

**MEMORANDUM OF AGREEMENT
FOR THE TRANSFER OF TITLE TO REAL PROPERTY**
City of Lompoc & Lompoc Healthcare District

DRAFT

Recitals

A. Lompoc Healthcare District (hereinafter "LHD") is the owner of that land in Lompoc, California located at 508 East Hickory Avenue, more particularly described in Exhibit A, incorporated as part of this agreement, which is commonly known as the Lompoc Hospital (hereinafter the "LHD Property"). The LHD Property includes all structures, buildings, improvements and fixtures on the LHD Property at the LHD Closing Date, including without limitation all nonmedical equipment and appliances used in connection with the Lompoc Hospital, such as heating and air conditioning systems, kitchen equipment and all other facilities used to provide utility services, parking services, ventilation, and trash disposal, but does not include any medical equipment or appliances whether or not they are attached to the real property. No personal property shall be included in the LHD Property except kitchen equipment.

B. The City of Lompoc (hereinafter "City") is the owner of that land in Lompoc, California located at 1501 East Ocean Avenue, more particularly described in Exhibit B, incorporated as part of this agreement, which is commonly known as the Lompoc Valley Community Center (hereinafter the "City Property"). The City Property includes all structures, buildings, improvements and fixtures on the City Property. No personal property shall be included in the City Property.

C. LHD wishes to acquire the existing Lompoc Valley Community Center for demolition to allow construction of a retention basin and parking lot for the new Lompoc Hospital and has requested that City exchange this property for a portion of the LHD Property. The City of Lompoc (hereinafter "City") wishes to maintain through an equitable exchange, at no cost to the City, a replacement facility, with adequate parking, in which to relocate and possibly enlarge the existing Lompoc Valley Community Center which is owned and operated by the City of Lompoc.

D. The Lompoc Healthcare District and City have determined that the transaction described herein will promote the more efficient provision of services to the public and is in the interest of the residents of the City of Lompoc and the Lompoc Health Care District.

NOW, THEREFORE, in consideration of the mutual promises made herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged by each of the parties hereto, LHD and City hereby agree as follows:

1. Transfer Of Property By LHD. LHD shall transfer to City title as cotenant to and a cotenancy interest in the LHD Property to the City, as further described in paragraph 3 of this Agreement, which transfer shall be effective on the LHD Closing Date. On the LHD Closing Date the City and LHD shall take title to the LHD Property as tenants in common. The transfer described in paragraph 2 of this Agreement is accepted by LHD as adequate consideration for the interest acquired by the City in the LHD Property. It is understood and agreed that prior to this transfer LHD may, at its sole election, remove from the LHD Property all equipment used to provide medical services, whether or not such equipment is attached to the LHD Property and whether or not such equipment may also have a nonmedical use, and all such equipment is excluded from the LHD Property.

2. Transfer Of Property By And Payment To City.

a. City shall transfer to LHD all of City's rights, title and interest in the City Property which transfer shall be effective on the City Closing Date. After the City Closing Date LHD shall hold title in fee simple to the City Property.

b. Commencing on the City Closing Date LHD shall allow the temporary use of that structure designated as the "B Occupancy Building" on Site Plan No. 1 for the Lompoc Replacement Hospital as prepared by NTD Stiehler Architects by the City for a community center until the earlier of (i) that date which is 21 days following completion of the remodel by the City of the LHD Property for community center purposes or (ii) that date which is

six months after the LHD Closing Date, at which time the City will completely vacate the "B Occupancy Building". Except as otherwise set forth herein, there shall be no charge to the City for the use of the "B Occupancy Building" for the purpose and during the period described in the preceding sentence. No alterations or improvements of any kind may be made by the City to the "B Occupancy Building". City will be responsible for any damage to the "B Occupancy Building" arising out of, related to, or resulting from the use of the "B Occupancy Building" by the City. City will indemnify, defend and hold LHD harmless from any claim, demand, or cause of action for any damage, injury or loss to any person or to any property arising out of, related to, or resulting from the City's use of the "B Occupancy Building". City will obtain insurance in an amount of not less than \$1,000,000, naming LHD as an additional insured, covering any injury, damage or loss to person or property, arising out of, related to or resulting from the City's use of the "B Occupancy Building", including, but not limited to, any damage or loss to the "B Occupancy Building" or any injury to any person while on property owned by LHD. Proof of such insurance, satisfactory to LHD, must be presented to LHD before the City's occupancy of the "B Occupancy Building" may commence.

c. LHD shall pay to the City the sum of \$500,000 as follows: (i) \$100,000 on the LHD Closing Date; plus (ii) \$400,000 when the City vacates the "B Occupancy Building".

d. The transfer described in paragraph 1 and the payment described in paragraph 2 of this Agreement is accepted by City as adequate consideration for the transfer of title to LHD in the City Property. City may, prior to the City Closing Date, remove from the City Property any or all fixtures.

e. LHD shall provide and conduct environmental review prior to the LHD Closing Date, including all necessary environmental and health studies, and provide all remediation of environmental or health concerns, at a cost to LHD not to exceed \$25,000. LHD shall provide adequate parking facilities for the future uses of LHD properties, at no cost to City, in compliance with City's parking requirements (not to exceed the City's parking requirements in effect on January 1, 2006), in phases as required.

3. General Terms Of Joint Tenancy Of The LHD Property By City And LHD. City and LHD shall enter into an agreement governing their tenancy in common in the LHD Property. That agreement shall include the following provisions:

(i) 15,500 square feet of the LHD Property shall be under the sole control of and occupied by the City or its lessees.

(ii) The remaining 49,800 square feet of the LHD Property shall be under the sole control of and occupied by LHD or its lessees.

(iii) The 15,500 square feet of the LHD Property to be under the sole control of the City shall be that western side of the LHD Property shown in Exhibit C to this Agreement.

(iv) The City and LHD shall each be responsible for, at their sole expense, the maintenance and improvement of that portion of the LHD Property under their respective control. The cost of any maintenance or improvements which are required of the entire LHD Property, or of any part of the LHD Property which part is used by both the City and LHD or is necessary to the maintenance, support or use of those parts of the LHD Property occupied by both the City and LHD, including, but not limited to, heating, ventilation, electrical or plumbing systems effecting the entire LHD Property, roof or parking areas, shall be paid 23.74% by the City and 76.26% by the LHD. Following the LD Closing Date, the City shall have a 23.74% interest in the tenancy in common in the LHD Property and the LHD shall have a 76.26% interest in the tenancy in common in the LHD Property.

(v) LHD agrees that City shall have the option under the terms set forth in this subparagraph 3(v) to obtain the right to control and occupy all or any part of the remaining 49,800 square feet described above as being under the control of and occupied by LHD.

In the event that LHD enters into any agreement with a third party, other than Santa Barbara County, for the purchase or lease of any portion 49,800 square feet of the LHD Property outside of the bounds of the western wing of the LHD Property which remains under LHD's control, LHD will notify the City of that pending sale or lease and the City shall have 60 days from the date of that notice,

(a) in the event of a purchase agreement between LHD and a third party, to purchase from LHD all (but not less than all) of the square footage which is subject to that purchase agreement at the price of \$129.00 per square foot (adjusted by any change in the Consumer Price Index, All Cities Average, from the Effective Date of this Agreement to the date of exercise of the option),

or

(b) in the event of a lease agreement between LHD and a third party, (1) to lease from LHD all (but not less than all) of the square footage which is the subject of that lease agreement on the same terms as set forth in the prospective lease between LHD and the third party, or (2) to purchase all (but not less than all) of the square footage which is subject to that lease agreement at the price of \$129.00 per square foot (adjusted by any change in the Consumer Price Index, All Cities Average, from the Effective Date of this Agreement to the date of exercise of the option).

The options described in this subparagraph 3(v) shall not apply to or in the event of any lease or purchase of the LHD Property by the County of Santa Barbara or any agency of the government of the County of Santa Barbara. In the event that any of the options described in this subparagraph 3(v) are exercised, the percentages applied to the sharing of costs described in subparagraph 3(iv) of this Agreement shall be adjusted on a prorated basis to reflect the increased rights of City and the diminished rights of LHD in the LHD Property. City's rights under the tenancy in common agreement shall be increased, and LHD's rights shall be decreased, accordingly and proportionally.

(vi) Neither the City nor the LHD will engage in or permit any activity on the LHD Property which would materially interfere with the use or enjoyment by the other of the other's part of the LHD Property. For example, and not by way of limitation, it is agreed that the use of the LHD Property by the City or third persons as a community center, City Hall annex, public meeting facility, emergency operations center, evacuation center, child care center, parks and recreation facility, municipal or public safety office facility or similar municipal facility, and the use of the LHD Property by LHD or third persons for office, laboratory or inpatient or outpatient surgical or medical facilities are compatible non-interfering uses and will be permitted.

(vii) the City and LHD shall enter into such further agreement as the City and LHD may deem advisable governing the terms and conditions of the joint occupancy and ownership by them of the LHD Property. In the event that City and LD can not come to further agreement on the terms and conditions of the joint occupancy and ownership of the LHD Property the remaining unresolved terms shall be resolved by binding arbitration by submission to the American Arbitration Association or such other arbitrator to which the City and LHD agree. In the event that, for any reason, the City and LHD are unable to reach such agreement prior to the LHD Closing Date and should such failure be the sole cause of the delay of the LHD Closing Date, LHD shall not be liable to the City for damages for any delay in the transfer of title of the LHD Property to the City or for delay in the payment of any sum to the City required by or from LHD under this Agreement. Such delay will not excuse later performance of transfer of title of the LHD Property or payment of any sum to the City required by or from LHD under this Agreement at such date subsequent to the LHD Closing Date that either City and LHD both agree that the LHD Closing may occur.

4. **Closing Dates.** The transfers described in paragraphs 1 and 2 of this Agreement shall all be effective on, and all instruments shall be delivered to the parties on, and possession of the property being transferred shall be taken by the party to whom the property is being transferred on, the following dates:

(i) for the LHD Closing Date, on such date that the LHD has completed moving into the "I Occupancy Building";

(ii) for the City Closing Date, on such date that the "B Occupancy Building" is suitable and ready for occupancy.

On the Closing Date relevant to the transfer of property by a party, the transferring party shall execute and shall deliver a grant deed, in recordable form and properly executed by a person duly authorized to so act on behalf of that party, conveying the transferring party's respective property in fee simple, the form and substance of which shall be satisfactory to all parties to that transfer.

5. **Warranties By LHD.** LHD hereby warrants and represents that as of the date of this Agreement and as of the LHD Closing Date, that to the best of its knowledge:

(i) no legal actions are pending or threatened against the LHD Property;

(ii) all information, records and studies maintained by LHD for the LHD Property concerning hazardous, toxic or governmentally regulated materials that are or have been stored or released on the LHD property have been disclosed to City;

(iii) that no leases or other agreements granting to any third person an interest in the LHD Property are or will be in effect, excluding a lease on 215 South C Street, Lompoc, to North County Rape Crisis And Child Protection Center for a term to expire on June 30, 2007;

(iv) that the execution, delivery and performance of this Agreement will not conflict with, or result in the breach or other violation of, any other contract, agreement, or instrument to which LHD is a party, or which affects the LHD Property;

(v) no agreements or understandings relating to or affecting the LHD Property exist, except for this Agreement;

(vi) that LHD is the owner in fee simple of the LHD Property and that all liens or other encumbrances on the LHD Property shall be satisfied and removed as of the LHD Closing Date;

(vii) that there is no statute, regulation, law, ordinance or order restricting the LHD's ability to convey an interest in the LHD Property to City and that all necessary approvals for such transfer have been properly and duly obtained; and,

(viii) LHD has had no dealings with any broker, finder or other person who might claim any commission, fee or other compensation for any services related to any part of the transaction described in this Agreement.

If LHD learns of anything that would make these warranties untrue prior to the LHD Closing Date, LHD shall notify City in writing. Upon written notice to LHD within seven (7) days from receipt of LHD's notice, City shall be entitled to terminate this Agreement if either concludes that the LHD Property will be materially affected. Upon such notice any escrow shall be cancelled and no party shall have any rights or responsibilities to the other except as otherwise provided in this Agreement.

6. Warranties By City. City hereby warrants and represents that as of the date of this Agreement and as of the City Closing Date, that to the best of its knowledge:

(i) no legal actions are pending or threatened against the City Property;

(ii) all information, records and studies maintained by City for the City Property concerning hazardous, toxic or governmentally regulated materials that are or have been stored or released on the City property have been disclosed to LHD;

(iii) that no leases or other agreements granting to any third person an interest in the City Property are or will be in effect;

(iv) that the execution, delivery and performance of this Agreement will not conflict with, or result in the breach or other violation of, any other contract, agreement, or instrument to which City is a party, or which affects the City Property;

(v) no agreements or understandings relating to or affecting the City Property exist, except for this Agreement;

(vi) that City is the owner in fee simple of the City Property and that all liens or other encumbrances on the City Property shall be satisfied and removed as of the City Closing Date;

(vii) that there is no statute, regulation, law, ordinance or order restricting the City's ability to convey the City Property to LHD and that all necessary approvals for such transfer have been properly and duly obtained; and,

(viii) City has had no dealings with any broker, finder or other person who might claim any commission, fee or other compensation for any services related to any part of the transaction described in this Agreement.

If City learns of anything that would make these warranties untrue prior to the City Closing Date, City shall notify LHD in writing. Upon written notice to City within seven (7) days from receipt of City's notice, LHD shall be entitled to terminate this Agreement if LHD concludes that the City Property will be materially affected. Upon such notice any escrow shall be cancelled and no party shall have any rights or responsibilities to the other except as otherwise provided in this Agreement.

7. Inspections; Notice Of Completion Of Inspections; Maintenance Of Properties Prior To Closing Dates .

(i) Initial Inspection/Investigation. The parties shall each inspect, examine, investigate and approve the physical condition and legal status of the property which is being transferred to them under this Agreement within 30 days following the Effective Date of this Agreement. Within 30 days of the Effective Date of this Agreement each party hereto will provide written

notice to each of the other parties that all inspections, examinations and investigations by them have been completed and that, except as otherwise provided herein, all conditions for the transfer of the property to be transferred to them hereunder have been satisfied, waived or approved.

DRAFT

(ii) Final Inspection. Not later than 21 days prior to the LHD Closing Date City shall examine the physical condition of the LHD Property and shall provide written notice to LHD that this final inspection by the City has been completed and that, except for the mutual transfers and payments required on the LHD Closing Date as described in paragraphs 1 and 2 of this Agreement, all conditions for the transfer of the property to be transferred to them hereunder have been satisfied, waived or approved.

(ii) Interim Maintenance. LHD shall maintain the LHD Property in the condition that property is in at the time notice of completion of the initial inspection of the LHD Property is given by the City, ordinary wear and tear excepted, until the LHD Closing Date. City shall maintain the City Property in the condition that property is in at the time notice of completion of the initial inspection of the City Property is given by LHD until the City Closing Date; provided, however, that City need not maintain the structure located on the City Property.

8. No Warranties Not Contained Herein. Except for the express representations and warranties set forth in this Agreement or otherwise delivered to any party by another in writing, no party hereto has relied upon, and no party may rely upon, any implied warranties, guaranties, statements, representations, or information about the property being transferred to them, whether made by the transferring party, the transferring party's agents or any other individual representing or purporting to represent the transferring party.

9. Risk Of Loss. LHD shall bear all risk of loss for the LHD Property up to the LHD Closing Date. City shall bear all risk of loss for the City Property up to the City Closing Date.

10. Execution By All Parties; Effective Date. This Agreement, once executed by both City and LHD, shall constitute an offer by each party to whom property is being transferred to purchase the property which is being transferred to that party on the terms and conditions set forth in this Agreement, which offer shall not be revocable or subject to modification by any party hereto. This Agreement shall be effective and binding on any party hereto only after it is executed by both the City and LHD. As used herein the phrase "Effective Date" shall mean that date on which this Agreement is last signed by both the City and LHD.

11. Cooperation. City and LHD shall promptly sign and deliver any further agreements, escrow instructions, deeds or other documents necessary to complete this transaction in a manner consistent with this Agreement and cooperate in undertaking any other actions needed to complete this transaction in accordance with this Agreement.

12. Escrow Costs. If any party terminates this Agreement because of the default of any other party hereto, the defaulting party shall pay all escrow costs. If this transaction closes as provided in this Agreement, all escrow charges shall be divided equally by City and LHD. The parties shall pay their own attorney fees, except as otherwise provided in this Agreement.

13. Notices. All notices under this Agreement shall be in writing and sent by first class mail and by telecopy to each party to this Agreement as follows:

To Lompoc Healthcare District:
Jim Raggio
Lompoc Healthcare District
P.O. Box 1058
Lompoc, CA 93438
Telecopier: (805) 737-3326

To City of Lompoc:
Gary Keefe
City Administrator
City of Lompoc

P.O.Box 8001
Lompoc, CA 93438-8001
Telecopier: (805) 736-5347

DRAFT

The addresses above may be changed by written notice to the other parties.

14. **Governing Law.** This Agreement shall be interpreted and construed in accordance with California law.

15. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

16. **Assignment.** The rights under this Agreement may not be assigned to any person other than LHD or City.

17. **Modifications; Waiver.** No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless it is in writing and signed by the party against which the enforcement of the modification, waiver, amendment, discharge or change is sought.

18. **Captions.** The captions in this Agreement are inserted for convenience of reference and do not define, describe or limit the scope or intent of this Agreement or any of the provisions of this Agreement.

19. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the transactions contemplated by this Agreement and all prior or contemporaneous agreements, understandings, representations or statements, oral or written, are superseded.

20. **Partial Invalidity.** Any provision of this Agreement which is unenforceable, invalid or the inclusion of which would adversely affect the validity, legality or enforcement of this Agreement shall have no effect, but all the remaining provisions of this Agreement shall remain in full effect.

21. **Survival.** Except as otherwise expressly provided in this Agreement, all representations, warranties, covenants, agreements and other obligations of the parties set forth in this Agreement shall survive the closing of this transaction.

22. **No Third-Party Rights.** Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties to this Agreement and their respective successors and assigns, any rights or remedies.

23. **Attorney Fees .** If any legal action or other proceeding, including arbitration or an action for declaratory relief or for an injunction, is brought arising under this Agreement, the prevailing party(ies) shall be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which that party or those parties may be entitled. "Prevailing party" shall include without limitation (a) a party who dismisses an action in exchange for a performance substantially equal to the relief sought in an action or in exchange for sums allegedly due or (b) the party determined to be the prevailing party by a court of law.

24. **Authority To Sign On Behalf Of Party.** Each person signing this agreement warrants and represents that he/she has been duly authorized to do so by the party on those behalf that person is signing and that upon execution this Agreement shall be binding upon that party.

LOMPOC HEALTHCARE DISTRICT ("LHD")

By: _____
James Raggio, Administrator & CEO

Date: _____

DRAFT

CITY OF LOMPOC ("City")

By: _____
Gary Keefe, City Administrator

Date: _____

EXHIBIT LIST

DRAFT

Exhibit A - Legal description of real property owned by LHD

Exhibit B - Legal description of real property owned by City

Exhibit C - Drawing or other specific description of that part of the LHD Property to be occupied by City and that part to be occupied by LHD.