

TRANSFER Agreement

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TRANSFER AGREEMENT

THIS TRANSFER AGREEMENT (this "Agreement"), effective as of this 1st day of January 1997, is between the CITY AND COUNTY OF DENVER, COLORADO, a municipal corporation and home rule city of the State of Colorado (the "City"), and the DENVER HEALTH AND HOSPITAL AUTHORITY, a body corporate and political subdivision of the State of Colorado (the "Authority"). The date of this Agreement is the Transfer Date agreed to by the City and the Authority as contemplated by Section 25-29-102 of the Act (as defined in the Recitals below), as now in effect, and is referred to in this Agreement as the "Transfer Date."

RECITALS

A. The Fifty-Ninth General Assembly (the "Legislature"), in its second regular session, enacted Senate Bill 94-099, which was signed into law by the Governor on April 19, 1994 and which is codified, in part, in Sections 25-29-101 through 25-29-126 of the Colorado Revised Statutes (the "Act").

B. The Legislature found and declared that the City and County of Denver Department of Health and Hospitals:

1. Provides access to quality preventive, acute, and chronic health care for all the citizens of the City regardless of ability to pay;
2. Provides high quality emergency medical services to the citizens of the City and the Rocky Mountain region;
3. Fulfills public health functions as dictated by the City charter and the needs of the citizens of the City;
4. Provides health education for patients and participates in the education of the next generation of health care professionals; and
5. Engages in research which enhances its ability to meet the health care needs of patients of the City health system.

C. The Legislature further found and declared:

1. In order to carry out its patient care and community service mission in an era of health care reform, it is necessary that the City health system be able to take whatever actions are necessary to enable its continuation as a system which provides the finest possible quality of health care.

2. It is essential that the City health system be able to maximize its economic viability and productivity in order to avoid becoming increasingly dependent on city, state, and other governmental subsidies.

3. Both the quality and economic viability of the City health system will be difficult to maintain in the future under the present constraints imposed by government policy and regulation.

D. The Legislature concluded that the needs of the citizens of the State of Colorado and of the City and County of Denver will therefore be best served if the City health system is operated by a political subdivision charged with carrying out the mission and programs of the City health system.

E. Pursuant to the Act, the City and the Authority have entered into a Personnel Services Agreement of even date herewith which sets forth the agreements of the City and the Authority as to personnel and employment matters relating to the transition and on-going operation of the Authority Health System (as defined herein). The City and the Authority also have entered into an Operating Agreement of even date herewith pursuant to which the City and the Authority set forth their agreements relating to aspects of their on-going relationship after the Transfer Date, including the Authority's obligation to provide citizens of Denver with access to quality preventive, acute and chronic health care regardless of their ability to pay.

F. This Agreement sets forth the agreement of the City and the Authority with respect to the conveyance and assignment of certain real property and personal property from the City to the Authority, the lease of certain real property by the City to the Authority, and the assumption by the Authority of certain liabilities relating to the Denver health system.

G. The City Council of the City has heretofore adopted an Ordinance approving the execution of this Agreement.

H. The City and the Authority are further authorized to enter into this Agreement pursuant to C.R.S. § 29-1-201, et seq., as amended (1995).

AGREEMENT

In consideration of the foregoing, the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Authority now agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions.

All capitalized terms not otherwise defined herein shall have the meaning assigned to such term in the Operating Agreement or the Personnel Services Agreement. In addition, the following terms, except where the context indicates otherwise, shall have the respective meanings set forth below.

The terms "Act," "Agreement," "Authority," "City," "Legislature," and "Transfer Date" have the meanings given to them in the Recitals.

"Authority Health System" means the programs, services and facilities transferred to the Authority pursuant to this Agreement and the Operating Agreement and the programs, services and facilities created by the Authority after the Transfer Date and includes, collectively, the Services (as defined in the Operating Agreement) provided by the Authority, the Real Property and the Personal Property.

~~"Buildings and Improvements" means all buildings and improvements (including without limitation, fixtures, trade fixtures, walkways, parking lots and structures, signs, landscaping), and all underground tunnels (such as the tunnel connecting the boiler room to other parts of the hospital complex)) now located on, under, attached or appurtenant to the Fee Property.~~

"Contract Rights" means all contractual rights of the City as of the Transfer Date that arise out of the City's operation, management and maintenance of the Existing Health System as of the Transfer Date, except for Excluded Contracts. The Contract Rights include, without limitation:

a. all rights to receive goods, services or other benefits arising under contracts entered into by the City for the sole purpose of operating, managing or maintaining the Existing Health System, or under Sole User Contracts or under Multiple User Contracts in which the Authority has agreed to participate pursuant to Article VII below;

b. all prepaid expenses, if any, relating to the operation of the Existing Health System which have previously been paid from amounts in the Enterprise Fund, but not excluding prepaid amounts which have been paid from the General Fund;

c. the right to recovery and damages with respect to all collection cases in progress on the Transfer Date for goods furnished or services rendered as part of the operation of the Existing Health System;

d. the right to all utility and other deposits, if any, paid with respect to the Fee Property, Buildings or Improvements;

e. the right to all security and other deposits, if any, paid with respect to the Facility Leases and Personal Property Leases;

f. the right to receive payments under the Subleases from and after the Transfer Date;

g. the right existing on the Transfer Date to receive payment for goods furnished or services rendered as part of the operation of the Existing Health System under contracts with third-party payors;

h. all rights in and to all payments, grants, awards, prizes, subsidies, and other payments, including, without limitation, the grant from the U.S. Department of Health and Human Services in connection with the Denver Neighborhood Health Program, Inc., Colorado Access, and other payments and grants; and

i. all warranty and contractual rights from any Person (including, without limitation, any vendor, distributor, manufacturer, architect, engineer, consultant) relating to the Personal Property, Buildings and Improvements, and any other asset conveyed to the Authority pursuant to this Agreement.

"Deed" has the meaning set forth in Section 4.1.

"Denver C.A.R.E.S. Master Lease" has the meaning given to that term in Section 6.3

"Dispute" means any claim, controversy or other dispute arising out of this Agreement.

"Environmental Matters" means (a) any release, discharge, spill, or other contamination of the Real Property, the Lease Premises or the property subject to the Facility Leases or (b) any failure of the Real Property, the Lease Premises or the property subject to the Facility Leases to comply with any statute, law, rule, regulation, or order now existing or hereafter occurring relating to pollutants, contaminants, wastes, hazards, or dangerous or toxic substances.

"Excluded Contracts" means Master Purchase Arrangements except those Sole User Contracts assigned to and assumed by the Authority and the Multiple User Contracts in which the Authority has agreed to participate after the Transfer Date pursuant to Article VII below.

"Existing Health System" means the programs, services and facilities operated by the City's department of health and hospitals immediately prior to the Transfer Date, excluding only those programs, services and facilities used for Regulatory Functions as listed or set forth in the Operating Agreement and Regulatory Leases.

"Existing Health System Assets" means all property and rights in property, real or personal, tangible or intangible, existing on the Transfer Date, that are used primarily in the normal course of operations of the Existing Health System, excluding only those programs, services and

facilities used for Regulatory Functions as listed or set forth in the Operating Agreement and Regulatory Leases.

"Facility Leases" means the City's leasehold interest as tenant pursuant to and as governed by the leases of real property, buildings and improvements listed on Schedule 2.2, and all rights of the City to the real property, buildings and improvements described in those leases, subject to the City's obligations under those leases.

"Fee Property" means the real property in the City and County of Denver, Colorado, that is more particularly described on Schedule 2.1, together with all air space above the Fee Property and all appurtenant rights, easements, and water rights.

"Goebel Lawsuit" means all matters related to or arising out of Goebel v. Colorado Department of Institutions and Aravello v. City and County of Denver (Cases Nos. 81MH270 and 81CV6961, consolidated).

"Intellectual Property Rights" means all trademarks, copyrights, trade names, and trade secrets and other confidential information concerning or related to the operation of the Existing Health System and to which the City has rights as of the Transfer Date.

"Lease Premises" shall have the meaning given to that term in Section 3.1.

"Liabilities" means all of the following liabilities of the City existing up to the Transfer Date with respect to operation of the Existing Health System, whether such liabilities are contingent or certain:

a. all current contractual liabilities for goods, services, supplies, utilities, maintenance and similar matters arising in the ordinary course of business out of operation of the Existing Health System, even if such liabilities arose prior to the Transfer Date, other than liabilities related to Excluded Contracts.

b. all current accounts payable of the City as of the Transfer Date arising in the ordinary course of business and solely out of its operation of the Existing Health System which have in the past been routinely paid from the Enterprise Fund;

c. the settlement payments agreed to and made after the Transfer Date in connection with medical malpractice, automobile liability, products liability, directors and officers liability (if any), and other negligence claims (i) filed after the Transfer Date and (ii) filed prior to the Transfer Date and agreed to by the City and the Authority in each case arising out of the operation, management or maintenance of the Existing Health System prior to the Transfer Date, subject to the Litigation Rights of the Authority;

d. up to a maximum of \$2,000,000 in the aggregate of costs relating to Environmental Matters arising out of conditions occurring prior to or existing on the Transfer Date with

respect to the Real Property, subject to the Litigation Rights of the Authority and expressly excluding the Ramp Industries Matter;

e. the settlement payments in connection with the existing dispute between the City and the Internal Revenue Service with respect to the independent contractor status of physicians, subject to the Litigation Rights of the Authority;

f. payment and other obligations under the Facility Leases and the Personal Property Leases assigned to the Authority pursuant to this Agreement arising after the Transfer Date;

g. all amounts due under Section 3.4 of the Personnel Services Agreement to City enterprise fund employees who elect to become Authority employees;

h. the obligations of the City as landlord under the Subleases arising after the Transfer Date;

i. any other liabilities or obligations expressly assumed by the Authority pursuant to the terms of this Agreement, the Operating Agreement, or the Personnel Services Agreement; and

j. all obligations and liabilities related to the operation of the Authority Health System arising from and after the Transfer Date.

The Liabilities expressly exclude (i) liabilities under Excluded Contracts; (ii) liabilities under general obligations bonds; (iii) liabilities under leases and agreements not assigned to the Authority pursuant to this Agreement; (iv) worker's compensation claims of employees of the Existing Health System that are based on events first occurring prior to the Transfer Date; and (v) all liability with respect to the Ramp Industries Matter and the on-going Goebel Lawsuit.

"Liaison" means the person appointed by the Authority to carry out the functions described in Section 5.2 of the Operating Agreement.

"Litigation Rights" means the following rights of the Authority with respect to litigation and environmental matters that form part of the Liabilities assumed by the Authority (subject to certain aggregate dollar limits) pursuant to this Agreement: (a) right of the Authority to have any claim against the City or the Department of Health and Hospitals arising out of the operation of the Existing Health System prior to the Transfer Date defended by the City Attorney's office or its designee at the City's expense (on the condition that the initiation of any litigation by the City on behalf of the City or the Authority as plaintiff shall require the approval of the Mayor and the City Attorney); (b) the right of the Authority to consent in advance to the settlement of any claim for which the Authority has agreed to make all or part of the settlement payments pursuant to this Agreement; and (c) the right of the Authority to retain its own counsel, at its own expense, to participate in or, at the Authority's option, to assume responsibility for the defense of any claim for which the Authority has agreed to make all or part of the settlement payments pursuant to this Agreement.

"Master Purchase Arrangements" means any purchase or lease arrangement entered into by the City where the Authority Health System is not the sole user of the product or service which is the subject of such arrangement.

"Mission" means the Authority's statutory mission under Section 25-29-104 of the Act, and the provisions of Section 25-29-107 of the Act, as now in existence.

"Mortgagee" means the holder of any mortgage, deed of trust or other similar instrument given by the Authority in accordance with this Agreement.

"Multiple User Contracts" shall have the meaning given to that term in Section 7.2(a).

"Negotiation Notice" shall have the meaning set forth in Section 12.5(c).

"Operating Agreement" means the Operating Agreement commencing on January 1, 1997, between the City and the Authority and all amendments and supplements thereto.

"Ordinance" means an official legislative act of the City duly passed and enacted into law in accordance with the laws of the State and the Home Rule Charter of the City.

"Ordinary Multiple User Contracts" has the meaning given to that term in Section 7.2(a).

"Owned Vehicles" means those vehicles identified on Schedule 2.4a.

"Permits and Licenses" means all permits and licenses held by the City as of the Transfer Date that are necessary for or relate to (a) the operation of the Authority Health System, or (b) the use or occupancy of any Real Property or property subject to a Facility Lease, or (c) to the use of any Owned Vehicles, Leased Vehicles or other Personal Property, including, without limitation, those permits and licenses listed on Schedule 2.5, health care licenses, Federal Aviation Authority permits, occupancy permits, Vehicle registrations, and permits or licenses required by any law or regulations with respect to operation of the Authority Health System or otherwise (including, without limitation, any Environmental Law).

"Person" means any individual, partnership, corporation, limited liability company, joint venture, association, trust, governmental entity, quasi-governmental entity or other legal entity.

"Personal Property" means all personal property assets owned by the City as of the Transfer Date that are used in or necessary to the operation, management or maintenance of the Existing Health System (but specifically excluding those assets which were used for Regulatory Functions prior to the Transfer Date and will be used for Regulatory Functions after the Transfer Date), including, without limitation:

a. the Existing Health System Assets (as defined in Section 25-29-102 of the Act, as in effect on the Transfer Date);

- b. the Owned Vehicles;
- c. all trailers and other movable assets that do not have certificates of title, if such property is now used as part of the Existing Health System;
- d. the Permits and Licenses;
- e. all personal property assets set forth on the Denver Health and Hospitals Enterprise Fund balance sheet as of the Transfer Date;
- f. all sources of revenue and money which have customarily been used for the operation of the Existing Health System;
- g. cash on hand in the Enterprise Fund and all cash balances in the Department of Health and Hospitals Enterprise Fund in the Treasurer's pooled funds, less estimated accounts payable and accrued payroll, all of the foregoing determined as of December 31, 1996;
- h. all health special revenue fund account balances, other than the environmental health special revenue fund account balances;
- i. all accounts receivable relating to the City's operation of the Existing Health System up to the Transfer Date;
- j. all gifts, grants, bequests, donations or other endowments specifically given for the benefit of or restricted to the use of Denver General Hospital or any other part of the Existing Health System, including without limitation, those related to the Rocky Mountain Poison and Drug Center Foundation, the NHP, the Denver Health and Hospitals Foundation, and the Denver Department of Health and Hospitals Volunteers Auxiliary, Inc. to be known as Denver Health Volunteers Auxiliary, Inc.;
- k. all promissory notes and instruments of debt made by patients of the Existing Health System; and
- l. all machinery, furniture, equipment, medical equipment, office equipment, computer hardware and software, computer data, decorations, books, records (excluding personnel records, and financial records retained by the City Auditor), files, patient records, accounting records, business records relating to operation of the Existing Health System, supplies and materials (including, without limitation, office supplies, medical supplies and cleaning supplies), inventory, medications, food products, plans, specifications, surveys, as-built drawings and all other records and assets used in connection with the use, operation and maintenance of the Fee Property, the Buildings and the Improvements, and the property subject to the Facility Leases or any of the Personal Property, or that are in the possession of or under the control of the City as of the Transfer Date and are reasonably necessary to permit the Authority to operate the Authority Health System pursuant to its Mission; provided, however, that (a) the Personal Property specifically excludes the property described on Schedule 1.1(a) attached hereto, which assets shall be retained by the City and (b) the City shall have

a right to continue to utilize the property described on Schedule 1.1(b) for a period of up to one year so long as the Information Services Division of the General Services Department uses such equipment to provide services for the Authority.

"Personal Property Leases" means the City's leasehold interests in all personal property and equipment (including, without limitation, medical equipment) used in or necessary for (a) the use, operation and maintenance of the Real Property or the property subject to the Facility Leases, or (b) the operation of the Existing Health System, excluding (1) leases of personal property by the City if the leased property is not used solely for purposes of the Existing Health System and (2) Master Lease Arrangement in which the Authority is not to participate under the terms of Article VII below. The Personal Property Leases include, without limitation, those described on Schedule 2.6.

"Personnel Service Agreement" means the Personnel Services Agreement, dated as of January 1, 1997, between the City and the Authority and any amendments and supplements thereto.

"Regulatory Leases" shall have the meaning given to that term in Section 4.4.

"Ramp Industries Matter" means all liability and other matters relating to the alleged disposal of radioactive waste from the University Hospital Surgical Research Center into any landfill.

"Real Property" means collectively the Fee Property and the Buildings and Improvements.

"Regulatory Functions" means environmental health services, consumer protection services (including quarantine powers and summary closure), animal control services and the operation of the coroner's office but specifically excludes services related to the medical investigation of disease, medical recommendations to the City for disease control and the providing of disease control (including clinics and the administration of vital records and the maintenance of vital statistics).

"Senior Executives" means the following persons:

- a. The Mayor (or a senior assistant or other individual designated by the Mayor);
- b. The President of the City Council or a representative of the City Council, as determined by the City Council; and
- c. The Chief Executive Officer (or other senior management designee) and the Chairman of the Board of the Authority (or other designated Board member).

"Sole User Contracts" shall have the meaning given to that term in Section 7.1(a).

"Space Leases" shall have the meaning given to that term in Section 3.20.

"Special Multiple User Contracts" shall have the meaning given to that term in Section 7.2(a).

"State" means the State of Colorado.

"Subleases" means those leases by the City, as landlord, to third parties, as tenants, of portions of the Buildings and Improvements, including, without limitation, the lease by McDonalds of certain premises in the main hospital complex located on the Fee Property and those leases identified on Schedule 4.2a.

"Task Force" means a task force comprised of two members appointed by the Mayor of the City within his or her sole discretion, two members of or appointed by the City Council and four members appointed by the board of directors of the Authority within its sole discretion.

"Title Commitments" means the Title Insurance Commitments issued by Stewart Title Guaranty Company relating to the Fee Property.

"911 Center" shall have the meaning given to that term in Section 6.4.

ARTICLE II

DESCRIPTION OF ASSETS AND LIABILITIES

2.1 Real Property.

a. The City owns the Fee Property located in the City and County of Denver, Colorado, which includes the land on which the Buildings and Improvements are currently located. The Fee Property is listed and described on Schedule 2.1 to this Agreement. Pursuant to Article IV of this Agreement, the City will convey the Fee Property to the Authority.

b. The City also owns the Buildings and Improvements on the Fee Property. Pursuant to Article IV of this Agreement, the City will convey title to the Buildings and Improvements to the Authority.

2.2 Facility Leases and Space Leases.

a. The City has leasehold interests in certain real property, Buildings and improvements located in the City and County of Denver, Colorado, that the City, as tenant, uses for purposes of the Existing Health System. These interests are governed by the Facility Leases, which include only leases of property used as health facilities, such as the Park Hill facility and the Denver C.A.R.E.S. facility. The Facility Leases are listed on Schedule 2.2 to this Agreement. Pursuant to Article VI of this Agreement, the City will assign (or in the case of the Denver C.A.R.E.S. Master Lease, sublease) the Facility Leases to the Authority.

b. The City owns certain other real property in the City and County of Denver, Colorado, that is not a part of the Real Property. These properties consist of the buildings and improvements that house multiple City agencies, and of which only a portion is used as part of the Existing Health System and are listed on Schedule 2.2b attached hereto. An example is the Montbello facility. Pursuant to Article III of this Agreement, the City will lease, as landlord, to the Authority, as tenant, certain space in those buildings and related access and use rights under the terms of the Space Leases.

2.3 Personal Property. The City owns certain Personal Property which is used in or necessary to operating, managing or maintaining the Existing Health System. The Personal Property expressly excludes personnel records, and financial records to be retained by the City Auditor (collectively, the "Excluded Records"). Pursuant to Article V of this Agreement, the City will transfer and convey the Personal Property to the Authority. The City agrees to provide the Authority with access to the Excluded Records at mutually agreeable times and places upon the Authority's request and to provide the Authority with copies of the Excluded Records, and expressly agrees not to dispose of the Excluded Records, or any part thereof, without giving the Authority prior written notice and a reasonable time and opportunity to take possession of such records.

2.4 Vehicles. The City holds title to the Owned Vehicles listed on Schedule 2.4a. Pursuant to Article V of this Agreement, the City will transfer and convey the Owned Vehicles to the Authority.

2.5 Permits and Licenses. The City holds certain Permits and Licenses necessary for operation of the Authority Health System by the Authority after the Transfer Date, including those Permits and Licenses listed on Schedule 2.5. Pursuant to Article V of this Agreement, the City will assign, transfer and convey the Permits and Licenses to the Authority.

2.6 Personal Property Leases. The City has leasehold interests pursuant to the Personal Property Leases, as lessee, in certain personal property and equipment (including without limitation, medical equipment) used primarily for (a) the use, operation and maintenance of the Existing Health System, or (b) the operation of the Existing Health System. The Personal Property Leases include those described on Schedule 2.6. The Personal Property Leases do not include leases of personal property by the City if the leased property is not used primarily for purposes of the Existing Health System, or is a part of a Master Purchase Arrangement in which the Authority is not to participate under the terms of Article VII below. Pursuant to Article VI below, the City will assign, to the extent permitted, the Personal Property Leases to the Authority.

2.7 Intellectual Property Rights. The City has rights to certain Intellectual Property Rights relating to or necessary for the operation of the Existing Health System. Pursuant to Article V of this Agreement, the City will transfer and convey the Intellectual Property Rights to the Authority.

2.8 Contract Rights. The City has certain Contract Rights arising out of its operation of the Existing Health System prior to and including the Transfer Date. Pursuant to Article VI of this Agreement, the City will assign the Contract Rights to the Authority. The Contract Rights exclude Master Purchase Arrangements, except those Sole User Contracts assigned to and assumed by the Authority and those Multiple User Contracts in which the Authority has agreed to participate after the Transfer Date pursuant to Article VII below.

2.9 Liabilities. In the course of operating the Existing Health System up to the Transfer Date, the City has incurred Liabilities to be assumed by the Authority. Pursuant to Article VIII below, and in consideration of the conveyances and assignments to the Authority, the Authority assumes the Liabilities. The Liabilities exclude certain matters and are subject to certain matters as described in the definition of "Liabilities" in Article I.

ARTICLE III

SPACE LEASES

3.1 Description of Space Leases. The Lease Premises consist of space within certain buildings owned by the City in which a portion of the space in such building will be used by the Authority (such as the Montbello facility) (the "Lease Premises").

3.2 Space Leases. Concurrent with the execution of this Agreement, the City shall deliver to the Authority a duly authorized and executed lease agreement, in form and substance reasonably acceptable to the City and the Authority (the "Space Leases"), evidencing the leasing of the Lease Premises as contemplated by this paragraph. With respect to the Lease Premises, the Authority agrees to pay to the City the Authority's proportionate share (determined on the basis of the square footage of a particular Lease Premises in relation to the total rentable square footage of the building in which such Lease Premises is located, or such other reasonable method as is agreed to by the City and the Authority) of utility charges, maintenance costs and operating costs, as provided in the Space Leases. The City covenants that the Authority shall have quiet enjoyment of the Lease Premises. The Authority shall not have any right to assign any interest in any Space Lease without the prior written consent of the City.

ARTICLE IV

CONVEYANCE OF BUILDINGS, IMPROVEMENTS AND AIR RIGHTS

4.1 Conveyance. The City hereby sells, grants and conveys to the Authority all of the City's right, title and interest in and to the Real Property. Concurrent with the execution of this Agreement, the City shall deliver to the Authority a properly executed and acknowledged bargain and sale deed conveying title to the Real Property to the Authority (the "Deed").

4.2 Title Exceptions. Subject to the provisions of Section 4.5 below, the City and the Authority intend that the Authority's title to and interest in the Real Property is subject only to: (a) the Subleases (such as the McDonald's lease) identified on Schedule 4.2a, which are being assigned to and assumed by the Authority concurrent with the execution of this Agreement; (b) the City's rights under the Regulatory Leases; and (c) those exceptions to title that are listed in the Title Commitments. If the Authority so requests, the City shall cooperate with the Authority in obtaining title insurance policies acceptable to the Authority, and showing fee title to the Buildings and Improvements in the Authority. The Authority shall pay the premium with respect to any title insurance policy requested by it.

4.3 Regulatory Leases. The City and the Authority acknowledge and agree that the City must use certain portions of the Buildings and Improvements in furtherance of its Regulatory Functions. Accordingly, concurrent with the execution of this Agreement, the Authority agrees to execute and deliver to the City leases in form and substance reasonably acceptable to the Authority and the City permitting the City to use for Regulatory Functions those portions of the Buildings and Improvements that are identified on Schedule 4.4 (collectively, the "Regulatory Leases"). The City shall not be required to pay any rent under the Regulatory Leases with regard to space in any building or improvement located on the Fee Property, however, that the City shall pay to the Authority the City's proportionate share (determined on the basis of the square footage occupied by the City for Public Health in relation to the total rentable square footage of the Building in which such space is located, or such other reasonable method as is agreed to by the City and the Authority) of utility charges, maintenance costs, and operating costs as provided in the Regulatory Leases. With respect to the space in any building or improvement which is not located on the Fee Property and which the Authority leases from a third-party landlord, the City shall pay to the Authority the City's proportionate share (determined on the basis of the square footage occupied by the City in relation to the total rental square footage of the Building in which the space is located, or such other reasonable method as is agreed to by the City and the Authority) of all base rent, additional rent, utility charges, maintenance costs, operating costs, and all other amounts due under the terms of the lease with such third-party landlord. The Authority may terminate the Regulatory Leases prior to expiration if the subject property ceases to be used for Regulatory Functions. The City may not assign or sublet all or any part of its interest in the Regulatory Leases, except an assignment to any successor governmental entity responsible for Regulatory Functions or an assignment that does not alter the use of the property for Regulatory Functions.

4.4 Certain City Statements. The City believes that:

- a. the City has title to the Real Property and full rights to convey the Buildings and Improvements to the Authority as provided in this Agreement;
- b. the Real Property is, as of the Transfer Date, free and clear of any and all liens, claims and encumbrances except those matters described in Section 4.2 above;
- c. the Real Property is, as of the Transfer Date, in compliance with all applicable zoning ordinances, building codes, and similar ordinances of the City;
- d. the Buildings and Improvements are located entirely within the boundaries of the Fee Property, and do not encroach on property owned by any third party, except as shown on the boundary surveys obtained by the Authority concurrent with the execution of this Agreement;
- e. the Real Property is not encumbered by any easements or other possessory rights, except those described in Section 4.2 above; and
- f. adequate access is available to the Real Property.

If any of the foregoing statements or any of the statements in Sections 3.3 and 3.4 are untrue, or there arises any claim or condition not expressly addressed in this Agreement that unreasonably interferes with the Authority's ability to use the Fee Property or the Buildings and Improvements or to operate the Authority Health System, the City shall cooperate with the Authority and use reasonable efforts to help effect the release of such claim or the remedy of such condition to the reasonable satisfaction of the Authority. However, the City shall not be liable for any monetary damages to the Authority if any of the foregoing statements in Sections 3.3 and 3.4 are untrue.

4.5 Condition of the Real Property. The Authority accepts title to the Real Property "AS IS," excluding all liability for Environmental Matters arising out of or related to conditions existing as of the Transfer Date or events occurring prior to the Transfer Date, subject only to the Authority's agreement to pay, in the aggregate, a portion of settlement costs relating to the Real Property not exceeding \$250,000, if any, as stated in the definition of "Liabilities" in Article I.

4.6 Demolition.

- a. The Authority may not demolish or destroy any of the Buildings or Improvements except as provided in Section 4.6(b) below.
- b. The Authority may demolish or destroy any or all of the Buildings or Improvements at any time and from time to time, if: (i) the Authority replaces the demolished or destroyed Building or Improvement with another Building or Improvement, but the Authority may substitute a Building or Improvement for the one demolished having substantially the same value

but having a different function, but, in all events, within the scope of the Mission; (ii) the Authority determines, in its reasonable discretion, that such Building or Improvement (or the portion thereof not replaced pursuant to (i) above) is not necessary to assure proper operation and management of the Authority Health System; (iii) the Authority determines, in its reasonable discretion, that such Building or Improvement creates a dangerous condition or otherwise presents a threat to health and safety; or (iv) such demolition or destruction is necessary to comply with any applicable law, ordinance, regulation or court order; on the condition that the Authority shall not destroy or demolish any Building or Improvement pursuant to subparagraph (ii) above if the book value (as determined by the Authority in its reasonable discretion) of any such Buildings or Improvements exceeds 15 percent of the book value (as reasonably determined by the Authority) of all of the Buildings and Improvements used in connection with the Authority Health System, unless the Authority first obtains the written consent of the City.

4.7 Sale of Real Property.

a. The Authority may not sell any Real Property unless that sale is in compliance with C.R.S. § 25-29-104(2). In the event that any of the Real Property is sold in compliance with C.R.S. § 25-29-104(2), the proceeds of any such sale shall be used by the Authority as set forth more fully in Section 4.7(b) below.

b. The proceeds of any sale of Buildings or Improvements agreed to by the City pursuant to Section 4.7(a) above shall be deposited in a separate Authority trust fund account and may be used by the Authority only for the construction of new buildings and facilities or otherwise for infrastructure improvements related to the development of the Authority Health System.

4.8 Subleases by the Authority. The Authority has the right to sublease all or any part of the Buildings or Improvements, without any review by or approval of the City or any agency of the City, subject to the condition that such sublease is subject to the rights of reversion of the City set forth herein. In the event of a reversion of the Buildings and Improvements to the City pursuant to the Deed, such sublease shall terminate.

4.9 Taxes. (a) Except as otherwise set forth in any Regulatory Lease, the Authority covenants and agrees at its own expense to timely pay, prior to delinquency, all real property taxes, if any, special assessments, utility charges and other similar charges (collectively, "Taxes"), that are payable with respect to the Real Property.

4.10 Expenses.

a. For Utilities. Except as otherwise set forth in any Regulatory Lease, the Authority shall promptly pay all charges for gas, electricity, water, telephone and other services furnished to the Real Property or the occupants thereof.

b. Operations. Except as otherwise set forth in any Regulatory Lease, the Authority shall promptly pay all of the expenses incurred in connection with the operation of the Real Property.

4.11 Insurance.

a. The Authority shall, at the Authority's expense (except as otherwise set forth in any Regulatory Lease), keep the Buildings and Improvements insured under an all risk policy insuring against loss or damage by fire and similar casualties in the approximate replacement cost thereof or such lesser or greater amount as the Authority shall determine in its reasonable discretion.

b. If the Authority defaults in obtaining insurance required under Section 4.11(a), the City may, but shall not be obligated to, obtain such insurance and pay the premium therefor. The Authority shall reimburse the City for any such premium payment.

c. All such insurance required under this Section 4.11 will be carried with companies acceptable to the City. The Authority shall deliver to the City certificates of insurance evidencing the coverage described in this Section 4.11.

4.12 Construction and Alteration.

a. Subject to the provisions of Section 4.6 above, the Authority may construct or remodel, at its expense, any Buildings or Improvements that it deems reasonable or necessary to facilitate operation or management of the Authority Health System (including, without limitation, the alteration of existing underground tunnels and the construction of new underground tunnels as well as the construction of new buildings on the Fee Property). In addition, subject to the provisions of Section 4.6 above, the Authority shall have the right, without the City's prior consent or approval, to make additions, alterations, improvements and changes in or to the Real Property, both structural and nonstructural, and to demolish, remove or replace the Buildings and Improvements and such alterations as the Authority shall desire.

b. All construction and alteration permitted pursuant to this Section 4.12 shall be subject to the Authority's compliance with all then-applicable laws, ordinances, rules and regulations generally applicable to entities and property holders engaged in such activities in the City and County of Denver, Colorado. In addition, the Authority shall provide to the City a copy of each building permit obtained by the Authority in connection with any construction on the Fee Property.

c. If any mechanic's or other lien or order for the payment of money shall be filed against the Real Property (whether or not such lien or order is valid or enforceable as such), the Authority shall, at the Authority's own cost and expense, within ninety days after the filing thereof, cause the same to be canceled and discharged of record, whether by payment or by bonding, by a surety company reasonably acceptable to the City. Upon posting of a statutory surety bond with the court having jurisdiction of the matter and obtaining a discharge of record (unless the

Authority is exempt from such requirement, in which event no such surety bond shall be required), the Authority shall have the right at its own expense to contest any such liens and orders. If the Authority shall fail to pay any charge for which a mechanic's lien has been filed, and such lien shall not have been discharged of record as described above, the City may, at its option, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fee incurred in connection therewith, shall be immediately due from the Authority to the City.

d. Notwithstanding anything to the contrary in this Agreement, the Authority has no obligation to repair damage, discharge liens or pay charges that arise as a result of (i) the negligence or willful misconduct of the City or its employees, agents, contractors, subcontractors, representatives, or officials after the date of this Agreement other than the negligence or willful misconduct of City employees who are leased to the Authority pursuant to the Personnel Services Agreement, (ii) liens or other matters being claimed by third parties (other than the City), by, through, or under the City, or (iii) the use or occupancy of any portion of the Real Property pursuant to the Regulatory Leases.

4.13 Requirements of Law.

a. Compliance with Law. The Authority shall, at the Authority's own cost and expense, promptly comply with all laws affecting the Real Property unless the Real Property is not in compliance with such law on the Transfer Date.

b. Contest of Requirements. The Authority may contest in good faith by appropriate proceedings conducted promptly at its own expense, in its name, the validity or enforcement of any law and may defer compliance therewith provided that (i) such noncompliance shall not involve any risk of forfeiture of the Real Property and (ii) the Authority shall diligently prosecute such contest to final determination by the court, department or governmental authority or body having final jurisdiction.

4.14 Damage or Destruction.

a. If any Buildings and Improvements are wholly or partially destroyed or damaged by fire or any other casualty, the Authority may, but the Authority shall not be obligated to, repair, replace, restore or reconstruct the same in the form in which the Buildings and Improvements existed prior to any such casualty or in any other form the Authority may elect.

b. In the case of any such damage or destruction, whether of all or part of the Real Property, the Authority shall be entitled to receive all payments to be made in connection with any such damage or destruction on the condition that (i) the Authority shall use all amounts received in fulfillment of the Mission and (ii) if such taking materially interferes with the ability of the Authority to carry out its Mission, the Authority shall replace or rebuild the property which was taken to the extent necessary in order for the Authority to continue to carry out its Mission.

4.15 Condemnation. If all or any part of the Real Property is taken for any public or quasi-public use, under any statute, by right of eminent domain, or by purchase by a public authority in lieu thereof, the Authority shall be entitled to receive all payments to be made in connection with any such taking relating to the Real Property and the City shall be entitled to receive the amount relating to the City's reversionary interest (as set forth in the Deed) on the condition that (i) the Authority shall use all amounts received in fulfillment of the Mission and (ii) if such taking materially interferes with the ability of the Authority to carry out its mission, the Authority shall replace or rebuild the property which was taken to the extent necessary in order for the Authority to continue to carry out its Mission.

4.16 Limitations on the Authority's Rights. The Authority shall not subject the Real Property to any easement or right-of-way which would materially impair the value of the Real Property, without the City's prior written consent, except as may be necessary in connection with the construction of a new or alteration of an existing underground tunnel under the Real Property.

4.17 Air Rights. The conveyance of the Fee Property includes the air rights associated with and above the Fee Property. Subject to the following sentence, the Authority has the sole and exclusive right to use and occupy the roofs of the Building and Improvements and the air rights above the Fee Property and the Building and Improvements. Notwithstanding the foregoing, upon request of the City, the Authority agrees to execute and deliver to the City a license agreement permitting the City to use the roofs of the Building and Improvements and the air space above the Building and Improvements (including any then existing heliport for emergency use) provided that in the event of conflicting use of the heliport, the rights of the Authority shall take precedence over the rights of the City and the placement of antennae and other telecommunications equipment on the Building and Improvements, provided that such use by the City does not interfere with the Authority's use of the roofs and accompanying air space.

4.18 Mortgages.

a. The Authority's Right to Mortgage Real Property. Subject to the limitations set forth in Section 4.18(c) below, the Authority may, without the City's consent, mortgage, pledge or hypothecate the Real Property by means of a mortgage or deed of trust. The City will consider a request by the Authority to cooperate with the Authority in such manner as the Authority may reasonably request in connection with the Authority obtaining a Permitted Mortgage, including, without limitation, the subordination by the City of its reversion rights, in a manner acceptable to the City and the secured lender in their reasonable discretion. Any mortgage or similar encumbrance permitted pursuant to the provisions of Section 4.18(a) and 4.18(c) is hereinafter referred to as the "Permitted Mortgage."

b. Payment of Mortgages. The Authority covenants to and agrees with the City that all sums paid under any promissory note secured, in whole or in part, by any Permitted Mortgage shall be paid as and when due and that the Authority as borrower shall comply with all its obligations under any such promissory note, mortgage, etc. and any related loan documents.

c. Limits on Permitted Mortgage. Notwithstanding anything to the contrary herein, (1) the Authority shall not mortgage, pledge, or hypothecate the Real Property to secure financing, the proceeds of which shall be used to pay operating deficits of the Authority, (2) any Mortgagee must agree that the Real Property will be used for health care-related purposes following foreclosure, and (3) any Mortgagee must agree to provide the City notice of any default by the Authority and provide the City a period of least ninety days to cure such default. In addition, any mortgage, pledge, or hypothecation of the Real Property shall be undertaken subject to and in accordance with the Act.

ARTICLE V

CONVEYANCE OF PERSONAL PROPERTY AND INTELLECTUAL PROPERTY RIGHTS

5.1 Conveyance. The City hereby sells, grants and conveys to the Authority all of the City's right, title and interest in and to the Personal Property and Intellectual Property Rights. Concurrent with the execution of this Agreement, the City shall deliver to the Authority:

- a. a properly executed bill of sale conveying title to and all rights with respect to the Personal Property and Intellectual Property Rights, subject only to any of the Liabilities by which such assets are encumbered;
- b. with respect to the Owned Vehicles, a duly endorsed certificate of title showing transfer of title to the Authority;
- c. all cash on hand, account balances, fund balances and other cash equivalent assets, which transfer will take place at 12:01 a.m. on January 1, 1997;
- d. all Permits and Licenses; and
- e. such other items, documents or instruments of conveyances as the Authority may reasonably request.

5.2 Certain City Statements. The City believes that:

- a. the City owns the Personal Property and Intellectual Property Rights conveyed pursuant to this Article V, and has full rights to convey such property to the Authority as provided in this Agreement; and
- b. the Personal Property and Intellectual Property Rights conveyed pursuant to this Article V are, as of the Transfer Date, free and clear of any and all liens, claims and encumbrances, except for Liabilities.

If any of the foregoing statements are untrue, or there arises any claim or condition not expressly addressed in this Agreement that unreasonably interferes with the Authority's ability to use the Personal Property or Intellectual Property Rights or to operate the Authority Health System, the City shall cooperate with the Authority and use reasonable efforts to help effect the release of such claim or the remedy of such condition to the reasonable satisfaction of the Authority. However, the City shall not be liable to the Authority for monetary damages if any of the foregoing representations is untrue.

5.3 Condition of the Personal Property. The Authority accepts title to the tangible Personal Property "AS IS."

ARTICLE VI

ASSIGNMENT OF LEASES AND CONTRACT RIGHTS

6.1 Conveyance. The City hereby sells, grants, conveys and assigns to the Authority all of the City's right, title and interest in and to the Facility Leases, Personal Property Leases, Subleases, and Contract Rights. Subject to the terms and conditions of this Agreement, the Authority hereby assumes all Liabilities of the City with respect to the Facility Leases, Personal Property Leases, Subleases, and Contract Rights. The City:

a. shall deliver to the Authority all security deposits held by the City as landlord under Subleases, to the extent such deposits are not already under the control of the Authority; and

b. shall deliver such other items, documents or instruments as the Authority and the City may reasonably identify.

6.2 Certain City Statements. The City believes that:

a. the City has full rights to convey and assign the Facility Leases, Subleases, Personal Property Leases, Leased Vehicles and Contract Rights to the Authority as provided in this Agreement and to enter into a sublease in connection with the Denver C.A.R.E.S. Master Lease;

b. the City's interest in and to the Facility Leases (other than the Denver C.A.R.E.S. Master Lease), Subleases, Personal Property Leases, and Contract Rights are, as of the Transfer Date, free and clear of any and all liens, claims and encumbrances, except for Liabilities assumed by the Authority pursuant to this Agreement; and

c. to the best of the City's knowledge, the consent of any Person having the right to consent to or approve any assignment contemplated by this Article VI has been obtained but the City is only required to use its best efforts to obtain such consent.

If any of the foregoing statements is untrue, or there arises any claim or condition not expressly addressed in this Agreement that unreasonably interferes with the Authority's ability to assume the rights of the City under the terms of any Facility Lease, Sublease, Personal Property Lease or document governing any Contract Right, or its ability to operate the Authority Health System, the City shall cooperate with the Authority and use reasonable efforts to help effect the release of such claim or the remedy of such condition to the reasonable satisfaction of the Authority. The City shall not be liable to the Authority for monetary damages if any of the foregoing representations is untrue.

6.3 Denver C.A.R.E.S. The parties acknowledge that fee simple title to the Denver C.A.R.E.S. facility is held by the Denver Municipal Leasing Corporation, a Colorado nonprofit corporation ("DMLC"). The City has a leasehold interest in the Denver C.A.R.E.S.

facility by virtue of a Master Leasing Purchase Agreement (the "Denver C.A.R.E.S. Master Lease"), dated as of April 15, 1986, as amended, between the City and DMLC. The City will sublease the Denver C.A.R.E.S. facility to the Authority in accordance with the terms of the Denver C.A.R.E.S. Master Lease. The Authority agrees that (a) its sublease shall be subject to the terms and conditions of the Denver C.A.R.E.S. Master Lease, (b) the Authority shall pay to the City the amount of Base Rent (as defined in the Denver C.A.R.E.S. Master Lease) that the City is required to pay under the Denver C.A.R.E.S. Master Lease, (c) the Authority shall pay Additional Rent (as such term is defined in the Denver C.A.R.E.S. Master Lease) subject to and in accordance with the terms of the Denver C.A.R.E.S. Master Lease, and (d) any rental payments made by the Authority shall be made using funds from sources other than the State of Colorado. The City hereby agrees that (a) all payments made by the Authority pursuant to the preceding sentence shall constitute costs of operating the Denver C.A.R.E.S. facility as set forth more fully in the Operating Agreement (b) that if an Event of Nonappropriation (as defined in the Denver C.A.R.E.S. Master Lease) occurs or there otherwise occurs a default under the Denver C.A.R.E.S. Master Lease (other than a default caused by the Authority) that the City will cooperate with the Authority in identifying a mutually satisfactory alternative location for the operation of the Denver C.A.R.E.S. program and (c) upon the expiration of the Denver C.A.R.E.S. Master Lease or at any other time that title to the Denver C.A.R.E.S. facility is conveyed to the City, the City will immediately convey title to the land and improvements which comprise the Denver C.A.R.E.S. facility to the Authority on the same terms and conditions that Real Property is being conveyed to the Authority pursuant to the terms of this Agreement, including a reversionary right similar to the City's reversionary rights under the Deed.

6.4 911 Center. The City owns and operates a 911 Dispatch Center on Columbine Street in Denver, Colorado (the "911 Center"). The 911 Center currently serves as a joint dispatch center for the Denver police, fire department and ambulance services. The City expressly grants to the Authority all necessary access, ingress, egress and use rights (including, without limitation, the right to use necessary equipment and reasonable space within the 911 Center) that are necessary for the Authority's continued use of and participation in the 911 Center (for ambulance dispatch in emergency situations) in accordance with past practice. The City shall at all times provide at least the same proportionate amount of space in the 911 Center to the Authority that it currently provides to the Department of Health and Hospitals in the 911 Center, treat the Authority in the same manner as, and shall apply the same standards and rules to the Authority as apply to the police department and fire department with respect to use and operation of the 911 Center. All of the City's obligations under this Section 6.4 apply to the 911 Center at its Columbine Street location as well as any center relating to 911 emergency dispatch services at any other location (whether now existing or hereafter established). The Authority shall provide staffing necessary to operate its ambulance dispatch services at the 911 Center, but shall have no responsibility or liability with respect to the costs and expenses of operating or equipping the 911 Center. Anything to the contrary notwithstanding, this section shall not be construed to give the Authority the unilateral right to require the City to enlarge the 911 Center or any other location for emergency dispatch, or any successor location.

ARTICLE VII

MASTER LEASE AND PURCHASE CONTRACTS

7.1 Sole User Contracts.

a. The City is party to certain contracts, purchase orders and agreements with third-party vendors that relate solely to the operation of the Existing Health System (for example, contracts relating to the purchase of prescription drugs) as of the Transfer Date (collectively, the "Sole User Contracts"). The Sole User Contracts include, without limitation, those contracts, purchase orders and agreements listed on Schedule 7.1. The City hereby, to the extent legally permissible, sells, grants, conveys and assigns to the Authority all of the City's right, title and interest in and to the Sole User Contracts. Subject to the terms and conditions of this Agreement, the Authority hereby assumes all Liabilities, to the extent legally permissible, with respect to the Sole User Contracts that accrue on and after the Transfer Date. Regardless of the structure of such Sole User Contract or anything to the contrary in this Agreement, the Authority is not obligated to pay for or reimburse the City for any of its operational expenses relating to management of any Sole User Contract.

b. The Authority may in its absolute discretion elect to discontinue or terminate any or all of the Sole User Contracts at any time in accordance with their terms, but if such discontinuance or termination results in the assessment by the vendor of any termination penalty or other similar, one-time cost against the City, the Authority shall be solely responsible for payment of the assessed penalty (but not merely an increase in the cost or marginal cost to the City because the Authority discontinues its participation).

c. The City shall execute and deliver to the Authority such items, documents or instruments in accordance with the assignments intended by this Agreement to effect the assignments intended by this Section 7.1.

d. The City believes that:

i. the City has full rights to convey and assign the Sole User Contracts to the Authority as provided in this Agreement;

ii. the City's interests in and to the Sole User Contracts are, as of the Transfer Date, free and clear of any and all liens, claims and encumbrances, except for Liabilities assumed by the Authority pursuant to this Agreement; and

iii. to the best of the City's knowledge, the consent of any Person having the right to consent to or approve any assignment contemplated by this Section 7.1 has been obtained.

If any of the foregoing statements are untrue, or there arises any claim or condition not expressly addressed in this Agreement that unreasonably interferes with the Authority's ability to assume the

rights of the City under the terms of any Sole User Contract, the City shall cooperate with the Authority and use its best efforts to help effect the release of such claim or the remedy of such condition to the reasonable satisfaction of the Authority. The City shall not be liable to the Authority for monetary damages if any of the foregoing representations is untrue.

7.2 Ordinary Multiple User Contracts.

a. The City is party to certain contracts, purchase orders and agreements with third-party vendors that provide goods or services to the Existing Health System as well as other operations of the City (for example, purchase orders and agreements relating to the purchase of gasoline for use in City vehicles) as of the Transfer Date (collectively, the "Multiple User Contracts"). The relative rights and obligations of the City and the Authority with respect to certain unique Multiple User Contract (the "Special Multiple User Contracts") are addressed in Section 7.3 below. All other Multiple User Contracts (the "Ordinary Multiple User Contracts") are governed by this Section 7.2.

b. With respect to all Ordinary Multiple User Contracts, the City and the Authority shall cooperate in good faith on and after the Transfer Date to allow the Authority to continue to participate in such Ordinary Multiple User Contracts, subject to the applicable third-party vendor agreeing to permit the Authority's continued participation. The Authority may in its absolute discretion elect to discontinue its participation in any or all Ordinary Multiple User Contracts at any time, but if such discontinuance results in the assessment by the vendor of any penalty against the City (but not merely an increase in the cost or marginal cost to the City because the Authority discontinues its participation), the Authority shall be solely responsible for payment of the penalty. The City shall notify the Authority prior to renewal or extension of any existing Ordinary Multiple User Contract, to permit the Authority to evaluate its continued participation in such contract prior to its renewal or extension.

7.3 Special Multiple User Contracts.

a. The City has entered into an agreement with U.S. West to provide telephone service to the City (the "Telephone Agreement"). The Authority may in its sole discretion elect whether or not to continue to participate in and receive service pursuant to the Telephone Agreement.

b. In the event the Authority elects to discontinue participation in the receipt of telephone service pursuant to the Telephone Agreement, the Authority shall pay to the City the Authority's proportionate share of the increase in the cost to the City as a result of the Authority discontinuing service. Proportionate share means a percentage of the increased cost equal to the percentage of the telephone service previously utilized by the Authority pursuant to the Telephone Agreement. For example, if the City's cost pursuant to the Telephone Agreement increases by \$10,000 as a result of the Authority's discontinuance of service and the Authority utilized 25% of the service pursuant to the Telephone Agreement prior to its discontinuance, the Authority shall pay to the City \$2,500.

ARTICLE VIII

CONSIDERATION

In consideration of the conveyances and leases to the Authority effected pursuant to this Agreement, the Authority hereby takes the following actions and agrees to abide by the following covenants:

8.1 Patient Care Services. The Authority shall provide Patient Care Services to the Population (as such terms are defined in the Operating Agreement) in accordance with its Mission subject to and in accordance with the terms and conditions set forth in the Operating Agreement. Reference should be made to the Operating Agreement for a complete description of Patient Care Services to be provided to the Population by the Authority.

8.2 Assumption of Liabilities. The Authority hereby assumes all of the Liabilities, and assumes responsibility for operation, management and maintenance of the Authority Health System on the Transfer Date.

8.3 Covenant to Pursue Mission. The Authority shall pursue its Mission in accordance with the Act.

8.4 Business Activities. The business activities of the Authority, including any joint venture, shall be primarily in furtherance or in support of the Authority's Mission, as determined in the sole discretion of the Authority.

8.5 Indemnification of City. On and after the Transfer Date, the Authority agrees to defend, indemnify and hold the City harmless from and against any and all claims, judgments, damages, losses, costs and expenses of whatever kind or nature with respect to:

- a. the Liabilities (as defined in this Agreement);
- b. all claims related to the employment relationship between employees of the Authority and the Authority on and after the Transfer Date;
- c. all claims for breach of contract resulting from the Authority's action or failure to act on or after the Transfer Date; and
- d. all claims related to the Authority's errors and omissions on or after the Transfer Date, including, without limitation, medical malpractice, director and officer liability, worker's compensation, automobile liability, and premises, completed operations and products liability.

8.6 Obligations under Regulatory Leases. The Authority shall enter into and honor its obligations under the Regulatory Leases.

8.7 Other Obligations. The Authority shall promptly perform all of its obligations and responsibilities under this Agreement, the Personnel Services Agreement, the Operating Agreement, and the Space Leases, as well as all contracts, agreements and leases assigned to the Authority pursuant to this Agreement.

8.8 Payment of Transaction Fees. The Authority shall pay appraisal fees, title insurance premiums, Phase I environmental audit costs, recording costs, costs of the agreed upon procedures letter, and related expenses necessary to effect the conveyance and assignment contemplated by this Agreement, except to the extent that this Agreement or the Operating Agreement expressly obligates the City to pay for or share in any such expense.

ARTICLE IX

CLOSING MATTERS

9.1 Mutual Covenant and Representation. The City and the Authority respectively represent that all activities conducted in connection with the Existing Health System within the prior ninety days have been conducted in the ordinary course of business and in a manner consistent with the manner in which such activities have been conducted in the past.

9.2 Agreed-upon Procedures Letter. The Authority and the City shall cooperate with one another to cause an agreed-upon procedures letter acceptable to the City and the Authority to be delivered by the Authority's independent auditors simultaneously with the closing of the transactions contemplated by this Agreement.

9.3 Payments. On the Transfer Date, the City shall transfer to the Authority all amounts appropriated by the City to Denver Health and Hospitals in connection with or arising out of the operation of the Existing Health System excluding Regulatory Functions, including, but not limited to, the amount of all City transfer payments due as of the Transfer Date.

ARTICLE X

GENERAL REPRESENTATIONS

10.1 Representations of the City. The City represents to the Authority that each of the following is true, complete and accurate as of the Transfer Date:

a. The City has the power and authority to enter into this Agreement and to consummate the transactions, conveyances and assignments contemplated thereby;

b. The City has duly authorized the execution and delivery of this Agreement and all documents and instruments contemplated by this Agreement, and the full performance by the City of its obligations under this Agreement, and this Agreement is a binding and enforceable obligation of the City;

c. Nothing in this Agreement, nor the execution and delivery of this Agreement by the City, nor the consummation by the City of the transactions, conveyances and assignments contemplated by this Agreement will violate the charter or other governing documents of the City, will not constitute a default or event of default or otherwise violate any term or condition to which the City is a party or by which any of the property or rights to be conveyed to the Authority are bound;

d. No pending or threatened litigation affecting any of the property or rights to be conveyed to the Authority pursuant to this Agreement or the Existing Health System exists as of the Transfer Date, except those disputes and claims expressly referred to in the definition of "Liabilities"; and

e. No consent of or notice to any Person is necessary with respect to the conveyances and assignments contemplated by this Agreement, except those that have been obtained or given.

If any of the foregoing representations are untrue, the City shall cooperate with the Authority and use its reasonable efforts to cause such representation and warranty to be true, however, the City shall not be liable to the Authority for monetary damages if any of the foregoing representations are untrue.

10.2 Representations of the Authority. The Authority represents to the City that each of the following is true, complete and accurate as of the Transfer Date:

a. The Authority has the power and authority to enter into this Agreement and the Operating Agreement and to consummate the transactions, conveyances and assignments contemplated thereby;

b. The Authority has duly authorized the execution and delivery of this Agreement and all documents and instruments contemplated by this Agreement, and the full

performance by the Authority of its obligations under this Agreement, and this Agreement is a binding and enforceable obligation of the Authority;

c. Nothing in this Agreement, nor the execution and delivery of this Agreement by the Authority, nor the consummation by the Authority of the transactions, conveyances and assignments contemplated by this Agreement will violate the Mission or other governing documents of the Authority, will not constitute a default or event of default or otherwise violate any term or condition to which the Authority is a party or by which any of its property or rights are bound; and

d. No consent of any Person is necessary with respect to the acceptance of the conveyances and assignments or assumption of liabilities contemplated by this Agreement, except those that have been obtained.

If any of the foregoing representations are untrue, the Authority shall cooperate with the City and use its best efforts to cause such representation and warranty to be true, however, the Authority shall not be liable to the City for monetary damages if any of the foregoing representations are untrue.

ARTICLE XI

DEFAULT

11.1 Default by Authority. The occurrence or existence of any of the following shall be an Event of Default under this Agreement:

- a. If the Authority voluntarily abandons, vacates or surrenders all or substantially all of the Real Property other than pursuant to the terms and conditions of this Agreement and other than pursuant to an eminent domain or condemnation proceeding initiated by the City; or
- b. The Authority shall file a petition in bankruptcy; be adjudicated insolvent or bankrupt; petition or apply to any tribunal for the appointment of a receiver of any trustee or similar officers of the Authority for a substantial part of the assets of the Authority; or shall commence any proceedings under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect that remains undismissed for a period of ninety days or more; or
- c. If the Authority dissolves; or
- d. If a court of competent jurisdiction determines that the Authority has failed to perform its Mission; or
- e. An event of Default shall occur under any Permitted Mortgage with respect to an indebtedness in excess of \$10,000,000 and the Mortgagee shall have provided notice to the Authority of its intention to accelerate the debt and commence the exercise of such Mortgagee's remedies against the Authority; or
- f. Any representation or warranty made herein shall have been incorrect or misleading in any material respect when made and such shall not have been corrected within thirty days after notice from the City; or
- g. If the Authority fails to pay any sum payable hereunder by the Authority to the City when the same becomes due and payable, and such failure is not cured within ninety days after written notice from the City to the Authority; or
- h. If the Authority fails to perform or comply with any other material term hereof and such failure continues for more than ninety days after written notice thereof from the City to the Authority, except that if such failure relates to any obligation that cannot reasonably be cured within such ninety-day period the Authority shall not be in default if it commences such performance within such ninety-day period and thereafter prosecutes the same with diligence and continuity.

If the City determines that the Authority is in default hereunder and the Authority does not agree with such determination, the Authority shall be entitled to utilize the dispute resolution process set forth below, except that the dispute resolution process shall not apply to a default by the Authority under Section 11.1(a), (b), (c), (d) or (e).

11.2 Default by City. The occurrence or existence of any of the following shall be an Event of Default under this Agreement:

a. Any representation or warranty made herein shall have been incorrect or misleading in any material respect when made and such shall not have been corrected within thirty days after notice from the Authority; or

b. If the City fails to perform or comply with any material term hereof and such failure continues for more than ninety days after written notice thereof from the Authority to the City, except that if such failure relates to an obligation that cannot reasonably be cured within such ninety-day period, the City shall not be in default if it commences such performance within such ninety-day period and thereafter prosecutes the same with diligence and continuity.

c. The City fails to pay any amount due hereunder.

ARTICLE XII

REMEDIES

12.1 Remedies. In case of an Event of Default, subject to the Mortgagee's right to cure set forth in Section 12.3 below, each of the City and Authority shall have all rights and remedies provided herein or in any document executed in connection herewith, together with all rights and remedies available at law or in equity.

12.2 Certain Defaults. Upon the occurrence of a default under Section 11.1 (a), (b), (c), (d) or (e) above, subject to the Mortgagee's right to cure set forth in Section 12.3 below, the Space Leases shall automatically terminate and the City shall be entitled to exercise the right of reverter with respect to the Real Property set forth in the Deed. Notwithstanding the foregoing, if the City exercises its right of reversion, the City shall be obligated to assume all outstanding indebtedness and other obligations of the Authority in effect at the time of such exercise.

12.3 Mortgagee's Right to Cure. The mortgagee under any mortgage given by the Authority in accordance with this Agreement shall have ninety days after such mortgagee's receipt of notice of a default under Section 12.1 above within which, at such mortgagee's election, to cure an Event of Default prior to the City exercising any rights or remedies hereunder.

12.4 Remedies Not Exclusive. No remedy of either party is intended to be exclusive, and each and every remedy of a party is cumulative and in addition to any other remedy of such party.

12.5 Delay and Waivers. No delay in the exercise of any remedy constitutes a waiver of that remedy, and any waiver under this Agreement must be in writing and signed by the party waiving its right. A waiver of one default does not constitute the waiver of any other default or any subsequent default.

12.6 Dispute Resolution Process.

a. Except as provided in Section 12.2 above and in subparagraph (f) below, no party may initiate litigation to resolve any Dispute without first attempting to resolve the Dispute pursuant to this Section 12.6.

b. Liaison. The Liaison will work with the designated representative of the Mayor and/or the designated representative of the City Council in a good faith and collaborative effort by all parties to resolve the Dispute. The work of the Liaison shall be in addition to ongoing informal discussions and attempts to resolve disagreements, problems, and disputes among the parties and is not intended to limit those ongoing discussions and efforts.

c. If the Dispute cannot be resolved by the processes set forth in (b) above, the parties will then attempt to resolve the Dispute through negotiations between their Senior Executives. The Senior Executives shall have decision-making authority for the parties for whom

they represent. To initiate the process, a party shall give written notice to the other of the existence of the Dispute and of its desire to resolve the Dispute through negotiations conducted pursuant to this Section 12.5(c). Within five days of the delivery of this notice (the "Negotiation Notice"), the receiving party shall submit a written response to the initiating party. Both the Negotiation Notice and the response thereto shall contain (i) a description of the nature of the Dispute, (ii) a statement of the party's position and a summary of the reasoning on which that position is based, and (iii) the name and position of the Senior Executives who will negotiate on behalf of that party. Within five days after delivery of the Negotiation Notice, the Senior Executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to promptly attempt to resolve the Dispute.

d. If the Dispute has not been resolved within ten days of the commencement of the discussions by the Senior Executives, a party may request that the parties attempt to resolve the Dispute through the Task Force. A party shall request Task Force discussions by delivering written notice to the other (the "Request for Facilitated Negotiations"). Such notice shall be delivered no later than three days after the conclusion of the negotiations described in Section 12.5(c). The parties shall then attempt to resolve the Dispute by Task Force discussions regarding the Dispute.

e. The Task Force shall be appointed within three days of the delivery of the Request for Facilitated Negotiations. Task Force discussions shall be convened within five days of such appointment and shall endeavor to settle the Dispute within twenty days. Any final decision of the Task Force must be unanimous. If any Dispute is not resolved within twenty days after the commencement of the Task Force discussion, or such later date as the parties may subsequently agree, either party may proceed with litigation. The City Council in its discretion may by resolution direct the City Attorney to take appropriate action.

f. The procedures set forth in this Section 12.5 shall be the sole and exclusive procedures for resolving any Dispute, and the parties must follow the procedure before instituting litigation; however, either party may initiate litigation to obtain a temporary injunction or other preliminary relief where necessary to prevent irreparable injury or preserve the status quo pending the completion of those procedures. All applicable cure periods set forth in Section 11.1 and all statutes of limitations will be tolled pending the completion of those procedures.

g. Each party will honor all reasonable requests for information from the other party during the negotiations, Task Force discussions and mediation. Unless otherwise provided by applicable law or by agreement of the parties, all information disclosed shall be deemed confidential and as having been disclosed during the course of settlement negotiations for purposes of the Colorado and Federal Rules of Evidence.

ARTICLE XIII

OBLIGATIONS UPON TERMINATION OR REVERSION

13.1 Obligations of the Authority. Upon reversion of the Real Property to the City pursuant to the Deed, the Authority shall:

a. subject to federal and state health care laws and regulations, surrender the Real Property (in substantially the condition now existing, subject to the Authority's rights under this Agreement and ordinary wear and tear excepted) to the City, and effect the reconveyance and assignment to the City of the then-existing Personal Property, Facility Leases, Subleases, and other property and assets conveyed to the Authority pursuant to this Agreement;

b. cooperate, in good faith, with the City to effect the prompt reconveyance to the City of any Personal Property and Intellectual Property Rights to which the Authority then has title (and subject to any encumbrances and liens to which the Authority's title is then subject);

c. cooperate, in good faith, with the City to effect the prompt assignment to the City of any Facility Lease, Personal Property Lease, Sublease, or documents governing any Contract Right in which the Authority then has an interest (and subject to any encumbrances and liens to which the Authority's interest is then subject); and

d. otherwise cooperate in good faith to effect the transfer of the operation of the Authority Health System to the City.

13.2 Obligations of the City. Upon reversion of the Real Property to the City pursuant to the Deed, the City shall:

a. accept immediate possession of the property and assets to be conveyed or assigned to the City pursuant to Section 13.1 above; and

b. cooperate in good faith to effect the transfer of the operation of the Authority Health System to the City.

ARTICLE XIV

MISCELLANEOUS

14.1 Entire Agreement. This Agreement represents the entire agreement of the parties with respect to their respective subject matter.

14.2 Binding Effect: No Third-Party Beneficiaries. This Agreement will inure to the benefit of and be binding upon the City and the Authority and their respective successors and assigns. It is not intended to, and does not, confer any rights upon any other Person.

14.3 Headings. The headings and captions used in this Agreement are for convenience only and shall not be considered in interpreting the meaning of this Agreement or its provisions.

14.4 Notices. All notices and other communications given pursuant to this Agreement must be in writing and delivered by personal delivery, facsimile transmission or certified mail, postage-prepaid, addressed as follows:

If to the City:

Office of the Mayor
City and County Building, Room 350
Denver, Colorado 80202
Attn: Mayor of Denver

and to

Department of Law
City and County Building, Room 353
Denver, Colorado 80202
Attn: City Attorney

If to the Authority:

Denver Health and Hospital Authority
660 Bannock, 5th Floor
Denver, Colorado 80204
Attn: Chief Executive Officer

Notices and other communication will be deemed received as follows: (a) if hand delivered, upon delivery; (b) if transmitted by facsimile, upon receipt of electronic confirmation of receipt of a properly addressed transmission at the appropriate facsimile number given above; and (c) if sent by certified mail, three days after deposit in the U.S. Mail, addressed as above and postage prepaid.

14.5 Governing Law. This Agreement is governed by and must be construed in accordance with Colorado law.

14.6 Amendment. This Agreement may be amended only by a writing signed by both the City and the Authority.

14.7 Further Assurances. Each of the City and the Authority agrees, at any time and from time to time, to promptly upon request execute and deliver any and all documents, instruments, items and agreements that are necessary or reasonably requested by the other party with respect to this Agreement or any conveyance, assignment, assumption or other matter contemplated by this Agreement.

14.8 No Waiver of Governmental Immunity. Notwithstanding any other provision of this Agreement, nothing in this Agreement is intended to or may be construed or interpreted as a waiver, either express or implied, of any of the immunities, rights, benefits or protections provided to the City or the Authority under governmental immunity laws from time to time applicable to the City or the Authority, including, without limitation, the Colorado Governmental Immunity Act (Sections 24-10-101 to 24-10-120, Colo. Rev. Stat., as it may be amended or expanded from time to time).

14.9 Acts of God. In any case where either party is required to perform any work hereunder, delays caused by war, strike, riot, acts of God, shortages of material or labor, governmental regulation or other cause beyond such party's reasonable control shall not be counted in determining the time during which such work shall be completed. In any case where work shall be paid for out of insurance proceeds or condemnation awards, due allowance shall be made, both to the party required to perform such work and to the party required to make such payment, for delays in the collection of such proceeds and awards.

14.10 Statutory Debt Limitation.

a. It is understood and agreed that the Colorado Constitution and the City Home Rule Charter prohibit the City from creating any debt against the City or incurring any expense beyond the City's ability to pay from its general revenue for the current Fiscal Year. No term or condition of this Agreement shall be construed or interpreted so as to cause the City to violate this provision of law (including, without limitation, any amendments to these laws) or any similar law which is subsequently enacted.

b. It is understood and agreed that the Colorado Constitution and the Act prohibit the Authority from creating any debt against the Authority or incurring any expense beyond the Authority's ability to pay from its annual income for the current Fiscal Year. No term or condition of this Agreement shall be construed or interpreted so as to cause the Authority to violate this provision of law (including, without limitation, any amendments to these laws) or any similar law which is subsequently enacted.

14.11 Perpetuities. Any and all interests created by this Agreement that are subject to the rule against perpetuities and that have not vested (as the term "vested" is used in the application of

such rule under Colorado law) within twenty-one years after the death of the last to die of the current living offspring of the following now living persons: Robert H. Bach, Mary L. Groves, Mashenka Lundberg, Manuel Martinez, Darlene Ebert, Don Wilson and Alice Fischer shall become void at the expiration of such twenty-one years.

14.12 No Discrimination in Employment. In connection with the performance of work under this Agreement, the Authority agrees not to refuse to hire, discharge, 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 the Authority agrees to insert the foregoing provisions in all subcontracts hereunder.

14.13 Examination of Records. The Authority shall keep and maintain and shall cause its subcontractors and outside consultants to keep and maintain, books, records, accounts and other documents (hereinafter collectively referred to as "records") that are sufficient to accurately and completely reflect the operations of the Authority. Such records shall be kept and maintained in the Denver metropolitan area, and the Authority shall upon the request of the Auditor of Denver (hereinafter referred to as "Auditor") make such records available in the Denver metropolitan area. Such records shall include, but not be limited to, receipts, memoranda, vouchers, and accounts of every kind pertaining to the performance of the work by and for the Authority, as well as complete summaries and reports setting forth all man-hours expended, payroll incurred and monthly salary and hourly rate of each and every employee whose payroll warrant(s) are issued by the Auditor. In addition, the Authority shall keep a detailed inventory of all property, plant, and equipment and shall furnish copies of such inventory records if requested by the Auditor. All records of the Authority referred to herein shall be kept in a form and manner satisfactory to the Auditor and in accordance with a system of accounting acceptable to the Auditor.

The City, including the Auditor, its representatives and any firm of auditors designated by the City shall have the right at any time to all such records, as referred to herein, maintained by the Authority and its subcontractors. The City shall have the right to reproduce any such records, and the Authority and its subcontractors and consultants shall keep and preserve all such records for a period of at least three (3) years from and after completion of the Agreement, or until an earlier time agreed to by the Authority and the Auditor.

EXECUTED as of the day and year first above written.

ATTEST:

CITY AND COUNTY OF DENVER, a
municipal corporation and Home Rule City

DEPUTY CITY CLERK

By: Elbra Wedgeworth

Elbra Wedgeworth
Clerk and Recorder, Ex-Officio
the City and County of Denver

By: Wellington E. Webb

Wellington E. Webb
Mayor



APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By: Daniel E. Muse

Daniel E. Muse
Attorney for the City and County of
Denver

By: Donald Mares

Donald Mares
Auditor

APPROVED AS TO FORM:

DENVER HEALTH AND HOSPITAL
AUTHORITY, a body corporate and
political subdivision of the State of
Colorado

By: Halme Roberts + Owen US

Attorney for the Denver
Health and Hospital Authority

By May L. Green

By: Patricia A. Gabow

Patricia A. Gabow
Chief Executive Officer

By: Paula Herzmark

Paula Herzmark
Chairman of the Board of Directors