

AGREEMENT

THIS AGREEMENT is made and entered into 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 **PANASONIC ENTERPRISE SOLUTIONS COMPANY, A DIVISION OF PANASONIC CORPORATION OF NORTH AMERICA**, a Delaware corporation, whose address is Two Riverfront Plaza, Newark, NJ, 07102 (“Panasonic”) (the “Contractor”) (together, the “Parties”).

R E C I T A L S

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

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

WHEREAS, Panasonic is willing to relocate and expand the Panasonic Enterprise Solution Company’s divisional headquarters and technology center 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 Panasonic’s Enterprise Solutions Company divisional headquarters within the City will advance the valid and valuable public purpose set forth above by generating tax revenues and by the creation and maintenance 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. Contractor shall operate its company divisional headquarters and technology center within the City and County of Denver, and such facility shall be leased for a term of not less than five years or constitute purchased or constructed office space (the “Facility”).

B. Contractor 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 Contractor payable as follows:

A. **Job Creation and Retention** (\$250,000.00). The City shall pay to Contractor the amount of One Thousand Dollars (\$1,000.00) multiplied by the total number of new full time permanent employees, up to a maximum of 250 employees, employed by Contractor for positions at the Facility ("New Employees") annually. The number of New Employees considered to be hired and employed by Contractor during the initial calendar year shall be determined by the number of Employees employed at the Facility on December 31 of that year as evidenced by corresponding Occupational Privilege Tax ("OPT") records. The number of New Employees considered to be hired and employed by Contractor during subsequent calendar years shall be determined by the increase in the number of Employees from those employed at the Facility on January 1 of that year to those employed at the Facility on December 31 of that year as evidenced by corresponding OPT records. To illustrate: if, on December 31 of 2016, the number of employees employed at the Facility is 100, then the number of New Employees would be 100; the incentive payment for that period would be \$100,000; \$150,000 of the job creation and retention incentive would carry forward to the next period and the new baseline for New Employees for 2017 would be 100. The City's incentive payments allocable to job creation and retention shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) over the term of this Agreement. Such payments shall be made pursuant to paragraph 2.C below.

B. **Location Establishment Expense** (\$1,100,000.00). The City shall reimburse Contractor for documented costs directly incurred by Contractor and allocable to the location the facility within the City upon the execution of a lease agreement for the Facility with a term of not less than five years. The City's incentive payments allocable to documented direct relocation expenses shall not exceed One Million One Hundred Thousand Dollars (\$1,100,000.00) over the term of this Agreement. 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; capital investment in furniture, fixtures and equipment (“FFE”), FFE delivery or installation expenses; architecture, design, 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. Such payments shall be based on receipts received and evidence submitted to the City pursuant to Paragraph 2.C. below.

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

1. The petition for Job Creation and Retention payment shall contain Contractor’s certification and supporting OPT documentation evidencing the number of employees located at the Facility as of December 31 of the year for which Contractor is petitioning for payment as described in paragraph 2.A above, based upon Contractor’s OPT documentation for December of that year, and Contractor’s satisfaction of the requirements contained in Paragraph 1 above. Contractor shall be entitled to petition annually for its incentive payments hereunder beginning on January 1, 2017, and on January 1 of each year thereafter through 2020. Contractor shall submit its petition on or before May 1 of each year in order to qualify for an incentive payment.

2. The petition for Location Establishment Expense payment shall contain Contractor’s certification and supporting documentation evidencing eligible expenses, as described in Paragraph 2.B above, and Contractor’s satisfaction of the requirements contained in Paragraph 1 above. Contractor may petition for such payment upon satisfaction of the requirements contained in Paragraph 1 and Paragraph 2.B above and this Paragraph 2.C, but in no case later than June 30, 2020.

3. Contractor shall supply whatever additional information the City requests in order to substantiate Contractor’s petition for incentive payments. The City may withhold incentive payments for which it has been petitioned by Contractor if it reasonably determines that the petition for Job Creation and Retention is not substantiated by the supporting documentation submitted by Contractor. Such determination shall be provided to Contractor 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 and 2.C.2 of this Agreement, the City shall verify Contractor'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 One Million Three Hundred Fifty Thousand Dollars (\$1,350,000.00).

4. **EXAMINATION OF RECORDS.**

A. Contractor 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 Contractor that are pertinent to Contractor's qualification for incentive payments hereunder.

B. Contractor agrees that the City's Office of Economic Development and Department of Finance (or successor agencies) shall have access to and the right to examine Contractor's City and County of Denver tax records (the "Tax Records") filed for the period beginning five (5) years prior to the execution of this Agreement and ending five (5) years after the termination of this Agreement. Tax Records shall include sales/use tax, property (real and business personal property), occupational privilege tax, and other City tax information necessary to provide data to be used by the City to develop aggregated reports of performance outcomes and assess the effectiveness of the City's Business Incentive Program (or its successor program). No identifying data and analysis shall be publicly available.

C. The City acknowledges that the records described herein may constitute proprietary, confidential business information and/or personnel records which are not subject to disclosure under the Colorado Open Records Act ("CORA"), C.R.S. 24-72-201 et seq. The Parties recognize that the mere marking of a document as "Confidential" does not render it

conclusively confidential under the Colorado Open Records Act. Consequently, in the event that the City is served with an Open Records Request or subpoena from any third party requesting all or part of any Confidential Information as defined herein, the City shall give timely notice to Panasonic of such request or subpoena within the time parameters of the Colorado Open Records Act or of any applicable court rule. In that event, Panasonic agrees upon receipt of actual notice from the City of such Open Records Request or subpoena to immediately undertake to defend, if Panasonic desires any defense, such confidential information from disclosure pursuant to the Colorado Open Records Act or applicable court rule and shall defend, save and hold harmless and indemnify the City and its agents and employees with respect to such issues.

5. **TERM.** The term of this Agreement shall be from January 1, 2015, to June 30, 2020; 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 Contractor. Contractor 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 Contractor hereunder constitute or be construed to be a waiver by the City or Contractor 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, Contractor 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.

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 Contractor 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. Contractor 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 Contractor do hereby represent and warrant that he/she or they have been fully authorized by Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor 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 Contractor or the person signing the Agreement on Contractor's behalf is not sufficient to enter into this Agreement. The City shall not be obligated to Contractor 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 Contractor, 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 Contractor that any person other than the City or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

14. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.**

Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

15. **COMPLIANCE WITH ALL LAWS.** Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

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Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: OEDEV-201522114-00

Contractor Name: PANASONIC ENTERPRISE SOLUTIONS
COMPANY, A DIVISION OF PANASONIC
CORPORATION OF NORTH AMERICA



By: 

Name: Tomo Ohi
(please print) **Director - Procurement
Real Estate and Facilities**

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

