

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF ESCONDIDO
AND
PALOMAR POMERADO HEALTH
CONCERNING THE PRESERVATION OF DOWNTOWN ESCONDIDO AND
THE REDEVELOPMENT OF THE PALOMAR MEDICAL CENTER.

RECITALS

WHEREAS, since its opening in the downtown area of the City of Escondido (“City”) in 1950, the Palomar Medical Center (“Downtown Medical Campus”) has provided a vital service to the residents of North County San Diego in the form of trauma, emergency, and acute health care services; and

WHEREAS, the Downtown Medical Campus is over 50 years old and serves as the only trauma center in North County San Diego, and over 70% of the hospital beds at the Downtown Medical Campus are located in buildings that do not meet state earthquake safety standards required by the California Hospital Seismic Safety Act; and

WHEREAS, the population of the service area of the Downtown Medical Campus is expected to grow by more than 30% over the next 15 years, including an increase of nearly 35% in the number of people over age 65 and a nearly 100% increase in the number of people between the age of 45 and 64, and consequently the demand for both hospital beds and emergency treatment positions at the Downtown Medical Campus is expected to grow by more than 50% by 2015; and

WHEREAS, Palomar Pomerado Health (“PPH”), a local health care district formed by a vote of the electorate in 1948, and the owner and operator of the Downtown Medical Campus, obtained through a vote of the electorate on November 2, 2004, the authorization to issue and sell \$496,000,000 in general obligation bonds, a material amount of which may be used to upgrade the Downtown Medical Campus; and

WHEREAS, the Board of Directors of PPH (the “Board”) has determined based on an evaluation of reports prepared by outside experts that the preferred and fiscally sensible approach to meeting the health care needs of the District would be to construct a new medical center in addition to renovating and maintaining the Downtown Medical Campus in Escondido; and

WHEREAS, in 2004 PPH approved, and continues to modify, a comprehensive Facilities Master Plan for (a) replacement of patient care facilities that do not meet state standards for

earthquake safety; (b) replacement, renovation, and repair of aging facilities to support advances in medical treatment technologies; (c) expansion of localized, community-based health care services in North County San Diego; and (d) provision of much-needed medical office space to support the provision of medical services to the community; and

WHEREAS, the City, after thorough investigation and analysis, has determined that the continued productive use of the Downtown Medical Campus is essential to the economic vitality of City's downtown business enhancement zone area ("BEZ Area") and is an important component of the City's Downtown and East Valley Parkway Specific Plans; and

WHEREAS, both the City and PPH view the development of the ERTC as a critical component of an effort to attract and maintain skilled employment opportunities within the City, and both Parties view the Escondido Research and Technology Center ("ERTC") as an optimal location within the City to meet the long term health care service needs of the District described in the Facilities Master Plan; and

WHEREAS, the City and PPH are committed both to the ongoing strong presence of PPH at the Downtown Medical Campus within the BEZ Area, and to the development of the ERTC, and will cooperate and use best efforts to achieve the long term economic vitality of both in a manner that is consistent with the objectives laid out in PPH's Facilities Master Plan; and

WHEREAS, the Parties agree that the following principles are central to the terms and conditions of this MOU: (a) PPH will make a good faith effort to maintain, renovate, and repair portions of the Downtown Medical Campus; (b) PPH will consider conversion of existing hospital space to office space at later date; (c) City will vacate the Valley Boulevard Road Segment, as hereinafter defined, to facilitate PPH's construction of a new building at the Downtown Medical Campus; (d) PPH will move its corporate and administrative offices to the Downtown Medical Campus; (e) City will cooperate in good faith to facilitate the development of the Palomar West facility; and (f) PPH will be responsible for financing the improvements to the Downtown Medical Campus.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

I. PURPOSE AND INTENT

The purpose and intent of this Memorandum of Understanding ("MOU") is to provide for the maintenance, renovation, and repair of the Downtown Medical Campus within the BEZ Area, and the construction of new development at and adjacent to the Downtown Medical Campus within the BEZ Area in a manner that meets the objectives of the Parties as PPH establishes a

new hospital facility (“Palomar West”) at the ERTC. The Parties intend that the planning, development and construction of the projects set forth in this MOU be a mutual endeavor in which the Parties actively participate and work together, in good faith and with due diligence – a cooperative effort between two public entities.

It is the intent of the Parties that this MOU constitute the primary legislative act necessary to establish City policy on these matters, and provides the ways and means for the implementation of that policy by such other acts as may be necessary and appropriate to carry out the purpose and intent provided for herein. The Parties both acknowledge and contemplate that there will be additional agreements, including without limitation development agreements, to implement the policy established in this MOU and to comply with the applicable laws and procedures of the Parties. This MOU is being adopted concurrently with the separate development agreement between the parties regarding the development of Palomar West at the ERTC (“Development Agreement”), as well as an amendment to the City’s ERTC Specific Plan to accommodate Palomar West.

This MOU does not provide for entitlements in land or development, such entitlements to be sought through separate proceedings with the City and other public agencies. It is also the intent of the Parties that the requirements of the California Environmental Quality Act (“CEQA”) be fully complied with in the implementation of the matters set forth in this MOU. Nothing in this MOU restricts the Parties’ obligations, rights, or duties with respect to compliance with CEQA.

II. DEFINITIONS

“BEZ Area” means the Escondido business enhancement zone as described and depicted in Section 33-1451 of the Escondido Zoning Code.

“Board” means the Board of Directors of PPH, the governing body of PPH.

“Bond Measure” means that measure titled “Hospital, Emergency Care, Trauma Center Improvement and Repair Measure”, adopted by the voters of the District in the General Election on November 2, 2004, authorizing a sum not to exceed \$496,000,000 for the purposes identified in the bond measure, including, but not limited to, those projects and goals outlined in the Facilities Master Plan.

“City” means the City of Escondido.

“City Council” means the Escondido City Council.

“City Manager” means the person designated by the City to negotiate the terms of this

MOU and facilitate the achievement of the conditions and promises contained in the MOU.

“Development Agreement” means that Development Agreement to be executed by the Parties concurrently with this MOU, concerning the development of the Palomar West Medical Center at the ERTC.

“District” means the legally defined special purpose area of PPH, a roughly 800-square mile area in North San Diego County including all or portions of the cities of Escondido, Poway, Ramona, Rancho Bernardo, Rancho Penasquitos, San Marcos, Valley Center, and Vista, as well as certain unincorporated territories of San Diego County.

“Downtown Medical Campus” means the existing Palomar Medical Center owned and operated by PPH in downtown Escondido, generally located to the east of Valley Boulevard between Valley Parkway and Grand Avenue. The Downtown Medical Campus currently provides trauma, emergency, acute health care, surgical, and other medical services to the District, and may also be referred to as the Downtown Campus.

“Downtown Redevelopment Project” means the renovation, repair, replacement, and construction of new facilities at or near the Downtown Medical Campus, in that portion of the BEZ area roughly bounded by Ivy Street to the west, Valley Parkway to the north, Fig Street to the east, and Grand Avenue to the south, as further described in Section IV. The Downtown Redevelopment Project may take place in one or more phases.

“East Properties” means the properties in the City of Escondido directly east of the Downtown Medical Campus and bounded by Pennsylvania Avenue, Fig Street, and Grand Avenue, as illustrated in Exhibit A.

“Effective Date” means the date on which PPH and the City have duly executed this MOU.

“Environmental Laws” for purposes of this MOU means any law or regulation pertaining to hazardous or non-hazardous waste, protection of soil, groundwater, surface water, or any other physical aspect of the environment, or pertaining to protection of human health, including without limitation the Comprehensive Environmental Resource Conservation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, and all state or local equivalents of these and other environmental laws or regulations.

“ERTC” means the Escondido Research and Technology Center, a 186-acre area generally located south of Vineyard Avenue and north of Harmony Grove Road, between Enterprise Street and Allenwood Lane in the western portion of the City of Escondido, and more specifically described in the Escondido Research and Technology Center Specific Plan.

“Facilities Master Plan” means the comprehensive plan adopted by the Board in July 2004 – as may be amended from time to time at the sole discretion of PPH pursuant to its applicable laws and procedures - to address the future health care needs of the of the District, calling generally for (i) replacement of patient care facilities which do not meet mandated state standards for earthquake safety; (ii) replacement, renovation, and repair of existing aging facilities to support advances in medical treatment, and (iii) expansion and diversification of health care services within the District. Projects in the Facilities Master Plan are to be completed as needed within the District according to Board-established priorities, not inconsistent with the terms of this MOU.

“Force Majeure Event” means any of the following events which prevents a party from performing any obligation under this MOU: any act of God, strike, lockout or other industrial disturbance during the development or construction of the Downtown Redevelopment Project or the Palomar West Medical Center; act of public enemy, blockade, war, insurrection, civil disturbance, explosion or riot; epidemic; landslide, earthquake, fire, storm, flood, or washout; title dispute, or other litigation, including the inability to timely obtain judgments in eminent domain or timely obtain possession through eminent domain after good faith prosecution of such actions and use of best efforts to acquire such properties; governmental restraint, action or inaction, either federal, state, county, civil or military, including the adoption of any new law materially affecting either the ability of the Parties to proceed or the costs of proceeding (but expressly excluding any City restraint, action, inaction, law, policy, or ordinance); any initiative or referendum; and failure to obtain any necessary federal, state or county governmental approval despite good faith efforts to do so.

“Governing Provisions” means the various authorizing statutes, regulations, policies, and procedures that control the actions of PPH and City, respectively, as public entities, including all procedural provisions.

“Headquarters” means the corporate and administrative offices of PPH presently located at 15255 Innovation Drive in the City of San Diego, as further described in Section V(D) of this MOU.

“MOU” means this Memorandum of Understanding.

“Northeast Properties” means the properties in the City of Escondido currently bounded by Valley Parkway, Fig Street, and Pennsylvania Avenue, as illustrated in Exhibit A.

“Palomar West” means the Palomar West Medical Center to be developed at the ERTC, as further described in Section IX.

“Party” or “Parties” means a party or the parties, respectively, to this MOU.

“Pennsylvania Avenue Road Segment” means that portion Pennsylvania Avenue extending from Valley Parkway to Fig Street in the City of Escondido, as illustrated in Exhibit A.

“Valley Boulevard Road Segment” means that portion of Valley Boulevard extending from Grand Avenue to Valley Parkway in the City of Escondido, as illustrated in Exhibit A.

“West Properties” means the properties in the City of Escondido located in the area currently bounded on the north by Valley Parkway, on the south by Grand Avenue, and fronting the Valley Boulevard Road Segment, as illustrated in Exhibit A.

III. EFFECTIVE DATE AND TERMINATION

The execution of this MOU shall occur upon authorization by the Escondido City Council and the PPH Board pursuant to their applicable laws and procedures. Upon execution of this MOU, both City and PPH irrevocably accept the terms of this MOU and agree to be bound by them. Unless otherwise agreed to in writing by the Parties, this MOU shall be valid and binding thereafter, but shall expire on February 8, 2020.

IV. DOWNTOWN REDEVELOPMENT PROJECT – GENERAL

The Downtown Redevelopment Project includes that portion of the BEZ Area at and around the Downtown Medical Campus, and roughly bounded by Ivy Street, Valley Parkway, Fig Street, and Grand Avenue. The narrative description and boundaries of the Downtown Redevelopment Project are given for illustrative purposes only, and do not geographically limit the projects or other efforts the Parties may make to achieve the goals of the MOU. The City and PPH may mutually agree to pursue activities or projects including activities discussed in this MOU and presently intended to take place within the aforementioned boundaries, outside of the boundaries of the Downtown Redevelopment Project, provided that activities or projects outside of the Downtown Redevelopment Project boundary described above shall not affect the Parties’ achievement of the goals or obligations of this MOU. In the construction of the Downtown Redevelopment Project, PPH shall use its good faith efforts to maximize the use of qualified local contractors, sub-contractors and workers.

As a general statement of policy, both the City and PPH agree that in addition to the Palomar West facility, the Downtown Medical Campus shall continue to be a significant component of a comprehensive approach to serving the healthcare needs of the City and the District. The City and PPH agree that for planning purposes, the actions and efforts constituting the Downtown Redevelopment Project, including the replacement, renovation, repair and maintenance of the Downtown Medical Campus, and the construction of new facilities at or near the Downtown Medical Campus, may be divided into one or more phases. The Downtown Redevelopment Project is currently contemplated to consist of three phases, as described herein.

The activities in Phase I of the Downtown Redevelopment Project described below in Section V represent the firm commitments of the Parties, subject to the specific conditions, contingencies, and deadlines described herein. Because of the difficulty in predicting the demand for medical services, the type of services demanded, and the physical and technological requirements to meet those demands, the activities described in Phase II (Section VI) and Phase III (Section VII) below represent the current and best intentions of the Parties, to be achieved through collaboration and cooperation, on a case-by-case basis. The inclusion of an activity in a particular Phase does not signify, and shall not restrict in any way, the chronological order in which any activities take place, nor are the activities in any Phase contingent upon the initiation or completion of the activities in any other Phase, except as expressly stated in this MOU.

The use of the word “Redevelopment” in the term “Downtown Redevelopment Project” is for descriptive purposes only. The term Downtown Redevelopment Project, as used in this MOU, is established for planning purposes only, and does not signify a redevelopment district formed pursuant to, or subject to the terms of, California Health & Safety Code § 33000, *et seq.*, or any other state or local redevelopment law.

Both PPH and City are public entities whose powers are defined and limited by their respective governing provisions, including without limitation, statutes, regulations, policies, and procedures (collectively, “Governing Provisions”). Therefore, even where not expressly stated herein, any commitments or pledged actions described in any of the Phases below are strictly contingent upon compliance with those City and PPH Governing Provisions which cannot be rescinded or contractually waived including without limitation notice and public hearing requirements. Neither party shall be held in default of this MOU if it uses best efforts to achieve the commitment or action described herein, but is precluded from doing so by virtue of compliance with its Governing Provisions.

V. DOWNTOWN REDEVELOPMENT PROJECT PHASE I

A. Vacation/Transfer of Valley Boulevard Road Segment

Upon the express request of PPH, and pursuant to applicable laws and procedures pertaining to street vacations, the City shall permanently vacate the segment of Valley Boulevard between East Grand Avenue and East Valley Parkway (“Valley Boulevard Road Segment”), for the purposes of executing the Downtown Redevelopment Project (“Vacation/Transfer”). The City shall be solely responsible for the implementation of the Vacation/Transfer, including all public notice and hearing requirements, and compliance with Environmental Laws. City shall also be responsible for the design, engineering, and construction of public improvements related to or caused by the realignment of Ivy Street, Grand Avenue, Valley Parkway, or any other street proposed by the City or any other person as a result of the Vacation/Transfer.

PPH shall cooperate with the City and use best efforts to facilitate the Vacation/Transfer,

including but not limited to cooperation in the design and configuration of new and existing streets and structures to facilitate the Downtown Redevelopment Project. Vacation/Transfer shall be deemed complete when the City has (1) vacated the Valley Boulevard Road Segment and ownership of the Valley Boulevard Road Segment has transferred in conformance with applicable laws and procedures pertaining to street vacations, and in compliance with any applicable Environmental Laws; and (2) City zoning and planning laws are revised, if necessary, to allow for the full development of the Valley Boulevard Road Segment area by PPH in a manner consistent with this MOU.

Notwithstanding the above, PPH shall not request that the City engage in the Vacation/Transfer of the Valley Boulevard Road Segment until such time as PPH has acquired the necessary West Properties as described in Section V(B) below, or the Parties have agreed to alternative arrangements wherein the West Office Building described in Section V(C) below can be configured and constructed without needing to acquire any of the West Properties.

B. Acquisition of West Properties

Upon the Effective Date, PPH will use best efforts to acquire, as necessary, one or more of the five parcels in the area currently bounded on the north by Valley Parkway, on the south by Grand Avenue, and fronting the Valley Boulevard Road Segment (the "West Properties"). Acquisition of the West Properties shall be deemed complete when PPH has secured possession or fee title to each of the five parcels comprising the West Properties, or, if PPH determines that it does not need to acquire each of the five parcels, acquisition shall be deemed complete when PPH provides written notice to the City that it has acquired the parcels that are necessary to construct the West Office Building improvements described in Section V(C) below.

For purposes of this Section V (B), "best efforts" shall include without limitation: (1) within two months of the Effective Date of this MOU, the PPH Board will authorize one of its corporate officers to negotiate acquisition of the West Properties, consistent with PPH Governing Provisions; (2) within three months of the Effective Date, PPH will retain one or more real estate professionals to assist in the process of acquiring the West Properties; (3) within seven months of the Effective Date, PPH and/or its agents will meet and confer with each of the five property owners regarding acquisition of the West Properties, provided that said property owners consent to such meetings; (4) within one year of the Effective Date, PPH and/or its agents will assess the market value of the West Properties and/or will cause an appraisal of said properties to be performed; (5) within one year of the Effective Date, PPH will make an offer to purchase one or more of the West Properties as determined necessary for the construction of the West Office Building; and (6) PPH will meet and confer with the City to discuss the progress towards acquisition of the necessary West Properties, pursuant to the Meet and Confer provisions of Section VIII of this MOU.

In the event the provisions of the prior paragraph do not result in the acquisition of all of the West Properties, PPH shall promptly notify City and thereafter, City and PPH shall meet and confer regarding other methods of acquiring the necessary West Properties or a plan of development that will permit construction of the West Office Building in conjunction with the potential re-alignment of streets in the area and other traffic circulation improvements in the area. Thereafter, City and PPH shall jointly exercise all necessary methods of acquiring the West Properties, as permitted by law, at PPH's sole cost and expense.

C. The West Office Building

Upon the completion of both the Vacation/Transfer of the Valley Boulevard Road Segment by the City and the acquisition of necessary West Properties by PPH, PPH will construct a high-quality mixed-use office building (or buildings), totaling not less than 50,000 square-feet, in the western portion of the Downtown Redevelopment Project (the "West Office Building"). The West Office Building shall also include parking capacity sufficient to meet any increased parking demand that it generates. PPH will have sole control of the development and management of any parking facilities, and may contract with any third-party to operate such parking facilities. The West Office Building will be a Class-A, premier office that will attract rents in the upper one-half of the commercial lease market, and will be of comparable quality to office buildings currently located within the City.

The precise location, size, configuration, architectural design, and other details of the West Office Building are to be determined by PPH in accordance with the land use approval processes applicable to PPH as a local health care district, and, to the extent not subject to the specific land use procedures of local health care districts, in accordance with the land use approval processes of the City in the same manner as any similar development within the City. Though PPH will retain the primary responsibility for planning, designing, funding, and developing the West Office Building, PPH reserves the right to enter into agreements with any third party or third parties to develop or jointly develop, in any proportion, the West Office Building. PPH shall make a good faith effort to maximize the use of qualified local contractors, sub-contractors and workers in the development of the West Office Building. PPH shall cooperate with the City regarding the location, size, configuration, architectural design, and other details of the West Office Building. PPH will have the West Office Building ready for occupancy within two years after the conditions of both Section V(A) and V(B) of this MOU have been fulfilled.

D. Corporate and Administrative Headquarters

PPH presently maintains its primary corporate and administrative offices, and its supply

distribution warehouse facility, at 15255 Innovation Drive within the City of San Diego, CA (exclusive of the warehouse facility, the “Headquarters”). The Headquarters serves as the location for both the corporate officers of PPH and its administrative staff responsible for the day-to-day management of PPH operations. In its current location, the Headquarters and warehouse facility occupies approximately 65,000 square feet of office space, housing approximately one-half dozen executives and 222 employees responsible for the daily operations of PPH, with a combined annual payroll of approximately \$16 million.

PPH shall relocate the entire Headquarters, excluding the warehouse facility, to the Downtown Medical Campus within the BEZ Area. The Headquarters shall be relocated to the Downtown Medical Campus upon (1) the issuance of a certificate of occupancy for the West Office Building should the West Office Building be developed; or (2) two years from the date the Office of Statewide Health Planning and Development has issued a letter certifying final approval for occupancy of an acute care hospital facility at Palomar West, pursuant to Section 7-155 of the California Code of Regulations, Part 1, Title 24, should the West Office Building not be developed.

PPH will relocate the distribution warehouse facility to the City, as further described in the separate Development Agreement being executed concurrently by the Parties.

VI. DOWNTOWN REDEVELOPMENT PROJECT PHASE II

PPH will use best efforts to upgrade the McLeod Tower to provide approximately 85,000 square feet of non-hospital bed use. PPH will use best efforts to upgrade for alternative uses other buildings that do not conform to the seismic standards of the Hospital Seismic Safety Act and cannot feasibly be upgraded to comply with the Act in the future, including the McLeod West Extension Tower and the Adams Wing. Phase II improvements will likely also include some new construction. Phase II Improvements at the Downtown Medical Campus may include (1) 30 Acute Rehabilitation beds; (2) 42 Behavioral Health beds, with a focus on Geriatric and Alzheimer’s patients; (3) Inpatient Support Services, including laboratories, pharmacies, and other administrative services; (4) Inpatient and Outpatient Rehabilitation/Therapy Services; (5) Outpatient Radiation Therapy and Oncology Services; and (6) Ambulatory Services, including urgent care, outpatient surgery, and extended care services. Notwithstanding the above, PPH commits to continuing the provision of certain levels of medical care at the Downtown Medical Campus. Though PPH will play the primary role in the completion of the Phase II improvements, PPH reserves the right to enter into agreements with any third party or third parties to develop or jointly develop, in any proportion, the Phase II improvements. In the construction of Phase II of the Downtown Redevelopment Project, PPH shall make a good faith effort to maximize the use of qualified local contractors, sub-contractors and workers.

VII. DOWNTOWN REDEVELOPMENT PROJECT PHASE III

PPH will consider completion of the Phase III improvements described herein, subject to market conditions, feasibility, the ability to acquire necessary properties, and other factors, at the sole discretion of PPH. Phase III Improvements at the Downtown Medical Campus may include (1) a Center for Advanced Surgery; (2) a Skilled Nursing Facility; (3) a Wellness Gym and Fitness Center; (4) a Magnet High School; and (5) 150 to 300 Housing Units, which may include short and long term employee housing, assisted care housing, senior housing, potentially accompanied by mixed-use retail/commercial development.

In order to accomplish the Phase III improvements, the Parties agree that City will need to vacate the portion Pennsylvania Avenue extending from Valley Parkway to Fig Street (“Pennsylvania Avenue Road Segment”), which is identified on Exhibit A. Upon PPH’s written request, as a condition precedent to completion of the Phase III improvements, and subject to applicable laws and procedures pertaining to street vacations, City shall permanently vacate the Pennsylvania Avenue Road Segment for the purposes of executing the Downtown Redevelopment Project. The City shall be solely responsible for the implementation of the vacation of the Pennsylvania Avenue Road Segment, including all public notice and hearing requirements, design and engineering, construction, and any necessary road realignments. PPH shall cooperate with the City and use best efforts to facilitate the vacation of the Pennsylvania Avenue Road Segment, including but not limited to cooperation in the demolition of existing structures, development of new structures, and the design and configuration of new and existing streets to facilitate Phase III of the Downtown Redevelopment Project. The vacation shall be deemed complete when the City has (1) vacated the Pennsylvania Avenue Road Segment and ownership of the Pennsylvania Avenue Road Segment has transferred in conformance with applicable laws and procedures pertaining to street vacations, and in compliance with any applicable Environmental Laws; and (2) City zoning and planning laws are revised, if necessary, to allow for the full development of the Pennsylvania Avenue Road Segment area by PPH as described in this MOU.

In order to accomplish several of the Phase III improvements, PPH would need to acquire several properties on the eastern portion of the Downtown Redevelopment Project, including the properties bounded by Valley Parkway, Fig Street, and Pennsylvania Avenue (“Northeast Properties”), as well as the properties directly east of the Downtown Medical Campus and bounded by Pennsylvania Avenue, Fig Street, and Grand Avenue (“East Properties”), both of which are identified on Exhibit A. If in its sole discretion PPH decides to acquire some or all of the East Properties or Northeast Properties for any purpose, including the completion of the Phase III improvements, PPH will use best efforts to acquire the properties via negotiated purchases from the property owners. Though PPH anticipates playing the primary role in the completion of the Phase III improvements, PPH reserves the right to enter into agreements with any third party or third parties to develop or jointly develop, in any proportion, the Phase III improvements. During the construction of Phase III of the Downtown Redevelopment Project,

PPH shall make a good faith effort to maximize the use of qualified local contractors, sub-contractors and workers.

VIII. MEET AND CONFER

The Parties agree to meet and confer at least once every six months to assess the progress towards implementing the purpose and intent of this MOU and achieving the milestones described herein, and to discuss any ongoing or future efforts towards the same. At such meetings, each Party shall present to the other Party any non-confidential reports, summaries, agreements, contracts, or other tangible documents demonstrating progress towards implementing the policies and achieving the milestones of this MOU. Such meetings will be arranged and conducted by senior administrative officials of the Parties at times and locations convenient for the Parties, as determined by the Parties on an informal basis, so long as they take place at least once in every six-month period.

IX. PALOMAR WEST MEDICAL CENTER

Palomar West is to be a tertiary care facility with full emergency and intervention services. Palomar West will be the District's primary medical/surgical acute care facility and regional trauma center. It will be constructed in one or more phases and will likely include one or more medical office/support buildings, and one or more parking structures. Palomar West shall be planned and constructed within the City, specifically on land identified as Lots 27 through 36 within Planning Area 4 and a portion of Planning Area 5 of the City's ERTC Specific Plan that is being amended concurrently with this MOU. PPH and its agents shall be responsible for the design and construction of Palomar West, including the selection of architects, contractors and project/construction managers.

The preceding paragraph is included for descriptive purposes only, and does not create any rights, duties, or obligations as between the Parties or any other person. The Parties' rights, duties, and obligations with respect to Palomar West are as defined in that certain Development Agreement between PPH and the City being executed concurrently with this MOU.

X. CITY COMMITMENTS

In addition to the commitments expressed in other parts of this MOU, City commits to the following: City shall rezone the land and provide other planning and discretionary approvals, to the extent necessary and reasonable, and consistent with applicable law, to effectuate the goals and purposes of this MOU. City shall use best efforts to effectuate the goals and purposes of this MOU during CEQA and other administrative proceedings, regardless of whether City is an interested person, a responsible agency, or the decision-making body.

XI. CONSTRUCTION ARRANGEMENTS FOR THE DOWNTOWN
REDEVELOPMENT PROJECT

PPH will select the architect, general contractor, and project/construction manager for the Downtown Redevelopment Project, subject to compliance with applicable law. The City shall have sole responsibility to proceed, in compliance with applicable law, to effectuate the Vacation/Transfer of the Valley Boulevard Road Segment, and, if implemented during Phase III, the vacation and transfer of the Pennsylvania Avenue Road Segment. The Parties may mutually agree to provide each other with progress reports and budget comparison statements throughout the Downtown Redevelopment Project, and may mutually agree to meet independently from and in addition to the Parties' required meet and confer sessions pursuant to Section VIII of this MOU, to discuss the progress toward implementing the goals and intentions of this MOU. City may retain whatever construction or engineering expertise it requires in connection with the Downtown Redevelopment Project, including the Vacation/Transfer of the Valley Boulevard Road Segment or the Pennsylvania Avenue Road Segment, and PPH may retain whatever construction expertise it requires in connection with the Downtown Redevelopment Project, with each party responsible for its own costs. The Parties shall ensure that their contractors work together cooperatively to accomplish the goals of this MOU.

XII. LAND ACQUISITION COSTS

PPH shall be responsible for the acquisition of all properties essential to implement the MOU, including without limitation the West Properties, Northeast Properties, and East Properties. The Parties acknowledge that it is desirable that the land necessary for the construction of the Downtown Redevelopment Project be obtained by negotiated purchase, and the Parties shall work cooperatively and in good faith to so acquire such land. The Parties acknowledge that there can be no assurance that the properties proposed to be acquired will successfully be acquired, or that they will be acquired by a date-certain, or that each of the referenced parcels will be acquired, as these outcomes are subject to fluctuating market conditions and the evolving medical demands of the District. The provisions pertaining to the acquisition of these properties - as all provisions of this MOU - shall be subject to the *force majeure* provisions described in Section XXIII.

The City shall not be responsible, either directly or as guarantor, for any costs of acquiring properties, including without limitation land costs, relocation expenses, goodwill payments, or related costs. However, the City will perform the services necessary to expedite the acquisition of properties, the entitlement process, and the design of the Downtown Redevelopment Project, including (a) preparing the Downtown Redevelopment Project boundary survey and description, including preparing a base map to be used by the design teams prior to the start of schematic design; (b) engaging a design/consulting team to design and plan the utility relocations and public roadway improvements associated with Vacation/Transfer of the Valley Boulevard Road Segment; and (c) processing any required changes to zoning laws or the specific

or general plans as necessary to pursue the activities of the Downtown Redevelopment Project.

XIII. RELATED PUBLIC INFRASTRUCTURE IMPROVEMENTS

Subject to the terms of this MOU, the City shall be responsible for the planning and procedures related to the Vacation/Transfer of the Valley Boulevard Road Segment and, if implemented during Phase III, the vacation of the Pennsylvania Avenue Road Segment; provided, however, that the franchise utilities shall be responsible for making certain related infrastructure improvements (i.e., dry utility relocation). The City agrees to work with PPH and the franchise utilities and take all steps necessary to provide that the franchise utilities will relocate their respective systems and pay all costs therein.

XIV. TIMETABLE FOR DEVELOPMENT AND CONSTRUCTION

Subject to all other provisions of this MOU, and for general planning purposes only, the target timetable for the development and construction of the Downtown Redevelopment Project shall be as set forth in Exhibit C. However, Exhibit C is non-binding, subject to change, and represents only the Parties' current best estimates of the timetable and sequencing for the Downtown Redevelopment Project.

XV. OTHER REQUIRED FINANCING INVESTMENTS

The City and PPH shall cooperatively endeavor to obtain commitments from other public, quasi-public, and/or private sources to provide funds, financing, and/or development assistance for land, parking, transportation, infrastructure improvements, or other value reasonably acceptable to the Parties.

XVI. OWNERSHIP OF THE DOWNTOWN MEDICAL CAMPUS

The Downtown Medical Campus, including improved facilities associated with the Downtown Medical Campus in the Downtown Redevelopment Project, is and shall continue to be owned by PPH. With respect to any new facilities constructed at the Downtown Medical Campus as part of the Downtown Redevelopment Project, PPH reserves the right to enter into development agreements, joint ventures, or any other arrangement with a third party or third parties, who may participate in the development, ownership or operation of these facilities. The City shall have no divided interest in the Downtown Medical Campus or the land comprising the Downtown Redevelopment Project.

Property and general liability insurance for the Downtown Medical Campus, including the West Office Building and any other new facilities constructed at the Downtown Medical Campus shall be obtained, and the expense of such insurance shall be borne, by PPH and any third party or third parties participating in the development, ownership, or operation of such facilities. City shall bear no responsibility for insuring such facilities, except where, through a

separate and independent agreement, City becomes a participant in the development, ownership, or operation of any of the new facilities at the Downtown Medical Campus and agrees to bear a portion of the insurance costs.

XVII. UTILITIES

PPH will be responsible for contracting with utility companies to provide all utility services for the Downtown Medical Campus, including improvements associated with the Downtown Redevelopment Project, except for utility services associated with the Vacation/Transfer of the Valley Boulevard Road Segment, and, if necessary the Pennsylvania Avenue Road Segment, for which the City shall be responsible for contracting with all utility companies.

XVIII. COMPLIANCE WITH LAWS

Each Party shall be responsible for compliance with all laws and regulations that may apply to the construction, use and operation of the Downtown Redevelopment Project to the extent that such Party is responsible for that aspect of the Downtown Redevelopment Project. PPH shall have the lead responsibility during the Downtown Redevelopment Project design and construction for ensuring compliance with all licensing, permitting and construction requirements, and with the design and access requirements of the federal Americans with Disabilities Act, hospital laws, and any similar laws.

All Parties to this MOU shall assure that equal opportunities are provided in contracting, sub-contracting and employment regardless of race, color, religion, sex, sexual orientation or national origin.

XIX. CONDITIONS PRECEDENT

Unless waived by both of the Parties, the respective obligations of the Parties as set forth in this MOU are contingent upon (1) full compliance with the California Environmental Quality Act as regards this MOU and the Development Agreement for the construction of Palomar West; (2) the City and PPH concurrently executing and approving a Development Agreement for the construction of Palomar West at the ERTC; (4) the City's approval of any necessary amendments to the ERTC Specific Plan or the City's General Plan, and any other discretionary City approvals being sought by PPH concurrently with the approval of this MOU and the Development Agreement for Palomar West; (4) resolution of any legal or administrative challenges to this MOU, the Development Agreement, the amendment to the ERTC Specific Plan, and any other discretionary approval being sought by PPH concurrently with this MOU; and (5) PPH closing escrow on the remaining property at the ERTC necessary for the development of Palomar West, as further described in the Development Agreement for Palomar West

XX. AMENDMENTS AND MINOR MODIFICATIONS TO MOU

Except as specifically set forth in this MOU, this MOU may not be amended or modified in a material way without the mutual consent of the Parties granted in accordance with Parties' Governing Provisions (such modifications being referred to as "Amendments"). However, the City Council hereby vests the City Manager, and the PPH Board hereby vests its senior administrative officials, with discretion to modify this MOU with respect to minor operating details and other non-material matters ("Minor Modifications") without notice, public hearing, or formal approval by the Parties' respective decision-making bodies, provided that such Minor Modifications do not materially: (1) decrease the rights or increase the obligations of the Parties; (2) increase the financial commitments of the City; or (3) decrease revenue to the City. Any Amendments or Minor Modifications to this MOU must be in writing and signed by the Parties, and shall be considered part of this MOU upon execution by the Parties.

XXI. IMPLEMENTATION

Subject to compliance with the California Environmental Quality Act and any other applicable laws, the Parties shall take all lawful actions, and enter into all legal agreements, within their respective jurisdictions, necessary to implement the purpose and intent of this MOU. Unless specifically directed or prohibited to act in a particular manner by this MOU, each Party shall have the discretion, within its respective jurisdiction, to implement this MOU in the manner that, in its best judgement, is in its best interests.

XXII. BINDING EFFECT AND ENFORCEABILITY

Although the planning, construction, operation, management, use and occupancy of the Downtown Redevelopment Project may be subject to the terms of more definitive agreements, which will encompass issues not addressed in this MOU, the Parties agree that the terms of this MOU may be incorporated into such other agreements. The Parties further acknowledge and agree that this MOU reflects the basic business deal and policy goals of the Parties and is intended to be binding on the Parties and their respective successors and assigns; however, this MOU shall be binding on the Parties only as to the matters set forth in this MOU, and shall not bind the Parties regarding any other future proposal for the redevelopment or improvement of the Downtown Medical Campus or other development anywhere in the City.

XXIII. FORCE MAJEURE

Should any of the Parties be delayed or prevented, in whole or in part, from performing any obligation or condition required by this MOU by reason of a Force Majeure Event, that Party shall be excused from performing that obligation or condition for so long as the Party is delayed or prevented from performing, and for a period of thirty calendar days thereafter, and any affected deadlines shall be similarly extended, except that the termination date of this MOU as

described in Section III shall not be so extended.

XXIV. THIRD PARTY LITIGATION

The filing of any third party actions against City or PPH relating to this MOU, the Palomar West project, and other agreements, entitlements, approvals or other development issues affecting the Property, including without limitation lawsuits or administrative actions, shall not delay or stop the execution or implementation of this MOU or the processing or approval of related entitlements, unless and until the third party obtains a court order preventing the activity or activities. Should a third party action cause an activity or activities in this MOU or related to this MOU to be delayed, and such delay affects any of the timelines in this MOU, the affected timeline or timelines shall be tolled commensurate with the delay caused by the third party action, except that the termination date of this MOU as described in Section III shall not be so extended.

In the event the validity, applicability, or implementation of this MOU is challenged by means of legal proceedings or administrative actions by any party other than the City or PPH, it shall be the option of each Party, at its sole and absolute discretion, whether or not to undertake the defense of such challenge. If either Party determines not to defend such challenge, it shall be the option of the other to defend the validity, applicability or implementation of this MOU in the proceeding. Regardless of whether one or both Parties participate, PPH and City agree to cooperate in the defense of any such challenges, and should one Party choose not to participate in the defense, that Party shall not interfere with the other Party's ability to mount a defense to any challenge.

XXV. COSTS FOR NEGOTIATIONS AND PREPARATION OF DOCUMENTS

Each Party shall be solely responsible for its own legal, accounting, consulting and other professional fees and expenses incurred in connection with the planning and negotiation process for the Downtown Redevelopment Project, and the negotiation and preparation of all agreements and documents required to implement the terms herein.

XXVI. NOTICE

Any notice, demand, complaint, request, or other submission under this MOU shall be in writing and shall be given by personal delivery to the persons designated below, with copies delivered as indicated, or by US Mail, Certified, return receipt requested, with copies mailed as indicated.

For the City: City Manager
City Hall, Second Floor
201 North Broadway
Escondido, CA 92025
FAX (760) 741-7541

Copy: City Attorney
City Hall, Second Floor
201 North Broadway
Escondido, CA 92025
FAX (760) 741-7541

For PPH: Chief Financial Officer
Palomar Pomerado Health
15255 Innovation Drive
San Diego, CA 92128
FAX (858) 675-5132

Copy: Allen Haynie, Counsel for PPH
Latham & Watkins LLP
600 West Broadway, Suite 1800
San Diego, CA 92101
FAX (619) 696-7419

The addresses to which notices shall be sent may be changed by giving ten (10) days written notice of change of address in the manner set forth above.

XXVII. COUNTERPARTS

This MOU may be executed in any number of separate counterparts and by each of the Parties in separate counterparts, each counterpart constituting an original, and all such counterparts constituting but one and the same agreement.

XXVIII. REVIEW AND AUDIT

At its own cost and expense, each Party shall have the right to review and audit, upon reasonable notice, the books and records of any other Party concerning any monies due and owing to the requesting Party, or concerning the expenditure of funds received from the requesting Party. This right does not extend to books and records that do not, in any way, relate

to or concern the accounting of monies as may be owed to the Parties from each other, or the expenditure of monies received from any other Party. Any additional agreement contemplated or required by this MOU shall contain appropriate provisions to implement this Section.

XXIX. OTHER PROVISIONS

The other documents required or contemplated by this MOU shall contain such other provisions, representations, warranties, covenants and indemnities as are customarily included in similar documents related to the development, construction and operation of hospital and medical facilities.

XXX. SUCCESSORS AND ASSIGNS

This MOU shall be binding upon and shall inure to the benefit of the Parties and their respective assigns.

XXXI. GOVERNING LAW

This MOU shall be governed by and construed according to the laws of California.

XXXII. SIGNATORIES

PALOMAR POMERADO HEALTH

By: _____

Marcelo Rivera, M.D., Chairman
On February __, 2006

By: _____

Michael Covert,
President & Chief Executive Officer
On February __, 2006

CITY OF ESCONDIDO

By: _____

Lori Holt Pfeiler, Mayor
On February __, 2006

By: _____

Clay Phillips, City Manager
On February __, 2006

I HEREBY APPROVE the form and legality of the foregoing Memorandum of Understanding this _____ day of February, 2006.

PALOMAR POMERADO HEALTH

CITY OF ESCONDIDO

By: _____

By: _____

Allen Haynie, Counsel to PPH

Jeffrey Epp, City Attorney

EXHIBIT A

Downtown Medical Campus – Existing Layout

EXHIBIT B

Downtown Medical Campus – Potential Layout After Downtown Redevelopment Project

EXHIBIT C

Timetable for Development and Construction of Downtown Redevelopment Project

The following dates and activities are non-binding, tentative, and created purely for the purposes of visualizing a time-sequence of the various potential activities associated with this project. The Parties agree that the exact order in which these activities take place, the time at which the activities are commenced, the duration of the activities, the degree and intensity of the activities, or whether the activities take place at all, are all subject to change, so long as the activities are conducted or not conducted consistent with the terms of this MOU.

February 2006: Adoption of MOU by the Parties.

April 2006: PPH Board to have authorized a corporate officer to negotiate acquisition of the West Properties.

May 2006: PPH to have retained a real estate professional or professionals to assist in the acquisition of the West Properties.

July 2006: First “Meet and Confer” session between the Parties; similar sessions to be held every six months thereafter.

October 2006: PPH to have attempted to meet and confer with each of the five owners of the West Properties regarding acquisition of the Properties.

February 2007: PPH to have assessed or appraised the market value of the West Properties that it intends to acquire.

February 2007: PPH to have made an offer or offers to acquire at fair market value the West Properties that are necessary for the construction of the West Office Building.

June 2007: PPH to request that City carry out Vacation/Transfer of the Valley Boulevard Road Segment provided that PPH has acquired the necessary West Properties or has arranged for the construction of the West Office Building without needing to acquire any of the West Properties.

2007 – 2008: PPH to complete planning, design, documentation, and permitting of proposed Phase I Downtown Redevelopment Project activities.

2008 – 2010: Construction bidding packages out and construction to commence on Phase I activities.

2010: Certificate of occupancy to be issued for West Office Building and Corporate and Administrative Headquarters to be relocated to the West Office Building at the Downtown Medical Campus.

2011 – 2014: PPH to engage in planning, design, documentation, permitting, and construction of proposed Phase II Downtown Redevelopment Project activities.

2013 – 2014: PPH Corporate and Administrative Headquarters to be relocated to the Downtown Medical Campus if the West Office Building has not been constructed.

2014 – 2015: PPH to engage in planning, design, documentation, and permitting of proposed Phase III Downtown Redevelopment Project activities.

2015 – 2016: PPH to acquire the East Properties and/or Northeast Properties as necessary for completion of the Downtown Redevelopment Project Phase III activities

2015 – 2016: PPH to request that City vacate and transfer the Pennsylvania Avenue Road Segment.

2016 – 2017: Construction bidding packages out for any remaining Phase I and Phase II activities and proposed Phase III activities.

2018 - 2019: Completion of any remaining Phase I, II, and III Downtown Redevelopment Project activities.

February 2020: MOU to expire.