

SAN JUAN COUNTY PUBLIC HOSPITAL DISTRICT NO. 1

RESOLUTION 17-466

A RESOLUTION OF SAN JUAN COUNTY PUBLIC HOSPITAL DISTRICT NO. 1 TO CONTRACT WITH MOUNT BAKER PLANNED PARENTHOOD FOR SEXUAL HEALTH AND REPRODUCTIVE HEALTH SERVICES.

WHEREAS, Resolution 17-461 formed a committee to draft a contract between the San Juan County Public Hospital District #1 ("District") and Mount Baker Planned Parenthood ("MBPP") for the provision of sexual health and reproductive health services for San Juan Island.

WHEREAS, The District and MBPP have set forth their mutual understandings regarding the District's desire to provide financial support for services rendered to the District's residents at the MBPP Friday Harbor Clinic ("FH Clinic") and MBPP's desire to provide such services, attached hereto as attachment A (the "Agreement").

NOW THEREFORE BE IT RESOLVED BY THE HOSPITAL DISTRICT COMMISSIONERS OF THE SAN JUAN COUNTY PUBLIC HOSPITAL DISTRICT NO. 1 THAT:

The District hereby approves the Agreement and authorizes and directs the Chairperson and Secretary of the District to execute and deliver the Agreement to MBPP on behalf of the District.

ADOPTED and APPROVED this 24th day of May 2017.



Commissioner



Commissioner



Commissioner

Commissioner

Commissioner



SUBSIDY AGREEMENT FOR HEALTH CARE SERVICES

THIS AGREEMENT FOR HEALTH CARE SERVICES ("Agreement") is made and entered into this 1st day of July, 2017, by and between Mt. Baker Planned Parenthood ("MBPP"), a Washington State nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and San Juan County Public Hospital District No. 1 (the "District"), a Washington State municipal corporation authorized under the Revised Code of Washington Title 70, Chapter 44. MBPP and the District are jointly referred to hereinafter as "the Parties."

RECITALS

A. MBPP is organized for the charitable purpose of promoting and providing comprehensive reproductive health care services to men and women. It operates clinics in Bellingham, Mt. Vernon, and Friday Harbor.

B. The MBPP Friday Harbor Clinic ("FH Clinic") operates on a part-time basis, open one day a week, with services offered on a sliding scale. A significant portion of its patients receive services for free. Its income is limited to grants and contracts, donations, and patient fees that include reimbursement from Medicaid and private insurance.

C. The District is authorized under RCW 70.44.003 to provide hospital and other medical services to residents of the District and other persons.

D. The District is authorized under RCW 70.44.060(3) and RCW 70.44.240 to contract with other organizations for the services provided by the District.

E. The District desires to provide financial support to MBPP to ensure that District residents have access to the services provided at the FH Clinic and MBPP desires to provide such services.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals above, the mutual benefits to be derived and all terms, conditions, and covenants set forth in this Agreement, the adequacy of which is acknowledged, and intending to be legally bound, the Parties agree as follows:

SECTION 1.

1.1 Obligations of Mt. Baker Planned Parenthood.

1.1.1 Provision of Medical Services. MBPP shall provide sexual health and reproductive health services at the FH Clinic, including but not limited to: contraception, including long-acting reversible contraception; health screenings for men and women; reproductive health counseling; sexually transmitted disease testing, treatment, and counseling;

ORIGINAL

sterilization counseling; and other pregnancy-related health services. The FH Clinic shall be open for provision of such services a minimum of one day per week.

1.1.2 Charity Care and Treatment of Medicare/Medicaid Patients. MBPP shall provide medical care regardless of a patient's ability to pay and at no cost or reduced cost if the patient's income (or the patient's family income) is below 200% of the federal poverty guidelines. MBPP shall accept patients without regard to the patient's insurance status and specifically including Medicare and Medicaid patients.

1.1.3 Fees. MBPP shall ensure that the fees of practitioners who practice at FH Clinic are reasonable as compared to the prevailing fees for comparable services in San Juan County.

1.1.4 Use of District Funds. Any funds provided to MBPP by the District shall be used exclusively for the provision of medical services specified above and the operation of the FH Clinic, which clinic shall be located on San Juan Island.

1.1.5 Annual Reports. MBPP shall present an annual financial report regarding the operation of the FH Clinic to the District's Board of Commissioners at its regular January meeting. The report shall include the following with respect to the FH Clinic: a comprehensive accounting of the funds paid by the District; other revenue received specifically by the FH Clinic, including but not limited to donations, and payments from private insurance, Medicaid and other payers. MBPP shall also provide, as part of the annual report, a detailed description of the services provided during the previous calendar year, including how many patients were treated through these services.

1.1.6 No Sanctions. MBPP represents and warrants that none of its employees, directors, officers, contractors or agents is or has been subject to sanction or barred from participation in or excluded from any state health care program, specifically including Medicaid. Further, MBPP shall promptly inform the District in writing if any such person is sanctioned, barred from participation in or excluded from any such program during the term of this Agreement.

1.1.7 Compliance with Law. MBPP shall comply with all laws, rules, regulations, and requirements of federal, state, city and county jurisdictions now in force or which may hereafter come into force pertaining to the services it provides pursuant to this Agreement.

SECTION 2.

2.1 Obligations of San Juan County Public Hospital District No. 1. The District agrees to pay forty thousand dollars (\$40,000) per calendar year to MBPP to subsidize medical services at the FH Clinic (the "Annual Subsidy"). The Annual Subsidy for the 2017 partial year shall be prorated by multiplying the Annual Subsidy amount by a fraction in which the numerator is the number of days during the period from the Commencement Date to December 31, 2017, and in which the denominator is 365. Payment for any future partial years shall be made using the same methodology. Payment of the Annual Subsidy shall be made in equal,

semiannual installments on June 30 and December 31 of each year with the first payment to be made December 31, 2017.

SECTION 3.

3.1 Terms and Termination of the Agreement.

3.1.1 Term. This Agreement shall begin on July 1, 2017 (the "Commencement Date"), and shall continue in effect for a period of five years ending June 30, 2022 (the "Initial Term"). This Agreement shall automatically renew for additional periods of five years year (the "Subsequent Terms") unless one party provides written notice to the other of its intent not to renew at least one year before the end of the current term. The Initial Term and Subsequent Terms, if applicable, are collectively referred to as the "Term."

3.1.2 Termination for Cause. This Agreement may be terminated by either party for material breach of any provision of this Agreement upon not less than 30 days' prior written notice to the other party. In addition, MBPP may terminate this Agreement upon not less than 30 days' prior written notice to the District if MBPP determines, based on reasonable assessment, that the grant funding, donations, patient fees and other sources of revenues available to MBPP together with the subsidy payment made by the District will not be sufficient to cover the costs of operating the FH Clinic.

SECTION 4.

4.1 Insurance and Liability.

4.1.1 Insurance. MBPP shall procure and maintain, or cause to be maintained, professional and general liability insurance for itself, its employees, and its agents, and its employed or contracted practitioners, with liability limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate. MBPP shall provide the District with certificates of insurance evidencing the insurance coverage required under this section. Upon expiration or effective date of termination of the Agreement, MBPP shall continue to maintain or obtain, or cause to be obtained, extended reporting insurance coverage for all claims relating to the services provided under the terms of this Agreement, with liability limits of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate for a period of not less than seven (7) years following termination of the Agreement.

4.1.2 No District Liability for Expenses or Claims Related to FH Clinic. The parties acknowledge and agree that the District is providing financial support for the FH Clinic to support access to the specified services in the District's service area and that the District is not involved in the management or direction of the FH Clinic or the services it provides. Except for the annual subsidy payment set forth above in section 2.1, and regardless of when they shall be submitted, incurred or made, the District shall have no obligation for expenses or claims of any nature related to operation of the FH Clinic, the condition of the land or building where it is located or any other operations of MBPP. This provision shall apply to all claims of any nature whatsoever, including, but not limited to, professional liability claims, claims arising from the operation or condition of the building and adjacent grounds, environmental liabilities, workers' compensation, unemployment compensation, sick leave, vacation pay, retirement benefits, Social

Security benefits, or any other employee benefits to or for employees. MBPP agrees to defend and hold the District harmless from all such claims.

SECTION 5.

5.1 General Provisions.

5.1.1 Relationship of the Parties. The District and MBPP are at all times acting as independent contractors. Nothing in this Agreement shall be construed or deemed to create any relationship other than independent parties contracting for the purpose of carrying out the terms of this support agreement.

5.1.2 Legal Compliance and Modification, Privacy. The parties are aware of laws prohibiting practices involving kickbacks, rebates, payment for referrals, private inurement and the unauthorized practice of medicine. Each party acknowledges that it has entered into this Agreement without intent to violate such laws and believes that this Agreement does not violate such laws. Each party agrees to seek to enforce this Agreement as it is written and not to assert that the relationship between the parties is anything other than a bona fide contractual relationship.

If any federal or state law or regulation is interpreted by judicial decision, regulatory action or a party's legal counsel in a manner that indicates that this Agreement may be in violation of such law or regulation, the parties shall work in good faith to amend this Agreement as necessary to comply with such law or regulation. If the parties are unable to reach agreement on an amendment, the parties shall unwind the financial terms and terminate this Agreement within a reasonable time.

Each party agrees to comply with all applicable laws regarding privacy and confidentiality of patient health information, including the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, and the implementing regulations as they currently exist and as from time to time amended ("HIPAA"). The parties further agree to negotiate in good faith any additional agreements or amendments to this Agreement that are necessary to ensure compliance with HIPAA. If after good faith negotiations the parties are not able to agree to the terms necessary to comply with HIPAA, this Agreement may be terminated by either party upon written notice.

5.1.3 Dispute Resolution. All disputes relating to this Agreement shall be resolved by the dispute resolution process set forth in Attachment A.

5.1.4 Notices. All correspondence and notices to the District shall be directed to the attention of the Superintendent at San Juan County Public Hospital District No. 1, 1079 Spring Street, P.O. Box 370, Friday Harbor, Washington 98250. All correspondence and notices to MBPP shall be directed to Linda McCarthy, Mt. Baker Planned Parenthood, 470 Reed Street, #2A, Friday Harbor, Washington 98250. Notices shall be delivered personally or mailed by certified mail, return receipt requested. The designated representative and addresses may be changed as necessary by giving notice in the same manner.

Notice shall be deemed received upon personal delivery or three business days after being mailed.

5.1.5 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Washington.

5.1.6 No Assignment. MBPP shall not assign, delegate, or otherwise transfer any duties or obligations under this Agreement without the prior written consent of the District. Any effort to do so shall be void and be cause for immediate termination of this Agreement by the District.

5.1.7 Entire Agreement/Amendment. This Agreement, including the Attachments, constitutes the entire agreement between the parties and supersedes any and all other prior agreements or understandings, either oral or written, relating in any way to the subject matter of this Agreement, and it may be amended only in writing.

5.1.8 No Waiver. No failure by either party to insist upon the strict performance of any provision of this Agreement shall be construed as depriving that party of the right to insist on strict performance of such provision or of any other provision in the future, and no waiver shall be deemed to have been made unless expressly in writing and signed by the other party.

5.1.9 Severability. If any provision of this Agreement or its application to any person or circumstance is held unenforceable, the remainder of the Agreement, or the application of the provision to other persons or circumstances, shall not be affected.

5.1.10 Survival. The provisions of this Agreement identified in Sections 4 and 5.1.3 shall survive the termination of this Agreement.

5.1.11 Binding Effect. This Agreement is binding on the parties and on their respective executors, administrators, representative, successors and assigns.

5.1.12 Construction of Agreement. This parties agree that each party and its counsel have participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any attachment or amendment.

5.1.13 No Third-Party Rights. The parties do not intend the benefits of this Agreement to inure to any third person not a signatory hereto. Nothing in this Agreement or the course of conduct by a party shall be construed as creating any right, claim or cause of action against either party by any person or entity not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective the date first above written.

THE DISTRICT:

San Juan County Public Hospital
District No. 1

By: Bill Williams

Bill Williams, Chair of the Board of
Commissioners

By: Barbara Sharp

Barbara Sharp, Secretary of the Board of
Commissioners

MBPP:

Mt. Baker Planned Parenthood

By: Linda S. McCarty

Name: Linda S. McCarty

Title: Executive Director

ATTACHMENT A
DISPUTE RESOLUTION

1. **Policy.** The parties agree to cooperate in good faith and to deal fairly with each other in carrying out their respective duties under this Agreement. If a dispute arises, the parties shall first try to negotiate a fair and prompt resolution. If they are unsuccessful, the dispute must be resolved by binding arbitration. The provisions of the Washington Uniform Arbitration Act, Chapter 7.04A RCW, are incorporated herein to the extent not inconsistent with the other terms of this Agreement, and the parties acknowledge that they intend to give up their right to have any dispute decided in court by a judge or jury except as provided in RCW 7.04A et seq.

2. **Binding Arbitration.** Any controversy or claim between the parties of any kind whatsoever, including but not limited to those arising from or relating to this Agreement or the relationship between the parties, and any claims arising in tort or under statute, must be resolved by a binding arbitration to be commenced in the manner provided in RCW 7.04A.090, provided, however, that all statutes of limitations that would otherwise apply do apply to disputes submitted to arbitration.

2.1 **Arbitrator.** The arbitration will be conducted by one arbitrator. The arbitrator must be an attorney with at least 15 years' experience in commercial law in Washington State. If the parties cannot, within 15 days after commencement of the arbitration, agree on an arbitrator, each party shall provide the other party with a list of five neutral arbitrators. None of the proposed arbitrators shall be or shall have been employed by, related to or affiliated with either party, nor shall any of them have provided goods or services to or have had a business relationship with either party. If the parties do not propose a common arbitrator acceptable to both parties, the parties or their representatives shall arrange a meeting to be held within five calendar days. Prior to such meeting, each party may advise the other party that it has stricken not more than two names from the other party's list of proposed arbitrators. At such meeting, each party shall select one arbitrator from those remaining on the other party's list, and a coin flip will decide the arbitrator. The party initiating the arbitration shall assign heads and tails to the names of the two proposed arbitrators, and the responding party in the arbitration shall flip a coin to determine the arbitrator.

2.2 **Venue.** The venue of the arbitration shall be Friday Harbor, Washington, or such other location as the parties agree in writing.

2.3 **Arbitrability.** Whether a controversy or claim is covered by this Agreement shall be determined by the arbitrator.

2.4 **Third-Party Intervention.** If either party so requests at any time within 75 days of the submission of the dispute to arbitration, the parties shall try to resolve the dispute by nonbinding third-party intervention, including mediation, evaluation, or both, but without delaying the arbitration hearing date.

2.5 **Arbitration Procedures.** The arbitration must be conducted, generally, under the provisions of the Washington Uniform Arbitration Act, RCW 7.04A et seq., as now

stated or hereafter amended. The arbitrator shall not be bound by the rules of evidence or of civil procedure, but rather may consider such evidence as reasonable business people would consider in the conduct of their day-to-day affairs, provided that the consideration of such evidence is not prohibited under RCW 7.04A et seq.

2.6 Discovery. The arbitrator may authorize such discovery necessary for a fair hearing of the dispute. Such discovery may not extend the time limits established by this section.

2.7 Limitation of Costs. The parties seek to minimize the cost of the dispute resolution process. To that end, the arbitrator may limit live testimony and cross-examination and require that the parties submit some or all of their case by written declaration if he or she determines that it can be done without jeopardizing a fair hearing of the dispute.

2.8 Time Limits. The arbitrator and the parties shall do what is reasonably necessary to conduct the arbitration hearing within 120 days of the date the arbitrator is selected, and the arbitrator shall make every effort to limit the hearing to 2 days and to render his or her opinion within 14 days after the hearing. The parties have specified these time limits to expedite the proceeding, but they are not jurisdictional, and the arbitrator may for good cause afford or permit reasonable extensions or delays, which will not affect the validity of the award.

2.9 Construction of Agreement. The arbitrator has no authority to add to, subtract from, or otherwise change or modify the provisions of this Agreement and may only interpret existing provisions of this Agreement as they may apply to the specific facts of the issues in dispute.

2.10 Award. The arbitrator must render his or her decision in writing. The decision must contain a brief statement of the claims determined and the award made on each claim. In making the decision and award, the arbitrator shall apply applicable law. Absent fraud, collusion, or willful misconduct by the arbitrator, the award will be final, and judgment may be entered in any court having jurisdiction over it.

2.11 Representation by Counsel. All parties shall have the right to representation by legal counsel at any stage of the proceedings.

2.12 Remedies. The arbitrator may award injunctive relief or any other remedy available from a judge, including the joinder of parties or consolidation of this arbitration with any other involving common issues of law or fact or that may promote judicial economy. The arbitrator may also award attorneys' fees and costs to the party that most substantially prevails, but does not have the power to award punitive or exemplary damages.

2.13 Arbitration Expenses. Each party will bear one-half of the arbitrator's fee and any other costs and expenses jointly incurred (court reporter, etc.) in the arbitration. All other costs and expenses, including attorneys' fees, are to be borne by the party incurring them, except as otherwise ordered by the arbitrator.