WEST CONTRA COSTA HEALTHCARE DISTRICT

WEST CONTRA COSTA HEALTHCARE DISTRICT BOARD OF DIRECTORS
May 25, 2011 – 4:00 pm
Doctors Medical Center – ACR
2000 Vale Road, San Pablo, CA 94806

Board of Directors
Irma Anderson, Chair
Eric Zell, Vice Chair
Beverly Wallace, Treasurer
Deborah Campbell, Secretary
Nancy Casazza, Assistant Secretary

REVISED AGENDA

1. Call to Order

2. Roll Call
   Irma Anderson
   Eric Zell
   Beverly Wallace
   Deborah Campbell
   Nancy Casazza

3. Consent Calendar — I. Anderson
   a. Today's Agenda
   b. Approval of April 29, 2011 Minutes
   c. Public Comment
   d. ACTION: Approval of Consent Calendar and April 29, 2011 Minutes

4. Public Comments
   [At this time persons in the audience may speak on any items not on the Agenda which are within the jurisdiction of the West Contra Costa Healthcare District Board]

5. Board Compensation / Grand Jury Report — D. Gideon
   a. Presentation
   b. Discussion
   c. Public Comment
   d. Action: For Information Only

6. Amendment to the Tax Exchange Agreement with Contra Costa County Dated April 2011 — C. Coffey
   a. Presentation
   b. Discussion
   c. Public Comment
   d. Action: Approval of Amendment to the Tax Exchange Agreement with Contra Costa County Dated April 2011

7. Senate Bill 810 – The California Universal Health Care Act — I. Anderson
   a. Presentation
   b. Discussion
   c. Public Comment

d. *ACTION: Letter of Support from the Board*

8. Support of Eden Township Healthcare District in Keeping San Leandro Hospital Open — D. Campbell
   a. Presentation
   b. Discussion
   c. Public Comment
   d. ACTION: Letter of Support from the Board

9. Announcements

10. Adjournment

DOCTORS
MEDICAL CENTER

Amendment to the Tax Exchange Agreement with Contra Costa County dated April 2011

TAB 6

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

This Agreement is entered into as of the Effective Date specified in Section D(1) below ("Agreement"), 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");

RECITALS

I. Effective February 6, 2007, County and District entered into a Joint Powers Agreement Establishing Doctors Medical Center Management Authority (the "JPA"), which created the Doctors Medical Center Management Authority (herein the "Authority"), a joint exercise of powers authority under Government Code Section 6500, *et seq.*, to provide for the oversight of the District-run Doctor's Medical Center – San Pablo ("DMC").

II. Effective April 5, 2011, District and County entered into that certain Second Agreement for Property Tax Transfer from West Contra Costa Healthcare District to Contra Costa County (the "Property Tax Transfer Agreement), pursuant to which County transferred certain amounts to District and District agreed to allocate certain amounts of its property tax revenues to County.

III. Effective April 29, 2011, District established a standing committee of District with overall administrative and professional responsibility for DMC (the "Governing Body"). District has delegated to the Governing Body the authority to, among other things, approve DMC budgets, determine the types of medical services provided by DMC, and make decisions regarding medical staffing.

IV. District has determined that its action in creating of the Governing Body renders the existence of the Authority unnecessary and County and District have agreed to terminate the JPA and the Authority pursuant to the terms of this Agreement.

V. In addition, County and District wish to clarify their agreement with respect to certain portions of the Property Tax Transfer Agreement, which references the Authority, by amending it in this Agreement.

VI. County and District also desire to set forth certain terms of their agreement regarding County Representatives'(as defined below) continued participation in the operation of DMC and membership on the Governing Body, pursuant to the terms of this Agreement.

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

AGREEMENT

A. TERMINATION OF JPA AND AUTHORITY.

1. Termination of JPA and Authority. Pursuant to Article 11 of the JPA, County and District hereby terminate the JPA and the Authority as of the Effective Date. Notwithstanding the foregoing termination and pursuant to Section 11(d) of the JPA, (i) neither County nor District are released from liabilities that may have accrued prior to the date hereof, and (ii) the termination of the JPA and the Authority does not terminate or in any way affect the survival of any right, duty or obligation of either party to the JPA that is intended to survive termination thereof. There are no obligations of the Authority to be paid and no assets of the Authority to be distributed and no wind-up of the Authority's affairs is needed.

2. Notice to Secretary of State. Not later than 30 days following the Effective Date of this Agreement, District will cause a notice of this Agreement and the termination of the Authority to be prepared and filed with the California Secretary of State.

3. Public Records Retention. District will retain and preserve the records of the Authority and will not destroy any of the records except as permitted by applicable law (i.e.; Government Code Section 60200, *et seq.*, or such other law or regulation adopted by the District that governs destruction of District records).

B. PROPERTY TAX TRANSFER AGREEMENT AMENDMENTS.

The Property Tax Transfer Agreement is hereby amended as follows:

1. Section 2(C) – Governing Body Bylaws. Section 2(C) of the Property Tax Transfer Agreement is hereby deleted in its entirety and replaced with the following:

> "District agrees that, unless and until District has satisfied its obligations under this Section 2, by causing the allocation and transfer of *ad valorem* property tax revenues of $11,500,000 to County, it will not amend either of District's Amended and Restated Bylaws or the Governing Body Bylaws, both of which were adopted on April 29, 2011, to remove, reduce or impair participation by County Representatives in the Governing Body without the prior written consent of County."

2. Section 2(D) – Governing Body Representatives. Section 2(D) of the Property Tax Transfer Agreement is deleted in its entirety and replaced with the following:

> "In further consideration of County's support of District pursuant to this Agreement, District has established a committee of the District Board with overall administrative and professional responsibility for DMC, that will serve as the Hospital "Governing Body" of the DMC 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). The membership and composition of the Governing Body

is made up of (i) five District representatives that are the current members of District Board of Directors, (ii) four County representatives who shall be: the District One representative of the Board of Supervisors; the County Health Services Officer or his/her designee; the County Public Health Director or his/her designee; and the County Health Services Chief Financial Officer or his/her designee, and (iii) two representatives of the medical staff of Doctors Medical Center nominated by District's Medical Executive Committee and shall be set forth in the Governing Body Bylaws."

3. Section 4(B) – District Representations and Warranties. Section 4(B) of the Property Tax Transfer Agreement is hereby deleted in its entirety and replaced with the following:

"District hereby represents and warrants that its Plan of Debt Restructuring has been confirmed and United States Bankruptcy Court approval is not required to enter into this Agreement."

C. PROVISIONS GOVERNING CONTINUED PARTICIPATION IN THE OPERATION OF DMC BY COUNTY REPRESENTATIVES

1. County Representative Withdrawal from Governing Body. Notwithstanding the provisions of Article VI (Committees) of the District 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 (each of the foregoing, a "County Representative" and collectively, the "County Representatives"), any County Representative may withdraw from the Governing Body by giving at least 60 days written notice to District of such withdrawal.

2. 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.

3. 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.

D. MISCELLANEOUS.

1. Effective Date. This Agreement is effective as of the later of the two dates set forth on the signature page to this Agreement (the "Effective Date").

2. Notices. Any notice or other communication required or permitted under this Agreement 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:	If to County:
Irma Anderson, Chair Board of Directors West Contra Costa Healthcare District	County Administrator Contra Costa County

C/O Doctor's Medical Center
2000 Vale Road
San Pablo, CA 94806
Fax #: (510) 970-5728

and to:

Dawn Gideon, Chief Executive Officer
West Contra Costa Healthcare District
C/O Doctor's Medical Center
2000 Vale Road
San Pablo, CA 94806
Fax #: (510) 970-5728

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

and to:

Chief Operating Officer/Chief Financial Officer
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 parties, designate any other address or facsimile number in substitution of the address or facsimile number to which such notice or communication shall be given.

3. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

4. 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 this Agreement shall not be affected and it shall remain in full force and effect, unless amended by mutual consent of the parties.

5. No Third-Party Beneficiaries. Except as otherwise provided herein, no provision of this Agreement is intended to benefit any person or entity not a signatory hereto, nor shall any other person or entity have any right or standing to seek to enforce or recover any right or remedy that may be binding hereunder. There shall be no third party beneficiaries to this Agreement.

5. 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. The recitals to this Agreement and the defined terms therein are incorporated into and made a part of this Agreement.

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

7. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

County of Contra Costa

Dated:_____, 2011.

By: _____
Name: William B. Walker, M.D.
Title: Director, Contra Costa County Department of Health Services

Dated:_____, 2011.

West Contra Costa Healthcare District

By: _____
Name: Irma Anderson
Title: Chair, Board of Directors

Approved as to form:

_____
County Counsel

_____
District Counsel