

**CITY OF MCKINNEY, TEXAS  
AND  
COLUMBIA MEDICAL CENTER OF MCKINNEY SUBSIDIARY, L.P.  
CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM AND AGREEMENT**

**WHEREAS,** the City of McKinney ("City") and Columbia Medical Center of McKinney Subsidiary, L.P. ("Columbia") desire to enter into a Chapter 380 Economic Development Program and Agreement (the "Agreement") whereby the City will provide certain incentives incident to Columbia's expansion of its McKinney hospital and medical facility (the "Facility") in the City; and

**WHEREAS,** Columbia will construct an 80,000 square feet expansion of the Facility (the "Project") and intends to purchase new equipment for the Project located at 4500 Medical Center, McKinney, Texas, 75069 (the "Property") which b; and

**WHEREAS,** the additional taxable value of real and business personal property will achieve the public purpose of promoting economic development and diversity, increasing employment, reducing unemployment and underemployment, expanding commerce and stimulating business and commercial activity in the State and in McKinney, Collin County; and

**WHEREAS,** the City has agreed to an incentive to Columbia whereby the City's ad valorem taxes paid by Columbia shall be reimbursed as a grant from the City's general fund, if at all, based Columbia's satisfaction of certain obligations incident to the construction and operation of the Project and tied to the increased valuation of the new building improvements and new business personal property attributable to such construction; and

**WHEREAS,** the City has the authority under Chapter 380 of the Texas Local Government Code to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City; and

**WHEREAS,** the City determines that a grant to Columbia will serve the public purpose of promoting local economic development and enhancing business, industrial and commercial activity in the City; and

**WHEREAS,** the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City of McKinney and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the City and Columbia.

**NOW, THEREFORE,** for and in consideration of the agreements contained herein and other

good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Columbia agree as follows:

## **SECTION 1. TERM.**

This Agreement shall be effective from the Effective Date (as such term is defined in Section 8 [i] below) until March 31, 2026 unless terminated sooner under any rights granted hereinafter.

## **SECTION 2. DEFINITIONS.**

The following words shall have the following meanings when used in this Agreement.

- a. Agreement. The word "Agreement" means this Chapter 380 Economic Development Program and Agreement, together with the "Whereas" recitals above, and the exhibits attached to this Agreement, if any, all of which are incorporated into the Agreement as if set out fully hereinafter.
- b. BPP and Real Property Improvements Grant. The words "BPP Grant" mean the reimbursement to Columbia of amounts equivalent to Columbia's paid, City ad valorem taxes for the Property for those eligible Tax Years, as defined below, between Tax Years 2021-2025 under the terms of this Agreement.
- c. City. The word "City" means the City of McKinney, Texas. For purposes of this Agreement, City's address is 222 N. Tennessee, McKinney, Texas 75069.
- d. Columbia. The word "Columbia" means Columbia Medical Center of McKinney Subsidiary, L.P., a Texas limited partnership, and its successors. For purposes of this Agreement Columbia's address is 4500 Medical Center, McKinney, Texas 75069.
- e. Grant. The words "Grant" or "Grant Payments" mean payments to Columbia under the terms of this Agreement computed with reference to ad valorem taxes received by City for the Property and payable, if at all, as the BPP and Real Property Improvements Grant.
- f. Phase 2. The words "Phase 2" or "Phase 2 of the Project" mean the expansion of the Facility after completing Phase 1, in accordance with Exhibit A, attached hereto and made a part hereof.
- g. Project. The word "Project", including Phase 1 of the Project, means the expansion of the Facility by not less than 80,000 square feet in Phase 1 and additional expansion of the Facility in Phase 2, in accordance with Exhibit A, attached hereto and made a part hereof.

- h. Property. The word "Property" means the real property improvements and business personal property situated at 4500 Medical Center, McKinney, Texas, 75069, including the Project, an 80,000 square feet expansion to the real property improvements as referenced above.
- i. Tax Year. The words "Tax Year" mean a year beginning on January 1 whereupon the ad valorem taxes are assessed and thereafter such assessed taxes are delinquent on January 31 of the following year.

### **SECTION 3. OBLIGATIONS OF CITY.**

During the term of this Agreement and so long as an Event of Default has not occurred and is continuing as set forth in Section 5(b) below (provided, however, an Event of Default hereunder shall not be deemed to have occurred until after the expiration of any applicable notice and cure period) and Columbia has satisfied the obligations in Section 4 below, City shall comply with the following terms and conditions:

For each Tax Year beginning not sooner than Tax Year 2021 and ending in Tax Year 2025, that amount of the revenue in the City's general funds equaling 50% of the City of McKinney ad valorem taxes on business personal property and real property improvements (exclusive of any taxes on land or rollback taxes on land), assessed against the Property on that portion of the assessed valuation exceeding the valuation of such Property in the Base Tax Year 2018, paid by Columbia, and received from the Tax Assessor Collector by City, up to an aggregate maximum of \$675,000.00 for all Tax Years, shall be tendered to Columbia on an annual basis, but in any event no later than March 1 of each year, so long as Columbia shall have satisfied its obligations under Section 4(a) below and not be in an uncured default under this Agreement. No other taxing entity's taxes shall be included in determining the amounts due to Columbia hereunder.

### **SECTION 4. OBLIGATIONS OF COLUMBIA.**

While this Agreement is in effect, Columbia shall comply with the following terms and conditions:

Columbia shall construct new building improvements, locate new business personal property incident to Phase 1 of the Project, and receive a certificate of occupancy therefor on or before December 31, 2020. The Collin County Central Appraisal District shall have increased the assessed value of the Property (in the aggregate of real property improvements [exclusive of land] and personal property) by \$16,000,000.00 over the valuation in the Base Tax Year 2018. In the event the Collin County Central Appraisal District does not increase the assessed value of the Property (in the aggregate of real property improvements [exclusive of land] and personal property) by \$16,000,000.00 over the Base Tax Year 2018, Borrower may render the Property in any Tax Year (for the eligible Tax Years 2021-2025) in an amount equal to or greater

than \$16,000,000.00 over the base year's valuation to receive the reimbursement in Section 3 above. Unless Phase 2 is completed in accordance with the following paragraph, reimbursements shall only be calculated on the increased assessed value of the Property for Phase 1.

To be eligible for additional reimbursements in excess of those incident to the attributable to Phase 1, Columbia shall construct additional new building improvements, locate new business personal property incident to Phase 2 of the Project, and receive a certificate of occupancy therefor on or before December 31, 2024. The Collin County Central Appraisal District shall have increased the assessed value of the Property (in the aggregate of real property improvements [exclusive of land] and personal property) by \$24,000,000.00 over the valuation in the Tax Year following the issuance of the certificate of occupancy in the preceding paragraph. In the event the Collin County Central Appraisal District does not increase the assessed value of the Property (in the aggregate of real property improvements [exclusive of land] and personal property) by \$24,000,000.00 over the valuation in the Tax Year following the issuance of a certificate of occupancy in the preceding paragraph, Borrower may render the Property in any Tax Year (for the eligible Tax Years 2021-2025) in an amount equal to or greater than \$24,000,000.00 over the valuation in the Tax Year following the issuance of a certificate of occupancy in the preceding paragraph to receive the reimbursement in Section 3 above.

## **SECTION 5. EVENTS OF DEFAULT.**

Each of the following shall constitute an "Event of Default" under this Agreement:

- a. Upon the expiration of the notice and cure period set forth in the first sentence of Section 6 below, City's failure to process any Grant payments owing to Columbia in accordance with Section 3(a) of this Agreement or otherwise comply with its obligations under this Agreement.
- b. Upon the expiration of the notice and cure period set forth in the first sentence of Section 6 below, Columbia's failure to comply with Section 4 of this Agreement.

## **SECTION 6. EFFECT OF AN EVENT OF DEFAULT.**

In the event of the occurrence of an Event of Default described under Section 5 above, the non-defaulting may give written notice to the defaulting party of such default, and the defaulting party shall have thirty (30) days thereafter to cure said default. So long as no default exists under Section 5(a), if Columbia shall fail to cure a default under Section 5(b), the City may terminate this Agreement. Upon such termination, the parties shall have no further rights against the other party. So long as no default exists under Section 5(b), and without terminating the Agreement,

Columbia shall have the power to enforce specific performance to collect amounts owing upon City's default under Section 5(a). Columbia shall further have the right to seek a judicial declaration of the appropriate amount of Grant payments owing by City under Section 3(a) above upon exhausting all administrative remedies and appeals granted in this Agreement. In the event of the occurrence of an Event of Default by Columbia under Section 5(b) above and prior to any termination by City, any unpaid Grant payment shall be waived by Columbia. No action shall lie for damages by either party, including punitive damages, and no special or consequential, incidental, indirect, special, or exemplary damages of any kind (including, but not limited to, lost profits, loss of business, loss of use of data, interruption of business) arising from, relating to, or in connection with this Agreement shall be recovered by any party, even if such party has been advised of the possibility of or could have foreseen such damages.

## **SECTION 7. TERMINATION OF AGREEMENT BY CITY WITHOUT DEFAULT.**

City may terminate this Agreement without an Event of Default by Columbia and effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual or illegal, including case law holding that a Chapter 380 Economic Development Agreement remitting general funds as such is contemplated by this Agreement is an unconstitutional debt.

Termination of this Agreement by City under this Section 7 shall render this Agreement null and void from that point forward with each party having no further rights against each other under this Agreement or at law; provided, however, that (i) Columbia shall be entitled to receive from City any Grant due Columbia through the date of termination and (ii) the City and Columbia agree to negotiate in good faith a remedy that preserves the intent of the parties hereunder, including Columbia's reasonably expected receipt of all or a portion of the BPP and Real Property Improvements Grant, as much as reasonably possible including, without limitation, the creation of an interest and sinking fund.

## **SECTION 8. MISCELLANEOUS PROVISIONS.**

The following miscellaneous provisions are a part of this Agreement:

- a. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by all of the parties hereto.
- b. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas. Venue for any action arising under this Agreement shall lie in the state

district courts of Collin County, Texas.

- c. **Assignment.** Columbia shall have the right to assign, transfer or otherwise convey any of its rights to payment under this Agreement, at any time, without the consent of the City to (i) an entity owned or controlled by, or under common control with Columbia and/or (ii) a successor-in-ownership by merger, consolidation or acquisition to all, or substantially all, of the assets of Columbia, with the understanding that Columbia shall provide written notice to the City within thirty (30) calendar days thereafter of the name of such party and the name and telephone number of a contact person affiliated with such party if the party is not an individual. Any lawful assignee or successor in interest of Columbia under this Agreement shall be deemed "Columbia" as applicable, for all purposes under this Agreement.
- d. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Agreement on behalf of City has full authority to execute this Agreement and bind City to the same. Columbia warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- e. **No Waiver; Sovereign Immunity.** Neither any failure nor any delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or of any other right, power or privilege. No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- f. **Execution of Agreement.** The City's Council has authorized the City Manager to execute this Agreement on behalf of City.
- g. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- h. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

- i. **Effective Date.** The effective date (the "Effective Date") of this Agreement shall be May 15, 2018.
- j. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- k. **Force Majeure.** The parties' obligations hereunder, save and except payment obligations, may be postponed for items of force majeure (accident, casualty, act of God, war or civil commotion, or strike).
- l. **Time of the Essence.** Time is of the essence with respect to each and every term and condition of this Agreement. If the time period by which any right, obligation or election must be exercised or performed expires on a weekend or legal holiday, then such time period shall automatically be extended through the close of business on the next regularly scheduled business day.
- m. **Attorney's Fees.** Each party agrees that it shall not seek attorney's fees from the other party in any action to enforce the terms of this Agreement.

[Remainder of Page Intentionally Left Blank; Signatures Follow.]

**COLUMBIA MEDICAL CENTER OF  
MCKINNEY SUBSIDIARY, L.P.,**  
a Texas limited partnership

By: Columbia North Texas Subsidiary GP,  
LLC

By: \_\_\_\_\_  
[Name]

Date Signed: \_\_\_\_\_

**CITY OF MCKINNEY,**  
*a Texas municipal corporation*

By: \_\_\_\_\_  
PAUL G. GRIMES  
City Manager

Date Signed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney

PREPARED IN THE OFFICES OF:

BROWN & HOFMEISTER, L.L.P.  
740 E. Campbell Road, Suite 800  
Richardson, Texas 75081  
214/747-6100



214/747-6111 Fax