Buc-ee's Amarillo, LLC
Summary Page

Project Goal:

Buc-ee's Amarillo, LLC received financial assistance for the construction of a 53,000 ft^2 Travel Center with 120 fueling positions.

Incentive Details:

Agreement Start Year: 2024?
Agreement End Year: 2043?

Developer's Obligations:

- Secure not less than $30,000,000 in private investment for the Project on the Property.
- Obtain a Certificate of Occupancy no later than fifteen (15) months after commencement of the Improvements.
- Within twelve (12) months, create and maintain at least one hundred fifty (150) full-time equivalent jobs with an annual payroll of not less than $6,000,000.
- Construct, at its expense, all public Right of Way improvements required for the Project and convey the rights-of-way and the ROW improvements to the City.
- Within thirty (30) days of the opening of the Project, donate two hundred seventy-five thousand dollars ($275,000) to benefit community-oriented projects, civic events, and other benevolent purposes with the City as determined by City Council.

City Obligations:

- Provide payment in the form of fifty (50) percent of Sales Tax Revenues collected at the Project at the City's tax rate of 1.5% for twenty (20) years beginning on the Tax Payment Effective Date.

Benefit to City:

1. Enhances and diversifies economic and industrial base of Amarillo area.
2. Contributes to the stimulation of business and commercial activity in the City.
3. Attracts major investment that will be of benefit to the City.
4. Contributes to the economic development of the City.

STATE OF TEXAS §
§ **ECONOMIC DEVELOPMENT AGREEMENT**
COUNTY OF POTTER §

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into by and between the City of Amarillo ("City") and Buc-ee's Amarillo, LLC, a Delaware limited liability company ("Developer"), on this 8th day of February, 2022 ("Effective Date"). City and Developer are sometimes individually referred to herein as a "Party" and are sometimes collectively referred to herein as the "Parties."

RECITALS:

WHEREAS, Developer is contemplating the purchase of a certain tract of land consisting of approximately 20.360 acres within the City of Amarillo, described by metes and bounds attached hereto as **Exhibit A** ("Property"); and

WHEREAS, in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Gov't Code, City may establish and provide for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity within the City; and

WHEREAS, in accordance with Chapter 380, Texas Local Gov't Code, the City hereby establishes such a program to provide incentives and financial assistance to Developer to encourage and promote the development of the Property thereby enhancing and stimulating business and commercial activity in the City; and

WHEREAS, the City passed Resolution 08-20-19-3 adopting comprehensive guidelines and criteria for economic development incentives for the City of Amarillo which Resolution includes a requirement that an applicant must produce a minimum of $10,000,000 in annual taxable sales ("Minimum Annual Taxable Sales") to qualify for a Sales Tax Rebate; and

WHEREAS, as a material inducement to Developer to purchase the Property and develop the Project (hereinafter defined) on the Property, City has agreed to offer incentives to Developer in the form of grants described in Article III of this Agreement; and

WHEREAS, the Project requires specific deviations from the Amarillo Code of Ordinances with respect to certain requirements including, but not limited to, sign height and size limitations, outside storage screening requirements, landscape/parking design requirements, and building materials classifications; and the staff recommendation of approval of said deviations shall be included as a material inducement to purchase the Property and develop the Project, and;

WHEREAS, Developer has agreed, in exchange for and as consideration for the incentives offered by the City, to satisfy and comply with the terms and conditions hereinafter set forth; and

WHEREAS, The City has concluded and hereby find that this Agreement substantially advances a legitimate interest of the City by promoting economic development, attracting new consumers to the City, expanding the sales tax base of the City, increasing employment, and generating new ad valorem tax revenue for jurisdictions in Potter County, which will help stimulate the overall local economy; and

NOW, THEREFORE, by and in consideration of the mutual covenants and agreements contained herein, the City of Amarillo and Developer hereby agree as follows:

ARTICLE I

DEFINITIONS

Whenever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Affiliate" means any entity directly or indirectly controlling or controlled by under direct or indirect common control with, or which directly or indirectly owns voting securities of an entity directly or indirectly controlled by, such specific entity.

"Chapter 380 Payment(s)" means the amount paid by the City to Developer under the Program (defined below).

"Event of Force Majeure" means strikes, riots, acts of God, extraordinary weather events, shortages of labor or materials, war, governmental laws, regulations or restrictions, the pendency of condemnation proceedings or any other causes or events of any kind whatsoever which are beyond a Party's reasonable control; excluding the inability to pay any monies when due under this Agreement for any reason.

"Improvements" means a retail development consisting of a Buc-ee's travel center being at least 53,000 square feet in size and providing approximately 120 fueling positions 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 $30,000,000.

"Overpayment Amount" means the percentage of Shared Sales Tax which Developer must reimburse to the City after delivery of a Job Compliance Affidavit showing Developer did not maintain the Minimum Job Threshold for the prior calendar year, which percentage shall be equal to the following: (150 minus Annual Job Average) divided by 150. For illustrative purposes, if Developer only maintains, on average, one-hundred (100) full-time jobs in any given calendar year, then Developer shall reimburse to the City thirty-three percent (33%) of the Shared Sales Tax. Upon payment of the Overpayment Amount, Developer will be eligible to receive Shared Sales Tax payments in future calendar months for the remainder of the Project Term. The Project Term shall not be extended as a result of any cure period under this Section.

"Program" means the economic development program established by the City pursuant to Texas Local Government Code Chapter 380 and under Resolution 08-20-19-3 to promote local economic development and stimulate business and commercial activity within the City.

"Project" means the development of approximately 20 acres as generally depicted on Exhibit B and the construction and operation of a retail development consisting of a Buc-ee's travel center being at least 53,000 square feet in size and providing approximately 120 fueling positions.

"Project Term" shall mean a period beginning on Tax Payment Effective Date and continuing for a period of twenty (20) years.

"Property" means the real property described on **Exhibit A**, attached hereto.

"Purchase Agreement" means the Real Estate Purchase and Sale Agreement dated effective as of August 27, 2021 by and between Attebury Farm, LLC and CSMS Management, LLC, as may be amended from time to time and assigned to Developer.

"Sales Tax Revenues" means the actual sales tax revenue derived from the sale of taxable items at the Project and collected by the City during the Project Term less any fees deducted by the Texas Comptroller.

"Shared Sales Tax" means fifty percent (50%) of the Sales Tax Revenues. For illustrative purposes, the City's current sales tax rate is 1.5%. As such, the Shared Sales Tax, on the Effective Date of this Agreement, would equal fifty percent (50%) of (1.5% percent), or (0.75%), minus any fees deducted by the Texas Comptroller.

"Tax Payment Effective Date" shall mean January 1 following the date the Project opens for business to the public.

ARTICLE II

PROJECT DESCRIPTION

2.1 Completion of Improvements. Provided Developer acquires the Property pursuant to the Purchase Agreement, Developer shall commence construction of the Project on or before May 1, 2023, and further agrees that the Improvements will be completed and Developer will have submitted all items necessary to receive a Certificate of Occupancy no later than fifteen months after it commences construction of the Improvements. If requested in writing by the Developer, the City shall extend these deadlines for the period of delay, if (a) an event of Force Majeure delays commencement of construction of or delays or suspends construction of the Project or Improvements; or (b) disruption due to construction of infrastructure improvements by the City delays commencement of construction or delays or suspends construction of the Project or Improvements. In addition, Developer and City each have the one-time right to extend a deadline set forth herein for a period of up to 120 days for the convenience of such party, such right to be exercised by written notice to the other party on or before such deadline to be extended.

2.2 Certificate of Completion and Subsequent Job Creation. On or before the date that is 12 months after Developer receives its Certificate of Occupancy for the Project (the "Job Threshold Commencement Date"), Developer and/or its Affiliate(s) shall create at least one hundred fifty (150) full time equivalent jobs (the "Minimum Job Threshold") on the Project with an annual payroll of not less than $6,000,000 and shall maintain on average, as calculated every year from and after the Job Threshold Commencement Date, such level of employment during the Project Term. On or shortly after the Job Threshold Commencement Date, Developer shall provide to the City an affidavit certifying its compliance with the foregoing employment requirements in the form attached hereto as **Exhibit C** ("Job Compliance Affidavit") and thereafter, on or before February 1st of each year until the end of the Project Term or earlier termination of this Agreement, Developer shall provide a supplementary Job Compliance Certificate to the City. If the average number of full-time jobs maintained by Developer and/or its Affiliate(s) for any calendar year (the "Annual Job Average") does not meet or exceed the Minimum Job Threshold, the Developer shall reimburse the City the Overpayment Amount. A failure to meet the Minimum Job Threshold shall not be a Default under this Agreement. The City's sole and exclusive remedy with respect to a failure to meet the Minimum Job Threshold shall be to demand the Overpayment Amount from Developer and to offset the

Overpayment Amount from future payments of Shared Sales Tax if such Overpayment Amount is not paid as required herein.

2.3 **<u>Construction and Dedication of Public ROW Improvements.</u>** Provided Developer acquires the Property pursuant to the Purchase Agreement and obtains all required permits and approvals, Developer shall construct, at its sole cost and expense, public ROW improvements required for the Project and shall convey the rights-of-way and the ROW improvements to the applicable governmental authority.

2.4 **<u>Community Outreach Donation</u>**. Within 30 days of the opening of the Project to the public, Developer shall donate Two Hundred Seventy-Five Thousand Dollars ($275,000.00) to benefit community oriented projects, civic events, and other benevolent purposes within the City as determined by the Amarillo City Council.

2.5 **<u>Minimum Annual Taxable Sales.</u>** Commencing one year after the Tax Payment Effective Date and annually thereafter for the Project Term, the actual sales tax revenue derived from the sale of taxable items at the Project shall exceed the Minimum Annual Taxable Sales. If the actual sales tax revenue derived from the sale of taxable items at the Project for any required year does not exceed the Minimum Annual Taxable Sales, the Developer shall reimburse the City for all 380 Payments made for such year. A failure to meet the Minimum Annual Taxable Sales for any required year shall not be a Default under this Agreement. The City's sole and exclusive remedy with respect to a failure to meet the Minimum Annual Taxable Sales for any required year shall be to demand reimbursement of the Chapter 380 Payments made for such year and to offset such amounts from future payments of Shared Sales Tax if such Chapter 380 Payment reimbursement is not paid as required herein.

ARTICLE III

ECONOMIC INCENTIVES

3.1 **<u>Project - Economic Development Grant.</u>** City shall pay to Developer an economic development grant in the form of monthly payments made solely from Sales Tax Revenues collected at the Project as allowed by Chapter 380 of the Texas Local Government Code, and as more particularly set forth in <u>Subsection 3.1(a)</u> below... It is the intent of the parties that the Chapter 380 Payments represent a sharing of tax benefits which inure to the City as a result of Developer's development of the Property. The Chapter 380 Payments shall be payable to Developer as provided hereinafter, unless this Agreement is earlier terminated pursuant to the terms hereof. Developer understands and agrees the City is not certifying or otherwise encumbering any funds for the Chapter 380 Payments. Developer agrees not to make any claims against City for any monies other than those from Sales Tax Revenues from the Project. Nothing in this Agreement shall require City to make payment from revenue sources other than from Sales Tax Revenues from the Project.

a. **<u>City Sales and Use Tax Collected from the Project.</u>** The Shared Sales Tax shall constitute the grant payment due and payable to Developer. The Shared Sales Tax will be paid monthly for a period of twenty (20) years beginning on the Tax Payment Effective Date and within sixty (60) days of the end of each calendar month thereafter until all payments are made in accordance with this Agreement. In recognition that grant payments are calculated and paid after taxes have been assessed and paid to the City, and therefore always run in arrears, the term of this Agreement shall be deemed to include any payments otherwise due and payable to Developer which extend beyond the original term of the Agreement.

3.2 **Additional Developer Agreements.** In addition to the conditions to the program grant payments set forth in Article 2 above, Developer agrees to the following requirements of the Project:

a. Include the word "AMARILLO" on the Primary Freestanding Sign as generally depicted on Exhibit D.

b. Maintain an annual membership with the Amarillo Chamber of Commerce.

c. Developer shall provide approximately eighteen (18) square feet of space within the retail space of the Project for the location of a community information kiosk provided by the City, at the City's sole cost and expense, which will provide printed materials and other promotional items about various community-oriented sites venues, events, and programs. Developer shall have the right to designate the location, design, and hours of operation of the kiosk.

d. Make an effort to hire qualified residents of the City of Amarillo for the travel center.

e. Make an effort to hire local contractors and suppliers in constructing the Project.

f. The Project will not provide for the servicing and/or fueling of 18 wheeled tractor-trailer or similar vehicles (excepting those 18 wheeled tractor-trailer or similar vehicles delivering merchandise, supplies and/or fuel to the Project).

g. The requirements set forth in subsections (a), (c), (d), and (f) above shall survive expiration of the Project Term or termination of this Agreement due to Developer Default if and so long as Developer operates the Project on the Property. Notwithstanding anything to the contrary in this Agreement, the Property and the Project shall not be bound by this Agreement following any sale of the Property after termination of this Agreement or any foreclosure or deed in lieu of foreclosure by any lender with a deed of trust or other security interest in the Property or Project.

ARTICLE IV

CODE VARIANCES

4.1 **Project Specific Code Deviation Approval.** Prior to the date of Property acquisition by Developer, City staff shall recommend, and the City Council shall vote to approve or disapprove, the following alternatives required for the commencement of the Project by Developer:

a. **Primary Freestanding Sign** having a total sign area of 515 square feet as depicted in **Exhibit D**.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE CITY

5.1 The City represents and warrants that:

a. The City is a home rule Texas municipal corporation and has the power to enter into and has taken all required actions to date required to authorize this Agreement and carry out its obligations hereunder.

b. The City knows of no litigation, proceedings, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed to Developer.

c. The City knows of no law, order, rule or regulation applicable to the City or to the City's governing documents that would be contravened by, or conflict with the execution and delivery of this Agreement.

d. This Agreement constitutes a valid and binding obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or equity. Subject to the indemnity provided by this Agreement, the City will defend the validity of this Agreement in the event of any litigation arising hereunder that names the City as a party or which challenges the authority of the City to enter into or perform its obligations hereunder.

ARTICLE VI

Intentionally Omitted.

ARTICLE VII

DEVELOPER REPRESENTATIONS AND WARRANTIES.

7.1 Developer represents and warrants that:

a. Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Project Term. As used herein, the term "good standing" means the status of Developer with the Comptroller of the State of Texas shall be "Active".

b. No litigation or governmental proceeding is pending or, to the knowledge of Developer, threatened against or affecting Developer with respect to the Property or the Project that may result in any material adverse change in Developer's business or operation.

c. No bankruptcy proceedings or other similar proceedings are currently pending or contemplated against Developer, and Developer has not been informed of any potential involuntary bankruptcy proceedings.

d. Developer shall remain current and in good standing with all sales taxes, property taxes, fees and other recurring charges of City, the State of Texas, and Potter County taxing jurisdictions with respect to the Property and the Project throughout the Project Term; provided Developer or its Affiliates may contest any such taxes as provided for by applicable law.

ARTICLE VIII

DEFAULT, TERMINATION, AND REMEDIES

8.1 **Developer's Representation and Covenants limited to Project.**.. The City agrees and acknowledges that Developer's representations, warranties, covenants, agreements and performance obligations under this Agreement are limited to and apply exclusively to the operations of Developer at the Property for the Project and any determination as to whether Developer is in violation or Default of this Agreement will be limited to Developer's operations on the Property for the Project.

8.2 **Termination for Misrepresentation**. Notwithstanding any provision for notice of non-compliance and any opportunity to cure, the City may terminate this Agreement immediately by providing written notice to Developer if Developer, its officers or signatories to this Agreement intentionally misrepresented or misrepresent any material fact or information: (a) upon which the City relied in entering into this Agreement; (b) upon which the City relies in making an incentive payment; or (c) as an inducement for the City to make an incentive payment.

8.3 **Developer Default and City Remedies**.

a. **Developer Default**. Developer will be deemed to be in "Default" of this Agreement only if it fails to substantially comply with any material provision of this Agreement and does not cure such failure within sixty (60) days after receipt of notice from the City describing such failure in reasonable detail; provided, such failure shall not be a Default if such failure is not reasonably susceptible to cure within 60 days and Developer commences curing such failure within such 60-day period and thereafter continuously and diligently pursues such cure to completion. In no event shall a failure under Section 2.2 or Section 2.5 of this Agreement be a Default.

b. **City Remedies**. Upon Default by Developer, the City has the right to terminate this Agreement and/or pursue any legal or equitable remedies it may have under this Agreement or applicable law, provided, however, that, except as provided in Section 2.2 and Section 2.5, the City will not be entitled to and may not seek or pursue the remedy of recapturing any incentive payments realized by or paid to Developer prior to the date of Default. Notwithstanding anything to the contrary in this Agreement, the City expressly releases Developer from any claims for speculative, indirect, consequential, or punitive damages arising from a breach of this Agreement.

8.4 **City Default and Developer Remedies**.

a. **City Default**. The City will be deemed to be in "Default" of this Agreement only if it fails to substantially comply with any material provision of this Agreement and does not cure such failure within sixty (60) days after receipt of notice from Developer describing such failure in reasonable detail; provided, such failure shall not be a Default if such failure is not reasonably susceptible to cure within 60 days and the City commences curing such failure within such 60-day period and thereafter continuously and diligently pursue such cure to completion.

b. **Developer Remedies**. Upon Default by the City, Developer has the right to terminate this Agreement and/or pursue any legal or equitable remedies it may have under this Agreement or applicable law. Notwithstanding anything to the contrary in this Agreement, Developer expressly releases the City from any claims for speculative, indirect, consequential, or punitive damages arising from a breach of this Agreement.

8.5 **Limitations.**

a. **Effect of Force Majeure Event**. A Party will not be deemed to be in Default or otherwise in violation of any term of this Agreement to the extent such Party's action, inaction or omission is the result of Force Majeure Event. The Parties agree to use commercially reasonable efforts to promptly resolve any Force Majeure Event that adversely and materially impacts their performance under this Agreement. A force majeure event pauses a Party's performance obligation for the duration of the event but does not excuse it. "Force Majeure Event" means any event or occurrence that is not within the control of such Party or its Affiliates and prevents a Party from performing its obligations under this Agreement, including without limitation, any act of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of either Party); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the Party, over the Project or over a Party's operations.

b. **Overpayments.** Notwithstanding the limitations on remedies in this Article, it is understood and agreed that, because the incentive payments are from public funds, any verified overpayments to Developer may be recovered by the City or, at the City's sole discretion, through available remedies at law or in equity, or by reducing future incentive payments by the amount of an overpayment.

c. **Offset**. The City may deduct from any Chapter 380 Payments, as an offset, any delinquent and unpaid fees, sums of money or other fees, charges or taxes owed to or for the benefit of the City by Developer; provided that before offsetting any amounts the City must provide Developer with (a) advance notice of such offset, (b) 60 days to take action to remedy the situation giving rise to the offset, and (c) reasonable opportunity, at Developer's own expense, to contest such offset.

d. **Limitation on Damages**. Notwithstanding anything contained in this Agreement to the contrary, under no circumstance shall a Party be entitled to punitive, spccial or consequential damages.

With respect to the above-referenced remedies afforded to Developer under this Agreement, City hereby expressly waives both its sovereign and its governmental immunity solely with respect to (a) the foregoing actions to enforce City's obligations under this Agreement and (b) writs of mandamus with respect to the performance of City's obligations under this Agreement. City acknowledges and agrees that the foregoing waiver may result in a judgment or writ compelling City to take certain actions and/or to pay funds to Developer in accordance with this Agreement, and the foregoing waiver of sovereign and governmental immunity shall apply with respect to the performance of said actions and/or the payment of such funds. In all other respects, the Parties agree that City has not waived, nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein.

8.6 Indemnity. DEVELOPER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS COUNCIL MEMBERS, BOARD MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, AND CAUSES OF ACTIONS, LIABILITIES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, OF ANY NATURE WHATSOEVER, ASSERTED BY A THIRD PARTY AND ARISING OUT OF DEVELOPER'S PERFORMANCE OF THIS AGREEMENT. THE RIGHTS AND OBLIGATIONS CREATED BY THIS SECTION 8.6 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT BUT, WITH RESPECT TO ANY IMPROVEMENTS DEDICATED TO THE CITY, SHALL TERMINATE UPON FINAL ACCEPTANCE OF SUCH IMPROVEMENTS OR ACCEPTANCE OF SUCH CONVEYANCE BY THE CITY.

8.7 Acknowledgement of City's Compliance with Applicable Law.

a. Developer acknowledges and agrees that:

i. The conveyances, dedications, easements and/or payment of money required by this Agreement to be performed by Developer, in whole or in part, do not constitute a:

(A) Taking under the Texas or United States Constitution;
(B) Violation of the Texas Water Code, as it exists or may be amended;
(C) Nuisance; or
(D) Claim for damages or reimbursement against City for a violation of any federal or state constitution, statute or case law or any federal, state or local ordinance, rule or regulation.

ii. The amount of Developer's financial or infrastructure contribution or conveyance of real property or interests therein (after receiving all contractual offsets, credits and reimbursements, if any) agreed to in this Agreement is roughly proportional to the demand that such Developer's development places on City's infrastructure.

iii. Developer hereby releases City from any obligation to perform or commission a takings impact assessment under Chapter 2007 of the Texas Government Code, as it exists or may be amended.

iv. Developer hereby agrees that any property which it conveys to City pursuant to this Agreement is roughly proportional to the benefit received by Developer for such land, and Developer hereby waives any claim therefore that it may have. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any value received by City relative to said conveyance are related both in nature and extend to the impact of the development of Developer's adjacent property on City's infrastructure. Developer and City further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the public infrastructure.

v. **DEVELOPER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, AND CAUSES OF ACTIONS, LIABILITIES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, OF ANY NATURE WHATSOEVER, ASSERTED BY THIRD PARTIES, INCLUDING BUT NOT LIMITED TO, DEVELOPER'S PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES OR TRUSTEES, BROUGHT PURSUANT TO THIS SECTION 8.7.**

b. Developer releases City, its council members, officers, agents, representatives and employees from any and all claims or causes of action based on excessive or illegal exactions.

c. Developer waives any claim for damages or reimbursement against City for a violation of any federal or state constitution, statute or case law or any federal, state or local ordinance, rule or regulation.

d. This Section 8.7 shall survive the termination of this Agreement.

8.8 **Vested Rights/Chapter 245 Waiver.** This Agreement shall confer no vested rights on the Property, or any portion thereof, unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245 of the Texas Local Government Code, as amended, and nothing in this Agreement provides City with fair notice of any project of Developer. Developer waives any statutory claim under Chapter 245 of the Texas Local Government Code, as amended, arising out of any acts or omissions under this Agreement. This Section 8.8 shall survive the termination of this Agreement.

8.9 **Senate Bill 18 Waiver**. As additional consideration for the benefits Developer is receiving under this Agreement, Developer hereby releases City from and against, and waives, any all rights to or claim for any relief under Senate Bill 18, as adopted by the 82^{nd} Texas Legislative Session, arising out of any acts or omissions under this Agreement.

ARTICLE IX

MISCELLANEOUS PROVISIONS

9.1 **Binding Agreement.** Except as provided herein, this Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

9.2 **Reports.** During the term of this Agreement, upon written request of the City, Developer shall provide public records reasonably requested by the City to confirm compliance with the Minimum Job Threshold requirement. Failure to provide such assistance shall be grounds for the City to withhold grant payments until assistance is provided and records received.

9.3 **No Waiver**. Except as set forth in Section 8.5 above, nothing contained in this Agreement shall be construed in any way to limit or to waive the City's sovereign immunity. However, the Parties agree that they have entered into this Agreement in good faith, intend to deal with each other in good faith, and intend for this Agreement to be enforceable as to its terms under Texas law.

9.4 **Applicability of Ordinances.** Developer acknowledges and agrees this Agreement does not alter the applicability of the ordinances of the City. Further, this Agreement does not waive or limit any of the obligations of Developer to City under any other ordinance whether now existing or in the future arising. This Agreement (i) is not in any manner to be considered a waiver by the Parties of any requirement contained in the City's ordinances and/or development requirements. (ii) will not and does not conflict with said ordinances, and in the event of such a conflict the terms of said ordinances control; and (iii) does not modify any City ordinances and/or development requirements. Where silent in this Agreement, the terms of City ordinances and/or development requirements shall control.

9.5 **Separate Status.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise.

9.6 **Construction and Interpretation.**

a. Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to specific terms, whether or not language of non-limitation, such as "without limitation" or "but not limited to" are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

b. The captions preceding the text of each article and section of this Agreement are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

c. This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one (1) complete document.

9.7 **Revenue Sharing Agreement.** The City designates this Agreement as a revenue sharing agreement, thereby entitling the City to request and receive sales and use tax information from the State of Texas Comptroller, pursuant to Section 321.3022 of the Texas Tax Code for any and all projects associated with this Agreement.

9.8 **Assignability.** Developer may assign or transfer its rights (including the right to receive payments), duties and obligations under this Agreement to any person or entity only with prior written approval and consent by City, which approval shall not be unreasonably withheld, conditioned or delayed; provided, Developer may assign this Agreement to an Affiliate if such Affiliate assumes all obligations under this Agreement.

9.9 **Severability.** If any provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the Parties.

9.10 **Entire Agreement.** This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior written and oral matters related to this Agreement. Any amendment to this Agreement must be in writing and signed by all Parties hereto or permitted or approved assignees.

9.11 **Exhibits.** All exhibits attached to this Agreement are incorporated herein by reference and are expressly made part of this Agreement as if copied verbatim.

9.12 **Notice.** Any notice or demand, which any party is required to or may desire to serve upon the other, must be in writing, and shall be sufficiently served if (i) personally delivered, (ii) sent by registered or certified mail, postage prepaid, or (iii) sent by commercial overnight carrier, and addressed to:

If to City:

City of Amarillo
ATTN: City Manager
PO Box 1971
Amarillo, TX 79105

With Copy to:

If to Developer:

Buc-ee's Amarillo, LLC
327 FM 2004
Lake Jackson, Texas 77566

With Copy to:

Buc-ee's Amarillo, LLC
Attn: Legal Department
327 FM 2004
Lake Jackson, TX 77566

or such other address or addresses which any Party may be notified in writing by any other Party to this Agreement.

Such notice shall be deemed to have been served (a) four (4) business days after the date such notice is deposited and stamped by the U.S. Postal Service, except when lost, destroyed, improperly addressed or delayed by the U.S. Postal Service, or (b) upon receipt in the event of personal service, or (c) the first business day after the date of deposit with an overnight courier, except when lost, destroyed or improperly addressed; provided, however, that should such notice pertain to the change of address to either of the Parties hereto, such notice shall be deemed to have been served upon receipt thereof by the Party to whom such notice is given.

9.13 **Force Majeure.** In the event any party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such force majeure in writing to the other party as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other inabilities of either party, whether similar to those enumerated or otherwise and not within the control of the parties claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

9.14 **Governing Law.** This Agreement and the relationship between the Parties shall be governed by the laws of the State of Texas, and venue for any action pertaining to this Agreement shall be in the State District Court of Potter County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of the said Court.

9.15 **Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Agreement, the Parties shall designate and appoint a representative to act as a liaison between the Parties. The initial representative for the City shall be the City Manager or his designee ("City Representative"), and the initial representative for Developer shall be Stan Beard

("Developer Representative"). The representatives shall be available at all reasonable times and places to discuss and review the performance of the Parties to this Agreement and the development of the Property.

9.16 **Effective Date.** This Agreement shall be binding and take effect only upon all Parties signatures hereto, attachment of all required exhibits, and receipt by the Parties of a fully executed copy hereof. For the purposes of timetables provided in this Agreement, the Effective Date shall be the date first above written.

9.17 **Legal Contest.** This Agreement is entered into in accordance with applicable law as understood by the Parties. In the event any part, provision or paragraph hereof shall become unenforceable by reason of judicial decree or determination, the Parties agree to the extent possible to ensure that all other provisions of this Agreement, including the intent of this Agreement, be honored and performed.

9.18 **Economic Incentives Constitute a Program.** This Agreement constitutes an economic development program to promote state or local economic development and to stimulate business and commercial activity in the City and the area annexed for limited purposes pursuant to Article III, Sec. 52-a, Texas Constitution and Chapter 380, Texas Local Government Code.

9.19 **Public and Confidential Information.** Information provided by or on behalf of Developer pursuant to this Agreement that Developer considers to be proprietary and/or confidential and marked as such shall be maintained by City as confidential to the extent allowed by law. If proprietary financial or trade secret information is requested under the Texas Public Information Act ("Act"), City shall follow the standards set out in the Act and under the Texas Attorney General's procedures for such requests and Developer shall be responsible for defending the confidentiality of such information.

9.20 **Automatic Termination.** In the event Developer elects not to proceed with the acquisition of the Property or the development of the Project, Developer will notify City in writing and this Agreement and the obligations of the Parties hereunder shall automatically terminate and be of no further force or effect as of the date of such notice. If a term, covenant or condition of this Agreement does not have an earlier express termination date, all terms covenants and conditions of this Agreement shall automatically terminate upon the expiration of the Project Term.

9.21 **Undocumented Workers.** During the term of this Agreement and in accordance with Chapter 2264 of the Texas Government Code, Developer agrees to not knowingly employ any undocumented worker and if convicted of a violation under 8 U.S.C § 1324a(f), grant payments shall terminate.

9.22 **Incorporation of Recitals.** The Recitals set forth hereinabove are declared true and correct and are hereby incorporated into and made a part of this Agreement for all purposes.

LIST OF EXHIBITS

Exhibit A	Property Description (Survey and Legal Description)
Exhibit B	Project (Site plan for Buc-ee's)
Exhibit C	Job Compliance Affidavit (form)
Exhibit D	Pole Sign

(Signature Pages Follow)

EXECUTED on this 20th day of Sept, 2022.

CITY OF AMARILLO:

Jared Miller, City Manager

ATTEST:

Stephanie Coggins, City Secretary

APPROVED AS TO FORM:

Bryan McWilliams
City Attorney

EXECUTED on this 16th day of September 2022.

DEVELOPER:

BUC-EE'S AMARILLO, LLC,
a Delaware limited liability company

By: ______________________
Joe O'Leary, Vice President

ml
jm

EXHIBIT A

A 20.40 acre tract of land, out of the Southwest quarter and Southeast quarter, less the North 58.7 feet, lying in Potter County, Texas, less right of way, of the following described real property, to-wit, to be further described by survey:

The South half (S/2) and the Northwest quarter (NW/4), of Section 58, Block Two (2), AB&M Survey, Potter and Randall Counties, Texas, less and except any of the said Northwest quarter (NW/4) lying within the road right-of-way of Interstate 40; and less and except a tract of ten (10) acres described as follows:

BEGINNING at the S. E. corner of Survey No. 58, in Block 2, AB&M;

THENCE North with the East line of said Survey No. 58, 61.6 feet;
THENCE South 89° 44' W. 81 feet to a 1-1/4 inch galvanized iron pipe the S.E. and beginning corner of this Tract;
THENCE N. 0021' W. 660 feet to a 1-1/4 inch galvanized iron pipe, 1 foot West of the West fence of road;
THENCE S. 89 44' W. 660 feet to a 1-1/2 inch iron pipe;
THENCE S. 00° 21' E. 660 feet to a 1-1/4 inch iron galvanized pipe under the North fence of road;
THENCE N. 89° 44* E. 660 feet to the beginning corner; CONTAINING 450 acres , more or less.

EXHIBIT B

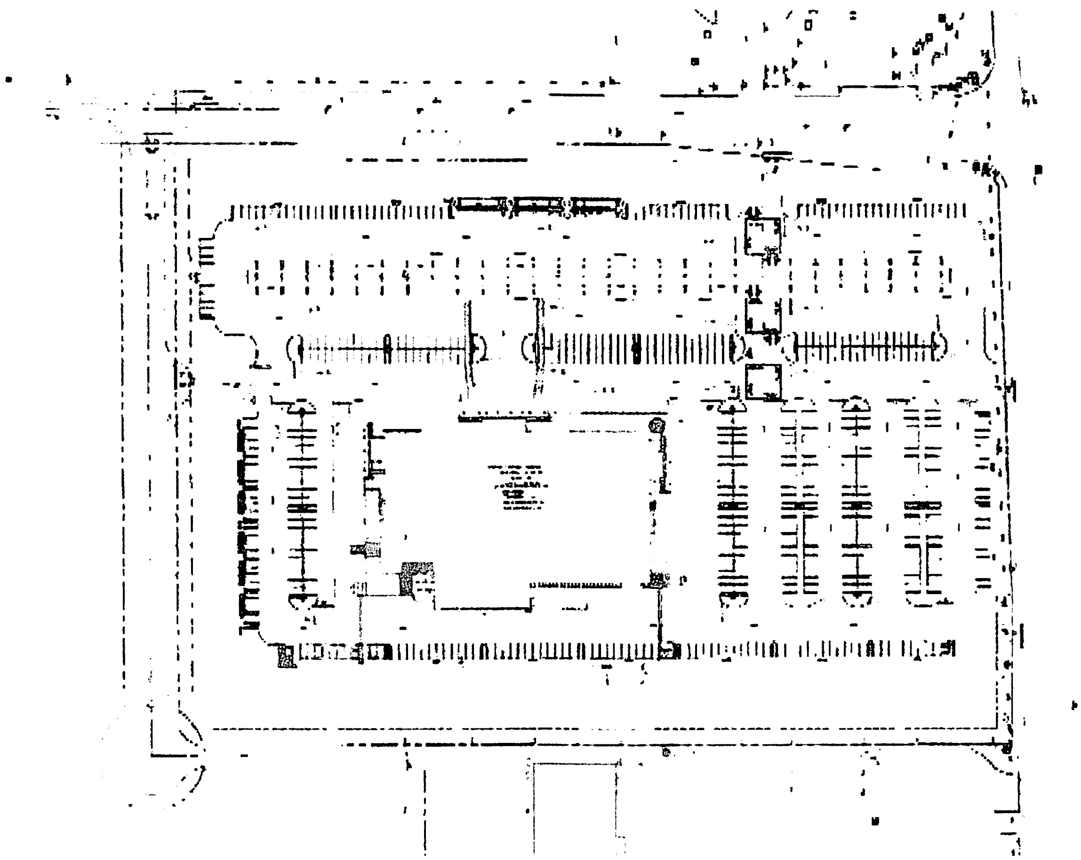


EXHIBIT C

JOB COMPLIANCE
AFFIDAVIT

STATE OF TEXAS §
§
COUNTY OF POTTER §

On this day personally appeared a person known to me, who, being duly sworn, stated as follows:

1. "My name is ______________. I am over 21 years of age, have never been convicted of a felony, and am fully competent to testify to the truth of the matters stated herein. To the best of my knowledge, each and every statement contained herein is true and correct.

2. I am the _____________of Buc-ee's Amarillo, LLC, a Delaware limited liability company.

3. Buc-ee's Amarillo, LLC, and/or its affiliates, has/have directly maintained from January 1, 20___ through December 31, 20___, an average of at least 150 full time equivalent jobs at the Buc-ee's travel center located in Amarillo, Texas."

By:________________________________

Printed Name:________________________

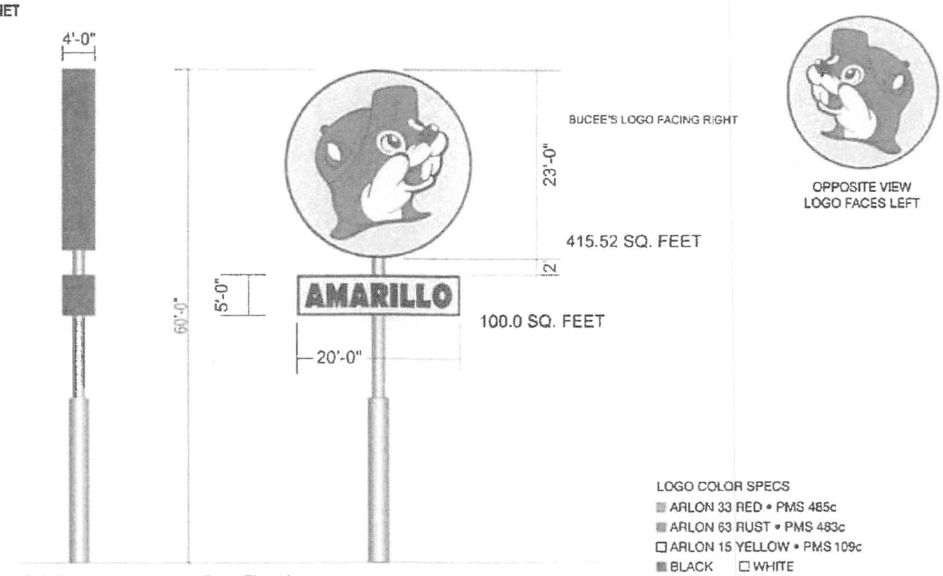
Sworn and subscribed to before me this _____ day of ___________, 20__.

____
Notary Public in and for the State of Texas

JobCompliance Affidavit

EXHIBIT D

60FT HIGH RISE PYLON
23'-0" LOGO
5'-0" X 20'-0" NAME CABINET



Side View
Scale: 3/16" = 1'-0"

Front Elevation
Scale: 3/16" = 1'-0"

Buc-ee's
Amarillo, TX

Project ID#: 129938
Project Mgr: Brenda A
Designer: Josh D.
Created on: 01/13/2022