

Amarillo LTACH, LLC  
Summary Page

**Project Goal:**

Amarillo LTACH, LLC (LTACH stands for Long Term Acute Care Hospital) received financial assistance to renovate an existing, never occupied 51,000 ft<sup>2</sup> hospital. The renovated facility to consist of ten ICU beds, thirty high acuity beds, and fourteen rehab beds.

**Incentive Details:**

Agreement Start Year: 2022  
Agreement End Year: 2029

Developer's Obligations:

- Invest a minimum of \$12,200,000 in construction and fixed equipment/machinery,
- Create a minimum of 110 new full-time and 50 new part-time positions within 90 days of opening for business,
- Have a combined minimum payroll of \$9,000,000 for new positions created.

City Obligations:

- Annually reimburse 80% of Property Tax Increment for 8 years.

**Benefit to City:**

1. Enhances and diversifies economic and industrial base of Amarillo area.
2. Contributes to the retention and expansion of primary employment.
3. Attracts major investment that will be of benefit to the City.
4. Contributes to the economic development of the City.

**CITY OF AMARILLO, TEXAS  
AND  
AMARILLO LTACH, LLC**

**CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AGREEMENT**

This CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (the "Agreement") is made and entered into by and between the CITY OF AMARILLO, TEXAS, a Texas home rule municipality ("City"), and AMARILLO LTACH, LLC ("Company"), a Texas limited liability company, each of which may be singularly referred to as "Party" and jointly referred to as "Parties," for the purposes and considerations stated below.

**WHEREAS**, the Company has applied to the City for financial assistance to renovate an existing never occupied building, for an approximately 51,000 square feet long-term acute care hospital, which will house fifty-four all private beds (ten ICU, thirty high acuity, and fourteen rehab) to serve patients needing respiratory therapy, physical therapy, dialysis, occupational therapy, cardiovascular recovery, and more ("Project" or "Hospital"); and

**WHEREAS**, the City has the authority under Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code ("Chapter 380") to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City; and

**WHEREAS**, the City desires to provide, pursuant to Chapter 380, an incentive to the Company to construct and develop the relocation/expansion of cancer treatment facility in this community; and

**WHEREAS**, the City has determined that the Project is also desirable for the redevelopment of a vacant and unused existing structure; and

**WHEREAS**, the City has also determined that a grant of funds to the Company will serve the public purpose of promoting local economic development, and stimulating business and commercial activity within the City, and creating and retaining jobs.

**NOW THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**SECTION 1. FINDINGS INCORPORATED.**

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

## **SECTION 2. PROGRAM APPROVED.**

The City Council of the City hereby establishes a Chapter 380 economic development program (the "Program") to facilitate the construction and development of the Project and determines that this Agreement will effectuate the purposes of the Program, and that the Company's performance of its obligations herein will promote local economic development and stimulate business and commercial activity in the City.

## **SECTION 3. TERM.**

This Agreement shall be effective as of the Effective Date for a period of eight (8) years and shall terminate when all terms and conditions of this Agreement have been fulfilled unless terminated earlier pursuant to the terms of this Agreement.

## **SECTION 4. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement:

"Agreement" means this Chapter 380 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.

"Certificate of Occupancy" means an approval issued by the City after final inspection reflecting that construction of the Improvements has been completed in conformance with all appropriate City codes and requirements.

"City" means the City of Amarillo, Texas, a Texas home-rule municipality, whose address for the purposes of this Agreement is 601 S. Buchanan Street, Amarillo, Texas 79101.

"Company" means Amarillo LTACH, LLC, a Texas limited liability company, authorized to do business in Texas, whose address for the purposes of this Agreement is 1540 Research Street, Amarillo TX 79106.

"Effective Date" means the last date this Agreement is signed by either Party.

"Event of Default" means and includes any of the Events of Default set forth below in the section entitled "Events of Default."

"Force Majeure" means any act of God or the public enemy, war, riot, civil commotion, fire, explosion or flood, and strikes or other act beyond the reasonable control of the Parties, but not including lack of funds.

"Improvements" means the completed renovation of an existing, approximately 51,000 square feet into a long-term acute care hospital, which houses fifty-four all private beds (ten ICU, thirty high acuity, and fourteen rehab to serve patients needing respiratory therapy, physical therapy, dialysis, occupational therapy, cardiovascular recovery, and more, all on a site described on EXHIBIT A, and pursuant to the Concept Plan attached hereto as EXHIBIT B, with a required

minimum new investment of not less than \$11,000,000 for construction, and installation of fixed machinery and equipment with a value of not less than \$1,200,000.

"Job" or position means a full-time job or position requiring a minimum of 2080 hours of work per year, including allowance for vacation and sick leave. Individual salary or wages must equal at least the federal minimum wage or as otherwise specified in this Agreement. Total hours of all part-time employees shall be combined and divided by 2080 to determine the number of full-time job equivalents provided by part-time employees. This term includes only employment at the Center and not independent contractors unless specifically provided for in this Agreement. The term includes employees of BSA Hospital, LLC, affiliates and subsidiaries employed in the Center.

"Project" means the design, construction, and operation of long-term acute care hospital described as "Improvements" and on Exhibits A & B.

"Program Grant" or "Program Grant Payment" means the economic development grants to be paid by the City to the Company in accordance with this Agreement.

"Property" means that real property on which the Project is to be located and being more particularly described on the attached Exhibit A.

"Property Tax increment" means the difference in the City ad valorem property tax revenue on the Property between the year in which this Agreement was approved (being 2021 and using the PRAD appraised value for that year as the base value) and January 1 of each subsequent tax year during the term of this Agreement.

"Property Taxes Paid" means the total amount of ad valorem property tax revenue (real and business property) paid to and received by the City, generated by the Project.

## **SECTION 5. OBLIGATIONS OF COMPANY.**

The Company covenants and agrees with the City that, while this Agreement is in effect, it shall comply with the following terms and conditions, which are prerequisites to being eligible for a grant(s) from the City:

- (1) Completion of Improvements. The Company agrees that it must receive a building permit and all necessary financing and governmental approvals no later than March 31, 2022; and Company further agrees that the Improvements will be completed and receive a Certificate of Occupancy no later than December 31, 2022. If requested in writing by the Company, the City may extend these deadlines, if in the City's reasonable discretion the City determines that an extension is warranted upon (a) an event of Force Majeure that suspends construction of the Improvements for a period of time such as to prevent the Improvements from receiving the Certificate of Occupancy within the time specified above; (b) disruption due to construction of infrastructure improvements by the City for a period of time such as to prevent the Improvements from timely receiving the Certificate of Occupancy; or (c) Company and City mutually agree to one (1) extension period of not more than 120 days for convenience of both parties. Failure or refusal to timely complete

the Improvements as required by this Agreement, including the minimum capital investment, shall be considered an Event of Default under this agreement.

(2) Jobs. Within 90 days following the opening of the Hospital for business with the public, and continuing for the duration of this Agreement, the Company shall create one hundred ten (110) new full-time employees (with an annual payroll of not less than \$7,000,000) in addition to creating fifty (50) part-time employees (with an annual payroll of not less than \$2,000,000).

(3) Performance. The Company agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between the Company and the City.

(4) Undocumented Workers. The Company certifies that the Company does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended, in carrying out its obligations under this Agreement. If during the Term of this Agreement, the Company is convicted of a violation under 8 U.S.C. § 1324a (f), the company will repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of the prime rate published in the *Wall Street Journal* plus two percent (2%) per annum, not later than the 120th day after the date the City notifies the Company of the violation.

(5) Taxes. During the term of the Agreement, the Company shall timely pay all ad valorem taxes (real and business property) and all other taxes and charges due by the Company to the City or other governmental entity (to the extent such is not being contested in good faith). Failure or refusal to do so shall constitute a default of this Agreement by the Company.

## **SECTION 6. OBLIGATIONS OF CITY.**

A. Program Grant Payments. Upon verification of the Company's timely and proper performance of its Obligations in Section 5 of this Agreement, then City shall pay to the Company certain grants according to the following terms:

(1) Annually reimburse the Company a percentage of the annual Property Tax Increment for a period of eight (8) years commencing on the date the first Program Grant Payment is paid to the Company, as follows:

- Years 1-8 at 80% of the Property Tax Increment

(2) The Company shall furnish evidence reasonably satisfactory to the City, on or before March 1 of the year following issuance of the Certificate of Occupancy for the Improvements, and on or before March 1 of each year thereafter during the Term of this Agreement, that the Company has performed the Jobs requirement of this Agreement and Property Taxes Paid, City utility charges or other fees due and owing, and that all such taxes and fees for the preceding year have been paid in full (to the extent such is not being

contested in good faith).The City will thereafter within 30 days pay the Program Grant Payment that is due to the Company.

(3) Partial Compliance. In the event the Company has not complied with the Jobs obligation of Section 5 for a particular year, then the annual Program Grant Payment to the Company for that year may be reduced by the same percentage that the Company is short of the Jobs obligation stated in Section 5. Once a reduced Program Grant Payment is made for partial compliance for a particular year, then the Company will be considered to have satisfied the requirements for jobs for that year, if in compliance with all other conditions of this Agreement.

B. Enterprise Project Support. If requested by the Company, City commits to support the Company in a Texas Enterprise Project nomination.

C. Administrative Assistance. City will endeavor to provide Company administrative assistance with facilitating and expediting City permit reviews as is feasible.

## **SECTION 7. EVENTS OF DEFAULT.**

Each of the following shall constitute an Event of Default under this Agreement:

(1) Default. Failure of the Company or the City to comply with or to perform any term, obligation, covenant or condition contained in this Agreement or in any related documents, and the Company or the City fails to cure such failure within thirty (30) days after written notice from the City or the Company, as the case may be, describing such failure, or if such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if the Company or the City fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such failure.

(2) False Statements. Any written warranty, representation or statement made or furnished to the City by the Company, or the City to the Company under this Agreement or any document(s) related hereto furnished by the Company or the City to the receiving Party is/are false or misleading in any material respect, either now or at the time made or furnished, and the furnishing Party fails to cure same within thirty (30) days after written notice from the receiving Party describing the violation, or if such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, then if the furnishing Party fails to commence such cure within such thirty (30) day period or fails to continuously thereafter diligently prosecute the cure of such violation, or if the furnishing Party obtains actual knowledge that any such warranty, representation or statement has become false or misleading after the time that it was made, and the furnishing Party fails to provide written notice to the receiving Party of the false or misleading nature of such warranty, representation or statement within ten (10) days after the furnishing Party learns of its false or misleading nature.

(3) Insolvency. The dissolution or termination of the Company's existence as a going business or concern, the Company's insolvency, appointment of receiver for any part of the

Company's property, any assignment of all or substantially all of the assets of the Company for the benefit of creditors of the Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Company unless, in the case of involuntary proceedings, such proceedings are discharged within ninety (90) days after filing.

## **SECTION 8. EFFECT OF AN EVENT OF DEFAULT.**

(1) Notice and Remedies. In the event of default under this Agreement, including without limitation, Section 7, the non-defaulting Party shall give written notice to the defaulting Party of any default, and the defaulting Party shall have the period provided in Section 7 to cure said default. Should said default remain uncured as of the last day of the applicable cure period and the non-defaulting Party is not otherwise in default, the non-defaulting Party shall have the right to immediately terminate this Agreement. In the event the City terminates this Agreement as a result of the foregoing, it will have no further obligation to make any remaining Program Grant Payment, including that of the current year, nor the immediately preceding year. Additionally, the Company will immediately owe the City repayment of the previous Program Grant Payments made to the Company, plus interest at the rate of the prime rate per annum. The Company shall pay such funds to the City within sixty (60) days of termination. In the event the City is the party in default, the City will cure the default as soon as possible and will pay the amounts under the Agreement, plus interest at the rate of the prime rate published in the *Wall Street Journal* plus two percent (2%) per annum. Repayment of previous Program Grant Payments will take into account exceptions for partial compliance adjustments found in Section 6. (3) under this Agreement.

(2) Damage Limitation. Under no circumstances shall the Company be liable to the City under this Agreement for damages in excess of the aggregate amount of funds paid by the City to the Company pursuant to this Agreement. Neither party shall be liable to the other for indirect, special or consequential damages except as provided for in Section 5.

## **SECTION 9. ADDITIONAL PROPERTY TAX PROVISIONS**

The following additional Property Tax provisions are a part of this Agreement:

(1) Legislative or Judicial Changes. In the event of any legislative or judicial interpretation that limits or restricts the City's ability to pay the Property Tax rebates or other incentive herein provided or otherwise extracts or imposes any penalty or other restriction upon the calculation or payment of same, such rebate will be modified or cease as of the effective date of such limitation or restriction and be of no further force, effect or consequence in which event the City shall be under no further obligation to the Company as of the effective date of such limitation or restriction. However, the City and the Company agree to modify the rebate provided for herein to the extent permitted by such legislative or judicial action to the fullest extent then authorized without penalty or other restriction upon the City for the payment of same.

(2) Erroneously Paid Property Tax. In the event the City Council or a court of competent jurisdiction determines that any property taxes were erroneously overpaid or underpaid by the Company to the City, an appropriate credit or offset shall be applied against the next Program Grant Payment provided for herein. If there is not another Program Grant Payment remaining under this Agreement, then Company and City respectively promise to issue to the other any and all such payments or repayments as indicated in order to balance the books for the erroneously paid property tax. Notification of any such required adjustment will be provided to the Company at the earliest practical date.

## **SECTION 10. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

(1) Amendments. At any time, the City and the Company may amend this Agreement for the mutual benefit of the Parties, or for any other reason, including an amendment to induce the Company to continue development and commercial activities in the City when this Agreement could otherwise be terminated. The City and the Company agree to consider reasonable requests for amendments to this Agreement which may be made by either of the Parties hereto, lending institutions, bond counsel or financial consultants. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of both the City and the Company.

(2) Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Potter County, Texas. Venue for any action arising under this Agreement shall lie in the state courts of appropriate jurisdiction in Potter County, Texas.

(3) Assignment. This Agreement may not be assigned without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

(4) Binding Obligation. This Agreement shall become a binding obligation on the Parties upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The Company warrants and represents that the individual executing this Agreement on the Company's behalf has full authority to execute this Agreement and bind it to the same.

(5) Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(6) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.



(7) Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment. Neither Party is relying on any statement, representation, or warranty of the other Party not expressly set out in this Agreement. Each of the undersigned authorized representatives of the Parties, warrants and represents and does hereby state and represent that no promise or agreement which is not herein expressed has been made to him or her in executing this Agreement, and that neither of the signatories is relying upon any statement or representation of any agent of the Parties. Each Party is relying on his or her own judgment and each Party has been represented by independent counsel of its choosing. This Agreement shall not be construed against the drafter hereof, but shall be construed as if all Parties drafted the same.

(8) Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such Party was delayed. This section does not affect the Company's obligations or the City's discretion described in Section 5(1).

(9) Further Acts and Releases. The City and the Company each agrees to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

(10) Governmental Powers; Waiver of Immunity. By execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities or rights.

(11) No Third Party Beneficiaries. The performance of the respective obligations of the City and the Company under this Agreement are not intended to benefit any Party other than the City or the Company, except as expressly provided otherwise herein. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.

(12) Notices. Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered either by hand, or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, or (iii) upon delivery via a delivery service, Federal Express or any other nationally recognized overnight courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof, and addressed as follows:

If to Company:                      Amarillo LTACH, LLC  
                                                 1540 Research Street  
                                                 Amarillo TX 79106  
                                                 ATTN: Todd Harmon

If to the City:                      City of Amarillo  
                                                 601 S. Buchanan  
                                                 Amarillo, Texas 79101  
                                                 ATTN: City Manager

(13) Right of Offset. Notwithstanding the provisions of Section 9(2), the City may, at its option, after prior written notice and a 30 day period to cure, offset any amounts due and payable under this Agreement against any debt lawfully due and owing to the City from the Company, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

(14) Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

(15) Severability. The City and the Company declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

(16) Time is of the Essence. Time is of the essence in the performance of this Agreement.

(17) Attorneys' Fees. In the event that either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may suffer or incur in the pursuit or defense of such action or proceeding.

**CITY OF AMARILLO, TEXAS**

By: [Signature]  
Jared Miller, City Manager

Date: 01/19/2022

**ATTEST:**

By: [Signature]  
Stephanie Coggins, City Secretary

**APPROVED AS TO FORM**

By: [Signature]  
Bryan S. McWilliams, City Attorney

**AMARILLO LTACH, LLC,**  
a Texas limited liability company

By: [Signature]

\_\_\_\_\_, Managing Member

Date: 01/19/22

Attachments: Exhibits A & B

**EXHIBIT “A”**

