

ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT

This **ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT** ("Agreement") is entered into to be effective as of the ____ day of _____, 2018 (the "Effective Date") by and between **BAYLOR SCOTT & WHITE HEALTH, as agent on behalf of its affiliate, BAYLOR SCOTT & WHITE MEDICAL CENTERS – CAPITOL AREA** ("BSWH") and the **BUDA ECONOMIC DEVELOPMENT CORPORATION** ("BEDC").

R E C I T A L S:

WHEREAS, BSWH has initiated the feasibility of constructing a medical facility of at least 70,000 square feet in the extraterritorial jurisdiction ("ETJ") of the City of Buda, Texas, to be open and operational by December 31, 2019; and

WHEREAS, BSWH intends to make an investment of at least Thirty-five million dollars (\$35,000,000.00) in land, buildings equipment, inventory and other improvements necessary for a medical facility, which shall include a full service emergency department, medical office space, operating rooms, imaging, and such other facilities and services that are necessary and appropriate for similar medical facilities in the region; and

WHEREAS, public infrastructure-related costs for the medical facility are estimated to be \$517,700; and

WHEREAS, the BEDC is a Type B economic development corporation located in the City of Buda, and is governed by Chapters 501-505, Texas Local Government Code; and

WHEREAS, the Board of Directors of the BEDC has determined that a medical facility located in the ETJ of the City will, in addition to providing much-needed medical care for the citizens of the City and the region, will stimulate growth and development, and will promote new and expanded business development in the City and the surrounding area; and

WHEREAS, the land, buildings, equipment, facilities, expenditures, targeted infrastructure and improvements of such a medical facility comprise an authorized project for the BEDC pursuant to Sec. 505.158, Texas Local Government Code; and

WHEREAS, the project will create and retain primary jobs in the City and the surrounding area; and

WHEREAS, the BEDC is authorized by law to provide financial incentives for the project, particularly including funding for infrastructure necessary to support the medical facility; and

WHEREAS, as required by law, the BEDC published notice on January 17, 2017, and conducted a public hearing on January 24, 2017, at which it approved as projects the providing of financial incentives for construction and installation of infrastructure and other improvements for the medical facility; and

WHEREAS, as required by law, the City Council of Buda has or will approve the project by the reading of a resolution on two separate occasions; and

WHEREAS, pursuant to the requirements of Sec. 501.158, Texas Local Government Code, BSWH and BEDC desire to enter into this Performance Agreement in regard to the medical facility project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the foregoing recitals are incorporated into this Agreement as if repeated in full, and the parties hereby agree as follows:

ARTICLE 1 **BEDC OBLIGATIONS**

1.1 BEDC shall provide funds to BSWH in the total amount of three hundred seventy-five thousand dollars (\$375,000.00), (“the funds”) to be used solely for the purpose of reimbursing BSWH for the development of infrastructure at the site of the medical facility. Such funds shall be paid to BSWH by the BEDC in the amounts and at the times described in **Article 3** hereof.

1.2 The infrastructure for which the BEDC shall provide funds shall include a turn lane, sidewalks, water and wastewater connections, driveway access, and permitting, tap, and impact fees.

1.2 BEDC shall ensure that the funds are expended in strict compliance with Chapter 501 and Chapter 505 of the Texas Local Government Code, and shall take action to recover such funds if it is determined that BSWH is not meeting the performance requirements of this Agreement.

ARTICLE 2 **BSWH OBLIGATIONS**

2.1 BSWH shall acquire the land, construct the medical facility, and make the capital investment described above, and will create new, full time jobs, commencing in 2020 and continuing through 2024 in the quantities for each of the five years described in Article 3 hereof.

2.2 By March 1 of each year, BSWH Healthcare shall submit employment reports to the BEDC to show the level and number of new jobs created over the previous year.

2.3 In order to determine compliance with this Agreement, BSWH shall allow the BEDC to conduct an audit of the relevant financial and business of BSWH related to terms of this Agreement. Such audit may be performed no more often than once per fiscal year and may be initiated only by majority vote of the Board of Directors of the BEDC.

2.4 BSWH shall create primary jobs at the medical facility according to the following schedule:

YEAR	TOTAL CUMALTIVE JOBS TO BE CREATED
Ending December 31, 2020	Forty (40)
Ending December 31, 2021	Ninety (90)
Ending December 31, 2022	One hundred fifty (150)
Maintained through December 31, 2024	One hundred fifty (150)

2.4 The average wage for the total cumulative created jobs equal no less than thirty dollars (\$30.00) per hour.

ARTICLE 3

REPAYMENT IN THE EVENT PERFORMANCE REQUIREMENTS NOT MET

3.1 In the event that BSWH does not maintain the projected number of jobs in a given year, or in the event that the cumulatively created jobs average a wage of less than thirty dollars (\$30.00) per hour, BSWH shall reimburse BEDC in an amount for that year that is equivalent to six hundred forty-seven dollars (\$647.00) per job. The difference between the actual reimbursement and the maximum reimbursement for that year may be carried over to the following year, but in no event shall the total reimbursement for all five years exceed three hundred seventy-five thousand dollars (\$375,000.00).

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

4.1 *Representations and Warranties of Developer.* BSWH and BEDC, as of the Effective Date, represent and warrant, one to the other, as follows:

4.2 *Authority.* The execution, delivery and performance by each is with the legal power and authority of each and has been duly authorized by all necessary action of the governing bodies of each.

4.3 *No Conflicts.* Neither the execution and delivery of this Agreement nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene the organizational documents of BSWH or BEDC or any provision of law, statute, rule or regulation to which BSWH and/or BEDC is subject, or any judgment, decree, license, order or permit applicable to BSWH and/or BEDC, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of BSWH and/or BEDC pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which the either is bound.

4.4 *No Consents.* Except for approval of the City Council of the City of Buda for a project of the BEDC, no consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution, delivery and performance by BSWH and/or BEDC of this Agreement or the consummation of the transactions contemplated hereby or thereby.

4.5 *Valid and Binding Obligation.* This Agreement is the legal, valid and binding obligation of BSWH and/or BEDC enforceable in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

4.6 *No Pending Litigation.* There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or to the best knowledge of BSWH and/or BEDC threatened against or affecting either, questioning the validity of any action taken or to be taken by either in connection with the execution, delivery and performance by either of this Agreement.

4.7 *Full Disclosure.* Neither this Agreement nor any schedule or exhibit attached hereto in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to keep the statements contained herein or therein, in light of the circumstances in which they were made, from being misleading.

ARTICLE 5

MISCELLANEOUS

5.1 *Article, Section or Other Headings.* Article or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

5.2 *Entire Agreement.* This Agreement contains the entire agreement between the parties with respect to the transactions contemplated herein.

5.3 *Amendment.* This Agreement may only be amended, altered or revoked by written instrument signed by all parties.

5.4 *Successors and Assigns.* This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns. No assignment by either party shall be made without the express written consent of the other party.

5.5 *Waiver.* No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel.

5.6 *Remedies.* Upon breach of any of the commitments and obligations contained in this Agreement in addition to any other remedies expressly set forth in this Agreement with respect

to such breach, the aggrieved party shall have such remedies as are available in law or equity for breach of contract; provided, however, that no party shall be liable to any other party for incidental or consequential damages.

5.7 *Notices.* Any notice, statement and/or other communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, telecopy, or reputable overnight carrier, and shall be deemed delivered when received at the addresses of the parties set forth below, or at such other address furnished in writing to the other parties hereto:

BSWH: Baylor, Scott & White Health
Attn: _____

Dallas, Texas _____
Telephone: _____
Facsimile: _____

BEDC: Buda Economic Development Corporation
Attn: President or Executive Director
203 Railroad Street Suite 3-A
PO Box 1650
Buda, TX 78610
Telephone: 512.295.2022
Facsimile: 512.295.3519

5.8 *Applicable Law.* This Agreement is made and shall be construed under the laws of the State of Texas, and venue shall lie in State courts located in Hays County, Texas.

5.9 *Severability.* In the event any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

5.10 *No Third-Party Beneficiaries.* BSWH and the BEDC intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than BSWH, the BEDC, or permitted assignees of such parties.

5.11 *No Joint Venture.* Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint any party as an agent of any other party for any purpose whatsoever. Except as otherwise specifically provided herein, no party shall in any way assume any of the liability of any other for acts of any other party or obligation of any other party.

5.12 *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

EXECUTED to be effective as of the Effective Date.

BAYLOR SCOTT & WHITE HEALTH

**BUDA ECONOMIC
DEVELOPMENT CORPORATION**

By: _____

Jose Montoya, Vice President

Attest:

Joy Hart, Secretary