

AGREEMENT

This Agreement (the "Agreement") is made and entered into the ____ day of _____, 2020 (the "Effective Date"), by and between the Lexington-Fayette Urban County Government, a Kentucky urban county government established pursuant to the provisions of KRS Chapter 67A ("LFUCG") and Baptist Healthcare Systems, Inc. a Kentucky nonprofit corporation ("Baptist Healthcare" and collectively, the "Parties"),

WITNESSETH:

WHEREAS, Baptist Healthcare has acquired an approximate 129-acre tract located on Polo Club Boulevard, in Lexington, Kentucky (the "Project Site") and plans to locate and construct thereon healthcare and medical office facilities related to its operations (the "Hamburg Project"); and

WHEREAS, the Hamburg Project will involve the construction of office and related healthcare facilities and related improvements with significant site improvements and other amenities with estimated total capital investment at full build out exceeding One Billion Dollars, create approximately 600 new permanent jobs at the Project Site in the initial phase of development with an annual payroll of \$55,000,000 and an average annual salary of \$89,000, and create a significant construction impact to the local and regional economy; and

WHEREAS, the Hamburg Project represents a major legacy project for Lexington-Fayette County and will have a long-term positive catalytic impact that will encourage future capital investment and employment growth in an area which has not developed at the same pace of other areas of Fayette County; and

WHEREAS, Baptist Healthcare has been a significant and valuable contributor to Lexington-Fayette County and its citizens; and

WHEREAS, the scope of the Hamburg Project and the number of professional, high salaried employees that will work there are a significant and valuable benefit to Lexington-Fayette County; and

WHEREAS, the Hamburg Project will generate substantial new occupational license taxes and other taxes and income to LFUCG; and

WHEREAS, LFUCG is agreeable to providing certain incentives to the Baptist Healthcare as an inducement to Baptist Healthcare locating the Hamburg Project at the Project Site for the reasons stated above; and

WHEREAS, the incentives granted to Baptist Healthcare, as set forth in this Agreement are in-lieu of other incentives, LFUCG may have granted related to the Hamburg Project; and

WHEREAS, the expenditure of public tax dollars to encourage economic development and to attract new jobs, even to pay for private costs of development, has been determined by the Kentucky Courts to be a valid public purpose for the use of public tax dollars; and

WHEREAS, in order to induce Baptist Healthcare to undertake the Hamburg Project and in consideration of the public interest, and the mutual covenants and conditions set forth herein, and for other good and valuable consideration, the receipt, mutuality and sufficiency of all of which is hereby acknowledged;

NOW, THEREFORE, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

SECTION 1
Definitions

The following definitions shall apply to this Agreement:

- A. “Account Numbers”. Shall have the meaning provided in Section 3.C. hereof.
- B. “Activation Date”. Shall mean December 31, 2023, or such earlier date as is established pursuant to Section 2.B. of this Agreement, provided that the Activation Date shall be on the 1st day of a calendar quarter for the reporting of Payroll Tax.
- C. “Activation Period”. Shall have the meaning provided in Section 2.A. hereof.
- D. “Baseline Wages”. Shall mean the total wages of all Company employees whose place of employment is located in Lexington-Fayette County, other than at the Project Site, as of the date thirty (30) days immediately prior to the Activation Date, and which shall be included with the Baseline Wages Report.
- E. “Baseline Wages Report”. Shall mean the report prepared by Baptist Healthcare and submitted to LFUCG pursuant to Section 3.E. of this Agreement.
- F. “Company”. Shall mean Baptist Healthcare and any subsidiary companies or other affiliated entities owned or controlled by Baptist Healthcare, or entities who provide health care services to Baptist Healthcare patients pursuant to contracts with Baptist Healthcare services at the Project Site.
- G. “Division of Revenue”. Shall mean the Division of Revenue within the LFUCG Department of Finance.
- H. “Fire Station Parcel”. Shall have the meaning provided in Section 4.A. hereof.
- I. “Payroll Tax”. Shall mean LFUCG’s occupational license tax on employees’ salaries and wages and compensation applicable to Project Employees, which is currently in the amount of 2.25% of gross salaries and wages.

J. “Payroll Tax Incentive”. Shall mean the Payroll Tax refunds for which Baptist Healthcare is eligible pursuant to the terms of this Agreement.

K. “Project Employees”. Shall mean employees of the Company working at the Project Site, including employees relocated to the Project Site from outside of Fayette County. Project Employees shall include Company employees relocated to the Project Site from facilities in Fayette County, so long as the Baseline Wages do not decrease during the Activation Period, and to the extent there is any decrease during the Activation Period, the amount of Payroll Tax applicable to any such decrease shall be retained from the Payroll Tax Incentive that would otherwise be due to the Company under this Agreement.

L. “Wages”. Shall mean salaries, wages, commissions and other forms of remuneration paid or payable to employees, within the meaning of Section 13-1(22) of the Lexington Fayette County, Kentucky Code of Ordinances, and more precisely defined by the provisions of Regulation 34, Section 2.2 through 2.5, as it may be amended, and subject to Payroll Tax.

SECTION 2

Term

A. **Term Dates**. The term of this Agreement (the “Term”) shall begin on the Activation Date and shall end on the date that is the twenty (20) year anniversary of the Activation Date.

B. **Acceleration of Activation Date**. Baptist Healthcare may certify that the Hamburg Project is substantially complete and all required certificates of occupancy have been issued by LFUCG and request acceleration of the Activation Date. Acceleration of the Activation Date shall be valid only upon Baptist Healthcare execution and delivery of such certification to LFUCG, but formal action of LFUCG shall not be required.

SECTION 3

Available Incentives

A. **Incentives**. LFUCG shall refund to Baptist Healthcare the Payroll Tax collected by the Company from Project Employees and remitted to LFUCG with respect to Wages for work done or services performed or rendered at the Project Site during the Activation Period as provided in this Section 3.

B. **Timing**. LFUCG shall issue refunds semi-annually and no later than forty-five (45) days after the due date of quarterly Payroll Tax returns for the second and fourth quarters of each calendar year during the Activation Period. The amount of Payroll Tax collected from Project Employees to be refunded shall be as follows:

- (i) For the Payroll Tax reporting periods beginning with the Activation Date through but excluding the fifth anniversary of the Activation Date, 1.25% of Wages; and
- (ii) For the Payroll Tax reporting periods beginning with the fifth anniversary of the Activation Date through the twentieth anniversary of the Activation Date, 1.125% of Wages.

C. **Issuance of Account Numbers.** LFUCG and Baptist Healthcare agree that the Parties shall have each of the Company maintain separate Payroll Tax numbers for each business situs at the Project Site (the “Account Numbers”). The Account Numbers shall be used exclusively to report Payroll Tax to LFUCG with respect to the Project Site.

D. **Certification of the Company.** Baptist Healthcare shall provide and certify to the Division of Revenue the entities that are included within the definition of Company that are operating at the Project Site, and which may be operating at other locations in Lexington-Fayette County, which list may be updated as needed, and no Payroll Tax remitted by entities not provided by Baptist Healthcare to the Division of Revenue shall be refunded.

E. **Baseline Wages Report.** Not more than 60 days after the Activation Date, Baptist Healthcare shall prepare, certify and submit to LFUCG a report (the “Baseline Wages Report”), together with such supporting documentation as LFUCG shall reasonably request to verify the accuracy and completeness thereof, setting forth the Baseline Wages.

F. **Refund Disputes.** Any dispute between Baptist Healthcare and the Division of Revenue related to the Payroll Tax refund may be resolved as provided in this Subsection.

(1) Any such dispute may be appealed in writing to the LFUCG Commissioner of Finance, who shall issue a determination on the appeal within thirty (30) days of receipt thereof. In the event Baptist Healthcare disagrees with the Commissioner’s determination, it shall have the right to submit the issue to non-binding arbitration pursuant to the provisions of subparagraph (2) hereof by notifying LFUCG of the election to do so within ten (10) days of its receipt of the Commissioner’s determination. The portion of any refund(s) not in dispute shall be paid to Baptist Health according to the schedule set forth in Subsection B of this Section 3, notwithstanding the pending appeal to the Commissioner or arbitration.

(2) Any dispute related to the Payroll Tax refund not resolved pursuant to the immediately preceding subparagraph shall be subject to non-binding arbitration as follows: (a) each of the Parties shall select a Fayette County based certified public accountant and those two accountants shall jointly select another Fayette County based certified public accountant to serve as arbitrator; (b) within three (3) business days after the arbitrator’s selection and acceptance of appointment and receipt of written notification to the Parties, each of the Parties shall furnish to the other and to said selected arbitrator a written statement of their respective positions regarding said dispute and shall furnish, as reasonably requested by the arbitrator, any further answering or explanatory statements that the arbitrator may require; (c) except as provided in (e) below, the costs of arbitration

are to be borne equally between the Parties and each of the Parties shall be responsible for its own attorney fees; and (d) the arbitration shall be conducted in Lexington, Fayette County, Kentucky and (e) to the extent either party is dissatisfied with the decision of the arbitrator, they may file suit, within thirty (30) days of the date of the arbitrator's decision, in Fayette Circuit Court, but the prevailing party in any such action shall be entitled, in addition to its judgment, an award of the attorney fees it expended for the cost of litigation in the Courts of the Commonwealth of Kentucky.

SECTION 4
Fire Station Parcel

A. As a condition of granting the incentives as set forth in Section 3 of this Agreement, and prior to the Activation Date, Baptist Healthcare shall donate to LFUCG parcel of land three (3.0) acres in size (the "Fire Station Parcel") at the location shown on Exhibit A hereto, for the exclusive use as a LFUCG fire/EMS station.

B. Baptist Healthcare shall permit access to the site to LFUCG to undertake, at its cost, any site investigations, including soil tests and environmental investigation as determined necessary by LFUCG for the construction of the fire station prior to the Fire Station Parcel being conveyed to LFUCG. In the event the Fire Station Parcel is deemed by LFUCG not suited for the construction of the fire station, the Parties shall negotiate in good faith to identify a mutually acceptable alternate parcel to be donated by Baptist Healthcare to LFUCG under the same terms and conditions as the Fire Station Parcel.

C. Once the Fire Station Parcel has been deemed suitable by LFUCG for the construction of the fire/EMS station, any surveying or other costs necessary to allow the Fire Station Parcel to be legally created and conveyed to LFUCG shall be undertaken and paid by LFUCG. Any and all costs of curb cuts, median cuts and other improvements (including roads and utility extensions) required for the construction and operation of the fire/EMS station shall be paid by LFUCG.

D. The Fire Station Parcel shall be conveyed to LFUCG by Baptist Healthcare by general warranty deed, free of all liens and encumbrances, except for: (i) utility and other easements that do not unreasonably interfere with LFUCG's intended use of the property for a fire/EMS station; and (ii) a restrictive covenant, coupled with a right of reversion in favor of Baptist Healthcare, limiting the use of the property exclusively to an LFUCG fire/EMS station and requiring reconveyance of the property to Baptist Healthcare in the event of a violation of the restrictive covenant, the failure of LFUCG to construct a fire/EMS station thereon prior to the expiration of the Term of this Agreement, or a determination by LFUCG prior to the end of the Term not to use the Fire Station Parcel for a fire/EMS station.

SECTION 5
General

A. **Incorporation by Reference.** The recitals set forth in the preamble to this Agreement are true and correct and are incorporated herein by reference and made of part of this

Agreement, and the terms defined in the preambles hereof shall have the same meanings when used herein. All exhibits to this Agreement are hereby deemed a part hereof.

B. **Assignment.** This Agreement is for the benefit of Baptist Healthcare and shall not be assigned without the approval of LFUCG, provided that nothing contained herein shall prohibit the assignment of the Payroll Tax refunds as set forth in this Agreement to any subsidiary or other entity owned or controlled by Baptist Healthcare or to a financial institution or other lender that provides financing to the Hamburg Project.

C. **Notices.** Notices required under this Agreement shall be sent electronically or via regular mail as follows;

If to the LFUCG: Lexington-Fayette Urban County Government
 200 E. Main Street
 Lexington, Kentucky 40507
 Attention: Commissioner of Finance

With a copy to: Kevin Atkins
 Chief Development Officer
 200 E. Main Street
 Lexington, Kentucky 40507

If to Baptist
Healthcare: Baptist Healthcare Systems, Inc.
 2701 Eastpoint Parkway
 Louisville, KY 40223
 Attn: Gerard Colman, Chief Executive Officer

With a copy to: Baptist Healthcare Lexington
 1740 Nicholasville Road
 Lexington, KY 40503
 Attn: William Sisson, President

D. **Further Assurances.** While LFUCG is not requiring that Baptist Healthcare make a minimum capital investment in the Hamburg Project and create and maintain a minimum number of jobs to be eligible for the Payroll Tax Incentive set forth in Section 3, the Parties acknowledge that the incentives granted by this Agreement are based on the representations made by Baptist Healthcare regarding the scope of the Hamburg Project and the estimated capital investment. In addition, should Baptist Healthcare not start construction of the Hamburg Project by December 31, 2022, LFUCG may terminate this Agreement after providing written notice and Baptist Healthcare's failure to begin construction within thirty (30) days thereafter.

E. **No Waivers.** The Hamburg Project shall be constructed in accordance with all local, state and federal permits that may be required, and nothing contained herein shall be considered a waiver of any and all required approvals of the Hamburg Project by LFUCG and its agencies from the customary zoning and other permits and required approvals that are applicable to the Hamburg Project.

F. **Reporting Prior to Activation.** Until the Activation Date, Baptist Healthcare shall provide quarterly updates and other relevant information to LFUCG regarding Baptist Healthcare's plans and progress related to the Hamburg Project.

G. **Flu Shots for LFUCG Employees.** During the Activation Period, Baptist Healthcare agrees to annually provide free flu shots to LFUCG employees at the Lexington Government Center, or other LFUCG facility as may be determined by LFUCG.

H. **Confidentiality.** Baptist Healthcare's submission of information such as the Baseline Wages Report, Payroll Tax returns and employee wage information is information submitted pursuant to a grant and confidential taxpayer information protected by KRS 67.790 and 131.190 further protected under the exclusions from disclosure set forth in Section 61.878(1)(c) and (l) of the Kentucky Open Records Act (the "Act") among other protections, and as such shall at all times be kept strictly confidential and not disclosed pursuant to the Act. LFUCG shall (i) give Baptist Healthcare notice within ten (10) days of receipt of (a) a request under the Act to inspect, copy or otherwise access such information or certificate(s) or (b) receipt of a discovery request, subpoena or similar litigation-related inquiry relating to the disclosure of same including a copy of such request, and (ii) provide Baptist Healthcare a copy of its proposed response to such inquiry or request with sufficient time to seek a protective order or otherwise assert its rights with respect to such request or any such production. If Baptist Healthcare decides in its sole discretion, to seek a protective order or otherwise assert its rights with respect to such request or any such production it shall do so at Baptist Healthcare's expense. Baptist Healthcare shall not be responsible to LFUCG for its associated costs and expense of any litigation undertaken by LFUCG necessary to assert the exclusion and/or protect the nondisclosure of Baptist Healthcare's information or certificate(s).

I. **Entire Agreement.** This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and may be modified only by a written instrument duly executed by each of the Parties hereto.

J. **Jurisdiction and Venue.** This Agreement and the rights and obligations of the Parties hereto and thereto shall be governed by and construed and enforced in accordance with the substantive law of the Commonwealth, without regard to conflict of law principles. Except as otherwise provided in Section 3.F., the Parties hereto agree that any suit, action, or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, (a) the courts of the Commonwealth of Kentucky situated in Fayette County, Kentucky, or (b) the United States District Court for the Eastern District of Kentucky, Lexington Division, and the Parties hereby submit to the jurisdiction of such courts for the purpose of any such suit, action, proceeding, or judgment and waive any other preferential jurisdiction by reason of domicile. The Parties hereby irrevocably waive any objection that they may now or hereafter have to the laying of venue of any suit, action, or proceeding arising out of or related to this Agreement brought in the courts of the Commonwealth of Kentucky situated in Fayette County, Kentucky, or the United States District Court for the Eastern District of Kentucky, Lexington Division, and also hereby irrevocably waive any claim that any such suit, action, or proceeding brought in any one of the above-described courts has been brought in an inconvenient forum.

K. **Counterparts.** This Agreement may be signed by each party upon a separate copy or separate signature page, and any combination of separate copies signed by all Parties or including signature pages so signed will constitute a single counterpart of this Agreement. This Agreement may be signed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same agreement. It will not be necessary, in proving this Agreement in any proceeding, to produce or account for more than one counterpart of this Agreement. This Agreement will become effective when one or more counterparts have been signed by each party, and delivered to the other parties, respectively. Any party may deliver an executed copy of this Agreement (and an executed copy of any documents contemplated by this Agreement) by facsimile transmission to another party or e-mailed .pdf files of scanned copies bearing their respective signatures, and such delivery will have the same force and effect as any other delivery of a manually signed copy of this Agreement (or such other document).

IN WITNESS WHEREOF, each of LFUCG and Baptist Healthcare has caused this Agreement to be executed in its name by its duly authorized representative, all as of the Effective Date but actually on the dates provided below.


Signature page to follow.

SIGNATURE PAGE TO AGREEMENT

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT

By: _____
Linda Gorton
Mayor

BAPTIST HEALTHCARE SYSTEMS, INC.

By: 
Gerard Colman, PhD
Chief Executive Officer

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