. The first monthly payment due under the Amended and Restated Note effective April 1, 2020 shall be due and payable on October 1, 2020, and each monthly payment shall be due on the first of each month thereafter. Job credits will continue to be applied to the Amended and Restated Note effective April 1, 2020.

2. Modified Note. The terms, conditions, and obligations of the “Amended and Restated Note” executed as of May 21, 2019 shall be incorporated into an Amended and Restated Note effective April 1, 2020 executed by the Applicant, in the form of the attached Exhibit A, the terms of which are incorporated herein by reference.

3. FTE Employees. The third full subparagraph under the paragraph entitled “Employee Definitions” of the Agreement is hereby amended as follows:

“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 on the basis of 40 hours per week. For the “Year” ending June 30, 2020, the term “FTE’s” shall be the number arrived at by dividing the total hours paid by the Applicant to the Eligible Full-Time Employees during that Year divided by 1,560 hours and then round it down to the nearest hundredth. For such Year ending June 30, 2020, the maximum hours paid that can be counted for any Eligible FTE shall continue and shall not exceed 1,560 hours. Salaried employees meeting the definition of an FTE during the Year ending June 30, 2020 shall be presumed to have been paid 1,560 hours. The modification of hours for FTE credits shall only apply to the Year beginning July 1, 2019 and ending June 30, 2020.”

4. This Second Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator’s responsibilities and authorities under of the Program. The Second Amendment, and those adjustments made, is intended to address business difficulties and the economic downturn related to the COVID-19 pandemic.

5. All other terms and conditions of the Agreement and the Amendment shall continue in full force and effect, and shall be amended only as set forth in this Second Amendment.

6. This Second Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Second Amendment shall be covered by the laws of Nebraska. This Second Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Pioneer Animal Clinic, L.L.C.

By: _____
Economic Development
Program Administrator

By: _____
Kimberly Walker, Member

By: _____
Joel K. Robbins, Member

Second Amendment to Economic Development Assistance Agreement

This “Second Amendment” to the Economic Development Assistance Agreement is made Effective April 1, 2020, and is by and between the City of Scottsbluff, Nebraska (the “City”) and Webb Orthodontics, LLP (the “Applicant”).

RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated December 30, 2016 (the “Agreement”). The Agreement was amended by an Amendment to Economic Development Assistance Agreement dated October 3, 2018 (the “Amendment”). The Agreement and Amendment were made under the Economic Development Program of the City (the “Program”), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Second Amendment for the purposes of amending the Agreement and the Amendment as set forth below.

SECOND AMENDMENT:

1. Assistance Modification. The “Loan” obligations as defined in paragraph 2 of the Agreement are hereby amended as follows:

a. The balance of the Note owed on March 1, 2020 shall become payable in 73 equal monthly payments of principal and interest, payable under an Amended and Restated Note, carrying interest at the rate set forth in the Promissory Note. Interest on the Promissory Note shall be waived from April 1, 2020 to June 30, 2020. The first monthly payment due under the Amended and Restated Note shall be due and payable on October 1, 2020, and each monthly payment shall be due on the first of each month thereafter. Job credits will continue to be applied to the Amended and Restated Note.

2. Modified Note. The terms, conditions, and obligations of the “Promissory Note” executed as of February 7, 2017 shall be incorporated into an Amended and Restated Note executed by the Applicant, in the form of the attached Exhibit A, the terms of which are incorporated herein by reference.

3. FTE Employees. Paragraph 5.c of the Agreement and paragraph 1 of the Amendment is hereby amended in total as follows:

“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 1,664 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 32 hours per week. Salaried employees shall be presumed to have been paid on the basis of 32 hours per week. For the “Year” ending June 30, 2020,

the term “FTE’s” shall be the number arrived at by dividing the total hours paid by the Applicant to the Eligible Full-Time Employees during that Year divided by 1,472 hours and then round it down to the nearest hundredth. For such Year ending June 30, 2020, the maximum hours paid that can be counted for any Eligible FTE shall continue and shall not exceed 1,472 hours. Salaried employees meeting the definition of an FTE during the Year ending June 30, 2020 shall be presumed to have been paid 1,472 hours. The modification of hours for FTE credits shall only apply to the Year beginning July 1, 2019 and ending June 30, 2020.”

4. This Second Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator’s responsibilities and authorities under of the Program. The Second Amendment, and those adjustments made, is intended to address business difficulties and the economic downturn related to the COVID-19 pandemic.

5. All other terms and conditions of the Agreement and the Amendment shall continue in full force and effect, and shall be amended only as set forth in this Second Amendment.

6. This Second Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Second Amendment shall be covered by the laws of Nebraska. This Second Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Webb Orthodontics, LLP

By: _____
Economic Development
Program Administrator

Sami Webb, DDS, PC

By: _____
Sami Webb, President

Second Amendment to Economic Development Assistance Agreement

This “Second Amendment” to the Economic Development Assistance Agreement is made Effective April 1, 2020, and is by and between the City of Scottsbluff, Nebraska (the “City”) and Jason Webb, O.D., P.C. (the “Applicant”).

RECITALS:

a. The City and the Applicant are parties to an Economic Development Assistance Agreement dated December 30, 2016 (the “Agreement”). The Agreement was amended by an Amendment to Economic Development Assistance Agreement dated October 3, 2018 (the “Amendment”). The Agreement and Amendment were made under the Economic Development Program of the City (the “Program”), pursuant to the Nebraska Local Option Municipal Act.

b. The Applicant has received assistance from the Program pursuant to the Agreement, and for several reasons the parties now desire to enter into this Second Amendment for the purposes of amending the Agreement and the Amendment as set forth below.

SECOND AMENDMENT:

1. Assistance Modification. The “Loan” obligations as defined in paragraph 2 of the Agreement are hereby amended as follows:

a. The balance of the Note owed on March 1, 2020 shall become payable in 73 equal monthly payments of principal and interest, payable under an Amended and Restated Note, carrying interest at the rate set forth in the Promissory Note. Interest on the Promissory Note shall be waived from April 1, 2020 to June 30, 2020. The first monthly payment due under the Amended and Restated Note shall be due and payable on October 1, 2020, and each monthly payment shall be due on the first of each month thereafter. Job credits will continue to be applied to the Amended and Restated Note.

2. Modified Note. The terms, conditions, and obligations of the “Promissory Note” executed as of February 7, 2017 shall be incorporated into an Amended and Restated Note executed by the Applicant, in the form of the attached Exhibit A, the terms of which are incorporated herein by reference.

3. FTE Employees. Paragraph 5.c of the Agreement and paragraph 1 of the Amendment is hereby amended in total as follows:

“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 1,664 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 32 hours per week. Salaried employees shall be presumed to have been paid on the basis of 32 hours per week. For the “Year” ending June 30, 2020,

the term “FTE’s” shall be the number arrived at by dividing the total hours paid by the Applicant to the Eligible Full-Time Employees during that Year divided by 1,472 hours and then round it down to the nearest hundredth. For such Year ending June 30, 2020, the maximum hours paid that can be counted for any Eligible FTE shall continue and shall not exceed 1,472 hours. Salaried employees meeting the definition of an FTE during the Year ending June 30, 2020 shall be presumed to have been paid 1,472 hours. The modification of hours for FTE credits shall only apply to the Year beginning July 1, 2019 and ending June 30, 2020.”

4. This Second Amendment is being entered into pursuant to adjustments made to the assistance provided to the Applicant by the Program Administration under the Program Administrator’s responsibilities and authorities under of the Program. The Second Amendment, and those adjustments made, is intended to address business difficulties and the economic downturn related to the COVID-19 pandemic.

5. All other terms and conditions of the Agreement and the Amendment shall continue in full force and effect, and shall be amended only as set forth in this Second Amendment.

6. This Second Amendment can be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one single instrument. This Second Amendment shall be covered by the laws of Nebraska. This Second Amendment shall be binding upon all successors and assigns of the parties.

City of Scottsbluff, Nebraska

Jason Webb O.D., P.C.

By: _____
Economic Development
Program Administrator

By: _____
Jason A. Webb, President