

**AMENDED AND RESTATED SECOND AGREEMENT FOR PROPERTY TAX
TRANSFER FROM WEST CONTRA COSTA HEALTHCARE DISTRICT TO CONTRA
COSTA COUNTY**

This AMENDED AND RESTATED SECOND AGREEMENT FOR PROPERTY TAX TRANSFER FROM WEST CONTRA COSTA HEALTHCARE DISTRICT TO CONTRA COSTA COUNTY (this "Agreement") is entered into this 16th day of July, 2013 (the "Effective Date") by and between the West Contra Costa Healthcare District, a California local health care district ("District"), and the County of Contra Costa, a political subdivision of the State of California ("County").

WITNESSETH:

WHEREAS, District owns and operates an acute care hospital in San Pablo, California, doing business as "Doctor's Medical Center – San Pablo" ("DMC"), at which it provides care to, among others, Medi-Cal beneficiaries;

WHEREAS, County believes that the preservation and continuance of DMC as a health care resource is necessary to meet the health needs of the population of West Contra Costa County;

WHEREAS, Section 99.02 of the California Revenue and Taxation Code (the "R&T Code") authorizes District and County to modify the allocation of property tax revenues between them, provided the modification does not violate the conditions set forth in R&T Code Section 99.02 and does not affect the tax revenue allocation for any other public entity;

WHEREAS, to facilitate the preservation of DMC as a health care resource for the communities they both serve, County and District entered into that certain "The West Contra Costa Healthcare District Agreement for Property Tax Transfer to Contra Costa County" dated October 31, 2006 (the "Initial Agreement"), pursuant to which District agreed, under the authority of R&T Code Section 99.02, to provide for the allocation and transfer to County of the entirety of the general *ad valorem* property tax revenues that otherwise would be collected and allocated to District, commencing July 1, 2007, and continuing from year to year thereafter until \$11,500,000 had been allocated and transferred to County, all in consideration of County transferring \$10,000,000 to the California Department of Health Care Services in order to facilitate enhanced Medi-Cal payments to District of up to Twenty Million Dollars (\$20,000,000) for services it rendered to Medi-Cal beneficiaries at DMC during the state fiscal year ending June 30, 2007, and as otherwise provided in the Initial Agreement;

WHEREAS, County and District fully performed their obligations under the Initial Agreement;

WHEREAS, in order to further facilitate the preservation of DMC as a health care resource for the communities served by District and County, District and County entered into that certain Second Agreement for Property Tax Transfer from West Contra Costa Healthcare District to Contra Costa County dated April 5, 2011 (as the same was amended by that certain Agreement (1) Terminating Doctors Medical Center Management Authority; (2) Amending Second Agreement for Property Tax Transfer from West Contra Costa Healthcare District to

Contra Costa County; and (3) Providing for Continued Participation in the Operation of Doctor's Medical Center by County Representatives, effective May 25, 2011, collectively referred to herein as the "Second Agreement"), pursuant to which: (i) County advanced, in installments, the sum of Ten Million Dollars (\$10,000,000) to District; and (ii) District agreed to cause the County Auditor, pursuant to R&T Code Section 99.02, to transfer and allocate to County *ad valorem* property tax revenues that otherwise would be allocated to District in a total amount of Eleven Million Five Hundred Thousand Dollars (\$11,500,000);

WHEREAS, pursuant to the Second Agreement, the parties also established a committee of the District Board that serves as the DMC "governing body," as that term is used in Section 70035 of Title 22 of the California Code of Regulations (respecting licensure and regulation of acute care hospitals), with overall administrative and professional responsibility for DMC;

WHEREAS, of the Eleven Million Five Hundred Thousand Dollars (\$11,500,000) in *ad valorem* property tax revenues to be reallocated and transferred from District to County pursuant to the terms of the Second Agreement, the County Auditor has transferred Six Million Three Thousand Seven Hundred Seventy-Six and 82/100 Dollars (\$6,003,776.82) to the County, and there remains to be transferred Five Million Four Hundred Ninety-Six Thousand Two Hundred Twenty-Three and 18/100 Dollars (\$5,496,223.18) to the County in *ad valorem* property tax pursuant to the terms of the Second Agreement;

WHEREAS, in order to further facilitate the preservation of DMC as a health care resource for the communities served by District and County, the parties desire that County transfer an additional Nine Million Dollars (\$9,000,000) to District and that District now cause the County Auditor to transfer and allocate to County additional *ad valorem* property tax revenues that otherwise would be allocated to District in the amount of Eleven Million Six Hundred Thousand Dollars (\$11,600,000);

WHEREAS, the total *ad valorem* property tax revenues to be transferred to County pursuant to this Agreement is Seventeen Million Ninety-Six Thousand Two Hundred Twenty-Three and 18/100 Dollars (\$17,096,223.18) (the "Restated Property Tax Transfer Amount"), which is the result of the Eleven Million Five Hundred Thousand Dollars (\$11,500,000), which District agreed to be transferred to County pursuant to the Second Agreement, plus the Eleven Million Six Hundred Thousand Dollars (\$11,600,000), which District agreed to be transferred to County pursuant to this Agreement, *less* the Six Million Three Thousand Seven Hundred Seventy-Six and 82/100 Dollars (\$6,003,776.82) the County Auditor has transferred to District from County pursuant to the terms of the Second Agreement;

WHEREAS, in order to accommodate this Agreement, District has held a properly noticed public hearing in accordance with R&T Code Section 99.02 and determined, based upon that hearing, that: (1) revenues are available for this purpose; (2) the contemplated transfer will not result in any increase in the ratio between the amount of revenues of the transferring agency that are generated by regulatory licenses, use charges, user fees, or assessments and used to finance services provided by the transferring agency; (3) the contemplated transfer will not impair the ability of the transferring agency to provide existing

services; and (4) the contemplated transfer will not result in a reduction of property tax revenues to school entities;

WHEREAS, to further accommodate this Agreement, District has adopted a resolution authorizing this Agreement and requesting concurrence by County in the foregoing findings pursuant to R&T Code Section 99.02;

WHEREAS, District and County now wish to enter into this Agreement in order to facilitate the preservation of DMC as a health care resource for the communities they both serve, with the purpose and intent that the same shall entirely amend, restate, replace and supplant the parties' remaining rights and obligations under the Second Agreement, and specifically, to provide for District's additional allocation and transfer of general *ad valorem* property tax revenues to County in consideration of County's transfer of additional amounts to District for the purposes and otherwise as set forth herein;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, and in further consideration of the foregoing premises and the following terms and conditions, the parties hereto agree as follows:

1. DEFINITIONS.

In addition to those words and phrases defined elsewhere in this Agreement, the following words and phrases in this Agreement shall have meanings set forth below:

A. "Ad valorem property taxes" shall mean the sum of the general *ad valorem* tax revenues allocable in regular installments to District, including such incremental increases or decreases as occur by reason of changes in District's property tax base or changes in District's allocations occurring by reason of law or subsequent reallocations of existing property tax revenues to District.

B. "Effective Date" has the meaning set forth in the first paragraph of this Agreement.

C. "Governing Body" shall have the meaning set forth in Section 2.B, below.

2. CONTINUING PROPERTY TAX ALLOCATION.

A. Continuing Property Tax Allocation. This Agreement amends, restates, replaces and supplants the parties' remaining rights and obligations under the Second Agreement. The County Auditor shall allocate and transfer to County the entirety of the general *ad valorem* property tax revenues that otherwise would be collected and allocated to District commencing July 1, 2013, and shall continue to allocate such *ad valorem* property tax revenues to County from year to year, as authorized by R&T Code Section 99.02, until the sum of all such allocations to County equals the Restated Property Tax Transfer Amount and District has satisfied all of its other obligations herein. The allocation and transfer of *ad valorem* property tax revenues to County that otherwise would be allocated to District shall be effective solely upon this Agreement becoming effective and being provided to the County Auditor. The transfer and allocation of property tax revenues provided herein is and shall be an effective and

completed assignment of all of District's rights to the amount of such tax revenues set forth in this Section 2.A, without the need for any further approval or action by District.

B. Governing Body Continued Existence; County Representatives. In further consideration for County's support of District pursuant to this Agreement, District will continue to maintain the committee of the District Board that serves as the "governing body" of DMC (the "Governing Body"), as that term is used in Sec. 70035 of Title 22 of the California Code of Regulations (respecting licensure and regulation of acute care hospitals), with overall administrative and professional responsibility for DMC at least until such time as there has been a transfer and allocation of *ad valorem* property tax revenues to County in an amount equal to the Restated Property Tax Transfer Amount. District agrees that, unless and until District has satisfied its obligations under this Section 2, by causing the allocation, transfer and apportionment of *ad valorem* property tax revenues in an amount equal to the Restated Property Tax Transfer Amount, it will not amend either of District's Amended and Restated Bylaws or the Governing Body Bylaws, to remove, reduce or impair participation by County Representatives in the Governing Body without the prior written consent of County.

C. Governing Body Membership. The Governing Body shall have and exercise the full powers and authority granted to it pursuant to the "West Contra Costa Healthcare District Doctors Medical Center Governing Body Bylaws" adopted April 29, 2011, as amended January 23, 2013, and as the same may be modified and amended with the consent of District and County at least until such time as there has been a transfer and allocation of *ad valorem* property tax revenues to County in an amount equal to the Restated Property Tax Transfer Amount. The membership and composition of the Governing Body shall be comprised of: (i) the five (5) members of the District Board, serving *ex officio*; (ii) four (4) representatives of the County, who shall be the District One representative serving on the County Board of Supervisors *ex officio*, the County Health Services Officer (or his/her designee) *ex officio*, the County Public Health Director (or his/her designee) *ex officio*, and the County Health Services Chief Financial Officer (or his/her designee) *ex officio* (each of the foregoing, a "County Representative" and collectively, the "County Representatives"); and (iii) two (2) representatives of the DMC medical staff, each of whom shall serve for a term of one (1) year. For purposes of selecting the two (2) DMC medical staff representatives to the Governing Body, the DMC Medical Executive Committee shall nominate three (3) members of the DMC medical staff, and a majority of the other members of the Governing Body shall select two of such nominees to serve on the Governing Body, with the third nominee being an alternate who shall serve as a Governing Body member in the event of a vacancy (temporary or otherwise) in either medical staff representative position.

D. County Representative Withdrawal from Governing Body. Notwithstanding the provisions of Article VI (Committees) of the District Amended and Restated Bylaws and Article 3 (Members) of the Governing Body Bylaws, each of which provide that the Governing Body includes (i) the District One representative of the Board of Supervisors, (ii) the County Health Services Officer or his/her designee, (iii) the County Public Health Director or his/her designee, and (iv) the County Health Services Chief Financial Officer or his/her designee, any County Representative may withdraw from the Governing Body by giving at least 60 days written notice to District of such withdrawal.

**3. DISTRICT REPRESENTATIONS, WARRANTIES AND COVENANTS;
CONDITIONS PRECEDENT.**

A. District hereby covenants and agrees that in each fiscal year it will: (i) take all actions necessary, reasonable and/or prudent to ensure that the levy of general *ad valorem* property taxes, upon which the allocation described in Section 2.A of this Agreement depends, will be fully implemented on an annual basis; and (ii) not take any actions that would have the effect of impairing or reducing such levy or the above-described allocation of general *ad valorem* property tax revenues until all amounts due to County hereunder have been allocated and transferred.

B. District was a debtor in a Chapter 9 bankruptcy case (Case No. 06-41774-T), which case was closed by order of the court on December 9, 2010. District hereby represents and warrants that (i) it has satisfied all of its obligations under its plan of bankruptcy reorganization, and that the United States Bankruptcy Court no longer has any jurisdiction over it, and (ii) since the closure of its prior bankruptcy case it has not considered instituting a bankruptcy proceeding, and has no intention of discussing instituting a bankruptcy proceeding, and is not insolvent.

C. County's obligation to effect the transfer to District pursuant to Section 4 of this Agreement shall be conditioned upon the occurrence of all the following matters to the satisfaction of County:

1. District demonstrates to County's satisfaction, in County's sole discretion, that District has complied with R&T Code Section 99.02, as required in order to permit District to enter into and perform the terms of this Agreement;
2. The transactions contemplated by this Agreement shall have been approved by such governmental agencies as may be required;
3. District takes no action to terminate, modify or otherwise alter the Governing Body, its composition or authority;
4. District has not instituted a case in bankruptcy court, or been the subject of any involuntary bankruptcy proceeding, or had a receiver appointed for it or its assets, or admitted in writing its inability to pay its debts as they become due; and
5. District otherwise is and remains in good faith compliance with its obligations hereunder.

4. COUNTY'S FUNDING OBLIGATIONS

A. No later than ten days after the Effective Date, County will transfer to District the amount of Nine Million Dollars (\$9,000,000) in immediately available funds (the "County Transfer").

B. District shall use the proceeds of the County Transfer only to pay and satisfy one or more of the following: (i) debt service on funded indebtedness incurred in

connection with the improvement or operations of DMC first coming due after the Effective Date; or (ii) the general expenses of operations of DMC incurred after the Effective Date.

5. INSURANCE AND INDEMNIFICATION.

A. Insurance. District will obtain or cause to be obtained such insurance as County deems necessary or prudent to protect the District, and the County Representatives from claims and liability to third parties, including without limitation Directors and Officers liability coverage naming the County Representatives as insureds. District will provide the Governing Body and County with evidence of the foregoing insurance no later than 30 days after the Effective Date. County shall be named as an additional insured on all insurance carried by District related to the operation, maintenance and administration of DMC.

B. Indemnification. To the maximum extent permitted by laws, District shall indemnify, defend, save, protect and hold harmless County and the County Representatives, and County's governing body, officers, employees, representatives, agents, successors and assigns (collectively, "Indemnitees"), from and against any and all demands, losses, claims, costs, suits, liabilities, expenses for any damage, injury or death (collectively, "Liability") arising directly or indirectly from or connected with this Agreement or the Indemnitees' actions or inactions under this Agreement or as members of the Governing Body, including but not limited to the Governing Body's oversight of DMC, or any other activity taken pursuant to this Agreement or in connection with the Governing Body, including reasonable attorneys' fees, the Indemnitees may make by reason of such matters. If requested by any of the Indemnitees, District will defend any such suits at the sole cost and expense of District, with counsel approved by County. District's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the Indemnitees, District or any other person or entity; provided, that District is not required to indemnify County for the proportion of Liability a court determines is attributable to the sole negligence or sole willful misconduct of County and is not required to indemnify a County Representative for the proportion of Liability a court determines is attributable to the sole negligence or sole willful misconduct of such County Representative.

6. **COMPLIANCE WITH LAW**. District has ultimate responsibility for ensuring compliance with federal, state and local laws and regulations governing the delivery of health care services at DMC. District will immediately report to the Governing Body any notice of violation. District will solicit the advice of the Governing Body regarding any violation and will take appropriate action, or direct the Governing Body to take appropriate action based on the respective scope of responsibilities, regarding remedial actions as needed or as recommended by the Governing Body.

7. EXCLUSIONS.

District and County recognize that District receives certain special taxes, i.e., parcel tax revenues generated from voter approved parcel tax measures enacted in 2004 and 2011 and that such special parcel tax revenues are not subject to this Agreement.

8. JOINT REVIEW.

District and County may jointly review County property tax records from time to time or as requested by District or County to verify accurate distribution under this Agreement.

9. GOVERNING LAW AND ATTORNEYS' FEES.

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party because of any default under this Agreement or to enforce any provision of this Agreement, or to obtain a declaration of rights hereunder, the prevailing party shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the court.

10. NOTICES.

Any notice or other communication required or permitted hereunder shall be sufficient if in writing, and given either personally, by facsimile (with original forwarded by regular U.S. Mail), regular U.S. mail or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice or communication shall be deemed to have been given and received when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon receipt of the entire document by the receiving party's facsimile machine, and verified by electronic transmission by the sending facsimile machine. Notices that are mailed by regular U.S. mail shall be deemed delivered two business days after deposited in the mail and notices given by Federal Express or other overnight courier service shall be deemed delivered the day following the date of delivery to Federal Express or such other overnight courier. Such notices or communications shall be given to the parties and each of their designees at their addresses set forth below:

If to District:

To the persons then serving as its Chair, Board of Directors and its Chief Executive Officer, at the below address:

West Contra Costa Healthcare District
c/o Doctor's Medical Center
2000 Vale Road
San Pablo, CA 94806
Fax #: (510) 970-5728

If to County:

The person then serving as its County Administrator, at the below address:

Contra Costa County
651 Pine Street, 11th Floor
Martinez CA 94553
FAX#: 925-335-1098

and to:

The person then serving as its Chief Operating Officer/Chief Financial Officer, Department of Health Services, at the below address:

Department of Health Services
50 Douglas Dr Suite 310-A
Martinez, CA 94553
FAX#: (925) 957-5401

Any party hereto may at any time, by giving ten (10) days written notice to the other party, designate any other address or facsimile number in substitution of the address or facsimile number to which such notice or communication shall be given.

11. SEVERABILITY.

If any provision of this Agreement is held invalid, void, or unenforceable but the remainder of this Agreement can be enforced without failure of material consideration to any party, then the remainder of this Agreement shall remain in full force and effect, unless amended by mutual consent of the parties.

12. FURTHER ASSURANCES; CONDITION PRECEDENT.

Each party shall execute and deliver to the other party or parties all such other further instruments and documents and take all such further actions as may be reasonably necessary to carry out this Agreement and to provide and secure to the other party or parties the full and complete enjoyment of its rights and privileges hereunder.

13. CONSTRUCTION.

All parties have been represented by counsel in the preparation of this Agreement and no presumption or rule that ambiguity shall be construed against a drafting party shall apply to the interpretation or enforcement hereof. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend, or affect the meaning of the provision to which they pertain.

14. OTHER MISCELLANEOUS TERMS.

The singular includes the plural; the masculine gender includes the feminine. "Shall" or "will" is mandatory; "may" is permissive.

15. TIME.

Time is of the essence of each and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

County of Contra Costa

By: _____

Director, Contra Costa County
Department of Health Services

West Contra Costa Healthcare District

By: _____

Chair, Board of Directors