

AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2010, by and between the **CITY AND COUNTY OF DENVER**, a home rule city organized and existing pursuant to Article XX of the Colorado Constitution (the "City"), and **DAVITA INC.**, a Delaware corporation and subsidiaries, whose address is 1551 Wewatta Street, Denver, Colorado, 80202 ("DaVita") (together, the "Parties").

RECITALS

WHEREAS, there is a public purpose for attracting new private enterprises to relocate within the City, including stimulating economic development and the creation of new jobs within the City;

WHEREAS, incentives are often necessary in order to attract private enterprises to further this public purpose;

WHEREAS, DaVita is willing to relocate its corporate headquarters within the City partly due to the availability of certain incentives provided by the City, as further described in this Agreement;

WHEREAS, this Agreement, and the location of DaVita's facility within the City will advance the valid and valuable public purpose set forth above by generating tax revenues and by the creation of job opportunities for City residents, as a result of the incentives described herein; and

WHEREAS, for these reasons, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. **CONDITIONS.** This Agreement and the City's obligations hereunder are conditioned upon the following:

A. DaVita shall establish and operate a new headquarters facility within the City and County of Denver, such facility shall be leased for a term of not less than five years or constitute purchased or constructed office space (the "Facility"). The requirement of a lease for a term of not less than five years shall be waived upon DaVita's purchase of office space or real property with the intent to construct office space.

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B. DaVita shall use reasonable efforts to make entry-level and other positions at the Facility available to residents of the City and County of Denver, by submitting to the City's Office of Economic Development pertinent job availability information on each job opening at the Facility during the term of this Agreement.

2. **INCENTIVE PAYMENTS/MECHANISM.** Subject to the terms hereof, the City agrees to make incentive payments to DaVita, payable as follows:

A. Relocation (\$250,000.00). The City shall reimburse DaVita for documented costs directly incurred by DaVita and allocable to the relocation of its corporate headquarters within the City upon the relocation and/or creation of one hundred (100) full time permanent employees working at the Facility (the "Job Relocation Requirement") as evidenced by Occupational Privilege Tax (OPT) records. Employees counted toward the Job Relocation Requirement shall not include the 229 employees based at the facility at 1627 Cole Boulevard, Lakewood, Colorado, 80401 (the Lakewood Facility), prior to June 1, 2009. The City's incentive payments allocable to documented direct relocation expenses shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) over the term of this Agreement, and shall not be payable unless and until the Job Relocation Requirement is satisfied. Examples of direct, allocable relocation expenses may include, but are not limited to, costs associated with training Denver staff; service, legal and/or building permit fees; equipment delivery, construction, and/or other costs related to establishment of the Facility. Such relocation expenses shall not include those costs associated with the location or relocation of employees, employees' families, employees' households or home furnishings to or within Colorado. Such payments shall be made pursuant to paragraph 2.C. below.

B. Job Creation and Retention (\$600,000.00). The City shall pay to DaVita the amount of Two Thousand Dollars (\$2,000.00) multiplied by the total number of full time permanent employees employed for positions at the Facility (excluding the 229 employees based at the Lakewood Facility prior to June 1, 2009) ("New Employees"). The number of New Employees considered to be employed at the Facility within the initial tax year shall be determined by the number of employees employed at the Facility and the Lakewood Facility on December 31 of that year, excluding the greater of either the 229 employees based at the Lakewood Facility prior to June 1, 2009, or the number of employees based at the Lakewood Facility on December 31 of the initial tax year, as evidenced by corresponding OPT records. Therefore, if on December 31 of the initial tax year, the number of employees at the Facility is 100 and the number of employees at the

Lakewood Facility is 200, then the number of new employees would be 71 (300 total employees minus 229 Lakewood Facility employees). If, however, on December 31 of the initial tax year, the number of employees at the Facility is 100 and the number of employees at the Lakewood Facility is 300, then the number of new employees would be 100 (400 total employees minus 300 Lakewood Facility employees). The number of New Employees considered to be hired and employed at the Facility within subsequent tax years shall be determined by the increase in the number of Employees from those employed at the Facility on January 1 as determined by the prior year's calculation to those employed at the Facility and the Lakewood Facility on December 31 of that year, excluding the greater of either the 229 employees based at the Lakewood Facility prior to June 1, 2009, or the number of employees based at the Lakewood Facility on December 31 of that tax year, as evidenced by corresponding OPT records. The City's incentive payments allocable to job creation and retention shall not exceed Six Hundred Thousand Dollars (\$600,000.00) over the term of this Agreement. Such payments shall be made pursuant to paragraph 2.C below.

C. Petition. To receive an incentive payment hereunder, DaVita shall petition jointly the City's Director of the Office of Economic Development and the City Treasurer.

1. The petition for relocation reimbursement shall contain DaVita's certification and supporting documentation evidencing the amount of relocation expenses described in paragraph 2.A above, DaVita's satisfaction of the requirements contained in paragraph 1 above, and completion of the Job Creation Requirement to the City's satisfaction. DaVita shall be entitled to petition for its incentive payments hereunder upon execution of this Agreement; however expenses incurred prior to January 1, 2010 or the date on which property for the Facility location is either purchased or leased, whichever is later, shall not be reimbursable.

2. The petition for job creation and retention payment shall contain DaVita's certification and supporting documentation evidencing the number of New Employees as described in paragraph 2.B above and DaVita's satisfaction of the requirements contained in paragraph 1 above. DaVita shall be entitled to petition annually for its incentive payments hereunder beginning on January 1, 2011, and on January 1 of each year thereafter. DaVita shall submit its petition on or before May 1 of each year in order to qualify for an incentive payment.

3. DaVita shall supply whatever additional information the City requests in order to substantiate DaVita's petition for incentive payments. The City may withhold incentive payments for which it has been petitioned by DaVita if it reasonably determines that the petition for

job creation and retention payments or for relocation expenses is not substantiated by the supporting documentation submitted by DaVita. Such determination shall be provided to DaVita in writing and shall be appealable to the Executive Director of the Office of Economic Development or his or her successor.

4. Upon receipt of documentation satisfying the requirements in paragraphs 2.C.1, 2.C.2 and 2.C.3 of this Agreement, the City shall verify DaVita's petition and issue proper incentive payment within the City's Prompt Payment Rules and Regulations as outlined in Denver Revised Municipal Code Sections 20-107 et seq.

3. **PRIOR APPROPRIATION.** The obligation of the City for payment(s) hereunder is limited to funds annually appropriated for this and similar agreements by the City Council and paid into a special revenue fund restricted to making incentive payments to private, taxpaying entities selected for such payments by the City. This Agreement shall not be construed to constitute a multiple year fiscal obligation of the City under Section 20, Article X of the Colorado Constitution. Further, the City's maximum obligation hereunder for the entire term of the Agreement shall not exceed Eight Hundred Fifty Thousand Dollars (\$850,000.00).

4. **EXAMINATION OF RECORDS.** DaVita agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after the termination of this Agreement, have access to and the right to examine, during normal business hours and following reasonable notice by the City, books, documents, papers and records of DaVita that are pertinent to DaVita's qualification for incentive payments hereunder.

5. **TERM.** The term of this Agreement shall be from January 1, 2010, to August 1, 2015; provided, however, that this Agreement shall automatically terminate when the City's payment(s) hereunder equal the amounts set forth in paragraphs 2.A and 2.B above.

6. **ASSIGNMENT AND SUBCONTRACTING.** The City is not obligated or liable under this Agreement to any party other than DaVita. DaVita shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City.

7. **WHEN RIGHTS AND REMEDIES NOT WAIVED.** In no event shall any action by the City or DaVita hereunder constitute or be construed to be a waiver by the City or DaVita of any breach of covenant or default which may then exist, and the non-breaching party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy

available with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

8. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Agreement, DaVita agrees not to refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and DaVita further agrees to use reasonable efforts to insert the foregoing provision in all subcontracts hereunder.

9. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS.** This Agreement is intended as the complete integration of all understandings between the parties. No prior, contemporaneous or subsequent addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement.

10. **CONFLICT OF INTEREST.** The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and DaVita further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 or 1.2.12.

11. **CONSTRUCTION.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, and the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

12. **LEGAL AUTHORITY.**

A. DaVita represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

B. The person or persons signing and executing this Agreement on behalf of

DaVita, do hereby represent and warrant that he/she or they have been fully authorized by DaVita to execute this Agreement on behalf of DaVita and to validly and legally bind DaVita, to all the terms, performances and provisions herein set forth.

C. The City shall have the right, at its option, to temporarily suspend or permanently terminate this Agreement, if there is a dispute that the legal authority of either DaVita or the person signing the Agreement on DaVita's behalf is not sufficient to enter into this Agreement. The City shall not be obligated to DaVita for any performance of the provisions of this Agreement in the event that the City has suspended or terminated this Agreement as provided in this Section.

13. **NO THIRD PARTY BENEFICIARY.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and DaVita, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements. It is the express intention of the City and DaVita that any person other than the City or DaVita receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

14. **FORCE MAJEURE.** DaVita Inc.'s failure to meet or delay in meeting the obligations set forth in this Agreement will be excused if such delay or failure is caused by the occurrence of cause beyond DaVita Inc.'s reasonable control, which might include an act of God, civil unrest, enemy action, epidemic, explosion, fire, flood, insurrection, natural catastrophe, riot, war, or requirement of law or of the Government of the United States or any other competent governmental authority, if DaVita, Inc., makes reasonable efforts to remove or overcome the effects of such occurrence or event. In such case, the sole effect on this Agreement of the event of force majeure shall be the extension of the term of this Agreement by the reasonable amount of time it takes DaVita to remove or overcome the effects of such occurrence or event.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

ATTEST:

STEPHANIE Y. O'MALLEY, Clerk
and Recorder, Ex-Officio Clerk of the
City and County of Denver

APPROVED AS TO FORM:

DAVID R. FINE, Attorney
for the City and County of Denver

By: _____
Assistant City Attorney

CITY AND COUNTY OF DENVER

By: _____
Mayor

RECOMMENDED AND APPROVED:

By: _____
Executive Director, Office of
Economic Development

REGISTERED AND COUNTERSIGNED:

By: _____
Manger of Finance

Contract Control No. CE07008

By: _____
Auditor

"CITY"

DAVITA INC.,
a Delaware corporation
Tax ID No. 51-0354549

By: _____

Title: Chief Accounting Officer
JP and Controller

"DAVITA"