

City of Scottsbluff, Nebraska

Tuesday, February 17, 2015

Regular Meeting

Item Public Inp3

Council to consider revising the prior approval of the Economic Development Assistance Agreement with EagleMed, LLC in the amount of \$70,000.00, to allow the funds to be used for a weather reporting system and authorize the Mayor to execute the agreement.

Staff Contact: Rick Kuckkahn, City Manager

ECONOMIC DEVELOPMENT ASSISTANCE AGREEMENT

This Agreement is made on December 31, 2014, between the City of Scottsbluff, Nebraska (the “City”) and EagleMed, LLC (the “Applicant”).

Recitals:

- a. The City has adopted an Economic Development Program (the “Program”) pursuant to the Nebraska Local Option Municipal Economic Development Act;
- 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”) be awarded 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.

Agreement:

1. Purpose of Grant:

The Applicant has established a fixed wing air medical service to be based at the Scotts Bluff County Airport (the “Service”). The purpose of the Grant is to assist the Applicant with the payment of the Applicant’s share of the cost of a weather reporting system to be located at the Gordon, Nebraska Airport. As a result of this system, the Applicant will expand the capabilities of its market area and enhance the Service.

2. Amount of Grant:

The amount of the Grant to be paid to the Applicant shall be \$70,000, which amount shall be payable from the Fund to the Applicant at the Closing (as provided for below).

3. Closing:

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

4. Possible Grant Repayment:

The Grant shall be subject to 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 for Job Credit calculation purposes shall be January 1, 2015 (the "Job Credit Effective Date")
- b. The term of this Agreement shall begin as of this date and shall continue until the end of 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 as full time; and (2) 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.

b. "Eligible Full Time Employee" shall mean a Full Time Employee who: (1) primarily works at the Facility, 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, 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. In addition, the restrictions of this paragraph shall not apply to pilots.

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 2080 hours. Salaried employees shall be presumed to have been paid for 2080 hours. Notwithstanding any other provision of this paragraph to the contrary, if the maximum number of hours permitted for 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.

6. Job Credits:

“Job Credits” shall be calculated as follows:

a. The Applicant shall receive an “Annual Job Credit” during the Term for the FTE’s for a Year multiplied by \$1000.

b. The amount of the Annual Job Credit for the FTE’s may not exceed \$14,000 per Year (the “Maximum Annual Credit”)

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.

7. Grant Repayment:

a. At the end of the Term, the total of the cumulative Annual Job Credits for FTE’s will be subtracted from \$70,000. Any balance shall be repaid to the Fund within 90 days of the end of the Term (the “Repayment”), and any amount not paid within this time period shall then carry interest at the rate of 7% per annum until paid. If there is no balance, then the Applicant shall be considered as having satisfied their obligations under the Grant and this Agreement and no repayment shall be due.

b. If the Annual Job Credit for FTE’s determined for any Year is less than 80% of the Maximum Annual Credit, then the Administrator may require repayment of the difference between that Year’s Annual Job Credit and the Maximum Annual Credit. Any balance shall be repaid to the Fund within 30 days of written demand of the Administrator, and any amount not paid within this time period shall then carry interest at the rate of 7% per annum until paid. If the amount repaid pursuant to this subparagraph is later earned by the Applicant, then the City shall pay the amount so earned to the Applicant within 30 days of the determination by the Administrator that the amount previously repaid has been earned.

8. 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 corporation organized, existing, and in good standing under the laws of _____, and is qualified to do business in 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 they are bound.

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

9. 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.

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 _____ and Nebraska Secretaries of State.
 - (2) A copy of the current and correct Articles or Certificate of Organization and Operating Agreement of the Applicant certified by its secretary to be correct;
 - (3) Certified resolutions authorizing this Agreement and providing for signature authority.
- c. In order to secure the Repayment, the Applicant shall have delivered to the City a guaranty (the "Guaranty") of Air Medical Group Holdings, Inc. ("AMG") The Guaranty shall be in the form of the attached "Exhibit A".
- 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 AMG, 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 Grant, the Applicant is considered to have represented that the above conditions have been satisfied and are continuing to be satisfied.

11. Annual Reports:

The Applicant shall annually, within 90 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 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 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. 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, the total of the Annual Job Credits for FTE's for all Years, calculated as of the end of the Year immediately preceding the termination will be subtracted from \$70,000. This amount shall then be immediately due and payable to the Fund, and interest shall accrue at the rate of 7% per annum on any amounts not immediately paid.

13. 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 of the Applicant or AMG, the termination of existence, insolvency, business failure, appointment of a receiver, assignment for the benefit of creditors, or bankruptcy of the Applicant or AMG.

d. The Applicant ceases to conduct the Service on a normal and regular basis.

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 10% of actual Annual Job Credit as reasonably determined by the Administrator.

14. 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 which results in AMG owning less than 51% of the membership interests in the Applicant.

15. 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.

16. 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 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
Fax: (308) 632-2916
Attention: City Manager

b. If to the Applicant:

EagleMed, LLC
6601 W. Pueblo Road
Wichita, KS 67209
Fax:
Attention: President

17. 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]

City of Scottsbluff, Nebraska

EagleMed, LLC

By: _____
Randy Meininger, Mayor

By: _____

Larry Bugg, President

GUARANTY

This Guaranty is given by Air Medical Group Holdings, Inc. (the "Guarantor") to guarantee certain obligations of EagleMed, LLC (the "Applicant") to the City of Scottsbluff, Nebraska (the "City").

Recitals:

a. The Applicant has entered into an Economic Development Assistance Agreement with the City dated December 31, 2014 (the "EDA Agreement"). Capitalized terms not otherwise defined in this Guaranty shall have the same meaning as provided for in the EDA Agreement.

b. One of the conditions to the Closing of the EDA Agreement is that the Guarantor enters into this Guaranty.

Guaranty:

1. Obligations Guaranteed:

The obligations of the Applicant being guaranteed (the "Obligations") are:

- a. The "Repayment" as defined in the EDA Agreement;
- b. Any and all other obligations of the Applicant under the EDA Agreement and any other documents entered into pursuant to the EDA Agreement;
- c. All costs, expenses and attorney fees paid or incurred by the City in collecting the Repayment, and in enforcing this Guaranty.

2. Guarantee of Payment:

This Guaranty is a guarantee of payment and the City shall not be required to resort first for payment from the Applicant or from any other person liable in any way for the Obligations.

3. Exercise of Rights/Waiver:

The City may at any time without consent of or notice to the Guarantor, and without incurring responsibility to or impairing or releasing the Obligations, in whole or in part:

- a. Change the manner, place or terms of payment and/or change or extend the time or payment of, renew or alter, any of the Obligations, any security, or any debt, liability or obligation incurred directly or indirectly with respect to the Obligations and this Guaranty shall continue to apply to the Obligations as changed, extended, renewed or altered;
- b. Exercise or refrain from exercising any rights against the Applicant or others (including the Guarantor);
- c. Settle or compromise any of the Obligations or any security for the Obligations, and may subordinate the payment of all or any part of the Obligations to the payment of any debt, liability or obligation (whether due or not) of the Applicant to creditors of the Applicant other than the City and the Guarantor; and
- d. Apply any sums paid or realized from any source to the Obligations and regardless of the application or use of the consideration, if any, received in connection with the Obligations.

4. Primary Obligation:

- a. This Guaranty is a primary obligation of the Guarantor. The Guarantor's obligation shall not be affected by the illegality, invalidity, irregularity or unenforceability of all or any part of the Obligations or of any security for the Obligations, or by the violation of any applicable usury laws, forgery, or any other circumstances which make the Obligations unenforceable against the Applicant which actions are the responsibility of the Applicant.
- b. The fact that the financial condition of the Applicant or any other obligor or guarantor may not have been correctly estimated or may change at any time shall have no effect on the rights of the City under this Guaranty. The City shall have no duty to disclose to the Guarantor any facts it may now or in the future have concerning the Applicant's financial condition.

c. The Guarantor shall remain obligated under this Guaranty even if the Applicant, or any other person who is obligated to pay the Obligations, has the Obligations discharged in bankruptcy or in any other manner. In the event of a discharge, the Guarantor's obligation shall include attorney's fees and any other amounts which the Applicant is discharged from paying.

d. If claim is ever made against the City for repayment or recovery of any amount or amounts received by the City in payment or on account of any of the Obligations and the City repays all or part of the amount claimed by reason of (1) any judgment, decree or order of any court (including a bankruptcy court) or administrative body having jurisdiction over the City or (2) any settlement or compromise of any claim effected by the City with any claimant (including the Applicant), then the Guarantor agrees that the judgment, decree, order, settlement or compromise shall be binding upon the Guarantor even though this Guaranty may have been revoked or released or the Obligations were canceled or released. In that event, the Guarantor shall remain liable to the City for the amount repaid by the City as if that amount had never been received by the City, along with any costs, interest, attorneys' fees and all other expenses incurred by the City in connection with the repayment.

5. Miscellaneous:

a. This Guaranty shall continue until the Obligations are paid in full or unless released by the City. All Obligations shall be conclusively presumed to have been made all or in part in reliance on this Guaranty.

b. The Guarantor waives notice of acceptance of this Guaranty and notice of the Obligations, and waive presentment, demand of payment, protest, notice of dishonor or nonpayment, notice of default, or notice of right to cure any default with respect to any of the Obligations, or notice of any suit or other action by the City against any party liable for the Obligations.

c. Unless and until the Obligations are satisfied in full, the Guarantor waives all present and future claims, rights, and remedies against the Applicant or any other party obligated for the Obligations. This waiver includes, but is not limited to, the rights of contribution, reimbursement, indemnification, subrogation, exoneration, and any right to participate in any claim or remedy that the City may have.

d. No delay or failure on the part of the City to exercise its rights under this Guaranty shall be considered as a waiver of the City's rights under this Guaranty. No

waiver, modification or amendment of this Guaranty by the City shall be effective unless in writing, and then shall only apply to the specific instance involved.

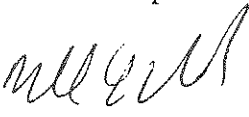
e. Any acknowledgment or new promise, whether or not a payment of any Obligation has occurred, by the Applicant or anyone else (including the Guarantor) shall toll any statute of limitations that may otherwise be running with respect to the Guarantor.

f. This Guaranty shall be construed according to the laws of Nebraska.

g. This Guaranty shall be binding upon the successors and assigns of the Guarantor.

Dated: December 31, 2014.

Air Medical Group Holdings, Inc.

By: 

Title: Chief Financial Officer