

2018/2019 CLINIC SUPPORT AGREEMENT

THIS 2018/2019 CLINIC SUPPORT AGREEMENT (the "Agreement") by and between SAN JUAN COUNTY PUBLIC HOSPITAL DISTRICT NO. 3, doing business as Orcas Island Health Care District, a Washington public hospital district (the "District"), and ORCAS FAMILY HEALTH CENTER, a Washington nonprofit corporation ("OFHC") is entered into and effective as of October 1, 2018 (the "Effective Date").

RECITALS

- A. The District was recently formed by a vote of the citizens of Orcas Island to assure the continued availability of primary care and after hour services to the residents and visitors on Orcas Island.
- B. OFHC is a Washington nonprofit corporation that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. OFHC operates a federally qualified rural health center on Orcas Island organized and operated to promote the availability of primary care medical services on Orcas Island for all patients, regardless of ability to pay, located at 1286 Mt. Baker Road, Suite B102, Eastsound, Orcas Island, Washington (the "Clinic").
- C. The District and OFHC desire to enter into this Agreement whereby OFHC will provide specified primary care and other agreed services to residents of and visitors to Orcas Island through the Clinic and the District will provide financial resources to OFHC to support the provision of the agreed services. The Clinic operates at a deficit and OFHC requires financial assistance from the District to enable it to continue to operate the Clinic and provide primary care and after hour services to residents of and visitors to Orcas Island.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the District and OFHC hereby agree as follows:

- Operation of the Clinic.** The District hereby contracts with OFHC to operate and manage a primary care medical facility with federal "rural health clinic" status or such other status as determined by the parties at the Clinic pursuant to the standards of performance set forth below in this Agreement. OFHC shall be responsible for the operation and management of the Clinic consistent with such standards and consistent with OFHC's historic operation of the Clinic. OFHC shall be responsible for establishing and implementing all policies and procedures necessary to operate the Clinic including without limitation, policies related to personnel, services, and pricing. Prior to establishing any policies related to the nature of services provided, OFHC shall consult with the District regarding the need for and implementation of such policies. Final decisions regarding such policies shall be made in the sole discretion of OFHC. The parties acknowledge and agree that each is a tax-exempt organization as a governmental entity or under Section 501(c)(3) of the Internal Revenue Code. As such, each party shall perform its obligations under this Agreement in a manner consistent with the parties' tax-exempt status.
- Relationship of the Parties.** The parties' relationship under this Agreement shall be that of independent contractors. OFHC and the District are not, and shall not be deemed to be, joint venturers, partners, employees, or agents of each other. No party shall have any authority to bind the other without the other's express written consent, and then only insofar as such authority is conferred by such express written consent.

3. **Professional Services.** OFHC shall provide the following professional services, all consistent with mutually agreed skills matrix set forth on Exhibit B.
- 3.1 **Primary Care Services.** A Provider, as defined below, shall be available to provide primary care services at the Medical Clinic during regular office hours, Monday through Friday, excluding holidays.
- 3.2 **After Hours Services.** OFHC shall also provide after hours call coverage including all week nights after 5:00 p.m., weekends and holidays ("**After Hours**"). After Hours call for services will be directed to a OFHC call-in line and callers will be directed to meet a Provider at the Clinic, call 911, seek care during regular clinic hours, or seek such other health care services as is medically appropriate and necessary.
- 3.3 **Additional Medical Services.** OFHC shall have the right to offer additional medical services at the Clinic, based on OFHC's evaluation of the need and support for such services on Orcas Island. OFHC shall consult with the District prior to offering or making changes in such services at the Clinic; provided, however, that the OFHC shall have sole discretion as to whether it will provide such additional services. If such additional services are offered, the services **will not be** considered for purposes of calculating the Clinic Net Loss, unless agreed to in writing by the parties.
4. **Performance Standards.** OFHC shall utilize the skills of its management staff to operate the Clinic in a reasonably economical and efficient manner and will devote such time and energy to such management as it deems appropriate. Specifically, OFHC's operation of the Clinic shall meet the following, minimum standards:
- 4.1 **Medical Staff.** OFHC shall employ or contract with an appropriate number of physicians, advanced registered nurse practitioners ("ARNP") and/or physician assistants ("PA") qualified to provide primary medical care services at the Clinic (collectively, a "Provider" or the "Providers") necessary to deliver the level of service planned in the 2018-2019 Budget described in Exhibit A. This staff will include 1.0 FTE of Medical Director/physician services and an appropriate level of ARNP/PA services. All costs of employing medical staff personnel shall be borne fully by OFHC and included as expenses in determining the Clinic's "**Clinic Net Loss**", as that term is defined in Section 5 below. All Providers shall be required to comply with OFHC's quality safety standards including Physician Quality Reporting Standards ("PQRS") of CMS and every other credentialing body of OFHC. A Provider's failure to comply with either OFHC's quality and safety standards or the PQRS may be grounds for discipline or termination of a Provider. The District shall support OFHC in its personnel decisions related to quality and safety standards, including PQRS.
- OFHC shall consult with the District regarding the employment decisions concerning the Medical Director/physician, but OFHC shall have the ultimate decision making authority concerning the Medical Director/physician. In the hiring process, OFHC shall ensure that all candidates for the Medical Director/physician position at the Clinic are available to be interviewed by the District and shall make available to the District all background and reference checks for such candidates.

- 4.2 Support Staff.** OFHC shall employ all of the support staff necessary to operate the Clinic to the level set forth in Section 4.1. The support staff shall include an on-site clinic manager (the “Clinic Manager”) and such other personnel as determined by OFHC in its sole discretion. OFHC shall use reasonable efforts to hire residents of Orcas Island for all support staff positions. The selection, retention, and discipline of support staff shall be the responsibility of OFHC; however, OFHC will discuss recommendations from the Providers and the District regarding the hiring and retention of support staff. Salaries and personnel policies for all support staff personnel employed or otherwise provided by OFHC at the Clinic shall be in accordance with OFHC’s regular salary and personnel policies applicable to all OFHC employees. The cost of the support staff shall be included as an expense in determining the Clinic Net Loss.
- 4.3 Meetings with the District.** A representative of OFHC (CEO, CFO, CMO, Medical Director or Clinic Manager) shall be available each month to attend the District’s Board of Commissioners’ meetings for the purpose of consulting with and reporting on the operation and financial results of the Clinic. On a quarterly basis, a representative from OFHC will be available to attend the District’s Board of Commissioners’ meeting to provide an update on the finances of the Clinic.
- 4.4 Meetings with EMS.** A representative of OFHC (CEO, CFO, CMO, Medical Director or Clinic Manager) shall be available each quarter to attend a meeting with the District, emergency medical service providers on Orcas Island, and other medical providers on Orcas Island in to review the availability of after hours care and the nature and disposition of the previous quarter’s acute care instances facilitate the coordination of care and to identify issues and opportunities to improve the level of acute and after hours services on Orcas Island.
- 4.5 Accounting and Financial Reports.** OFHC shall furnish the District with quarterly financial statements within thirty (30) days of the end of each calendar quarter, detailing separately the profit or loss of the Clinic, including categories of income and expense, charges, performance against budget and patient visits and worked relative value units (WRVUs). Such financial statements shall be in a form substantially similar to that attached hereto as **Exhibit A**. Income and expense from new lines of service shall be included in the financial statements as a line item for the Clinic but shall not be broken out into a new, separate column/category.
- 4.6 Customer Satisfaction Metrics.** OFHC shall work collaboratively with the District to develop and implement a methodology for measuring customer satisfaction on mutually agreed upon goals including but not limited to access to care and quality of care.
- 4.7 Provider Productivity.** By January 1, 2019, OFHC shall implement provider productivity system to track and report WRVUs by Provider and to implement a compensation structure that incentivizes Providers to perform at a productivity level consistent with the 50th percentile of MGMA standards for WRVUs in similar clinical settings.
- 4.8 Operational Supplies.** OFHC shall furnish and maintain an inventory of such medical and office supplies and services as are reasonably necessary, as determined by the OFHC, for the operation of the Clinic pursuant to this Agreement.

5. **Grant by the District to the OFHC.** In order to promote the availability of primary care medical services on Orcas Island and ensure OFHC's ability to operate the Clinic, the District shall make a grant to OFHC, for OFHC to use for expenses of operating the Clinic in any "Contract Year" (defined below). The initial Contract Year for purposes of this Agreement shall be from the Effective Date through September 30, 2019. OFHC will use good faith efforts to minimize the amount of financial losses incurred by the OFHC.

The "Maximum Grant Amount" shall be \$330,000.00 for any full Contract Year, and shall be pro-rated for any partial Contract Year. Subject to the quarterly reconciliation described below, the District shall award payments of the grant within fifteen (15) days of the start of each quarter during the Contract Year in equal amounts of \$82,500.00 (the "Quarterly Grant Amount").

Calculation of Clinic Net Loss shall be reconciled at the end of each calendar quarter, beginning on December 31, 2018, with the October 31st calculation reconciling performance for the entire Contract Year. If Clinic Net Loss is less than the Quarterly Grant Amount, then the difference between the Clinic Net Loss and Quarterly Grant Amount shall serve as a credit towards the next quarterly grant payment due from the District to OFHC.

For purposes of this Agreement, "Clinic Net Loss" means (i) all revenue from all sources received by the OFHC related to the Clinic, including patient revenue (less contractual allowances and deductions), and donations, less (ii) all the OFHC's direct expenses for operating the Clinic. Clinic Net Loss shall be calculated according to generally accepted accounting principles and shall be measured based on each Contract Year, or the pro rata portion thereof, during the term of this Agreement. OFHC will use its customary financial report format for purposes of calculating Clinic Net Loss.

6. **After Hours Call Payment.** OFHC shall track all After Hour call services that result in a Provider having to meet a patient at the Clinic to provider services After Hours (each, an "After Hours Encounter"). OFHC shall provide monthly reports to the District on all After Hours Encounters, without including protected health information (a/k/a/ PHI) of a patient, to all the District to continue to study the need for After Hours services on Orcas Island. In addition to the support from the grant funding described in Section 5, the District shall pay OFHC \$250.00 for each After Hours Encounter. At the end of each quarter, OFHC shall invoice the District for all After Hours Encounters provided during the previous quarter, plus the employer portion of any payroll taxes incurred by OFHC related to After Hours Encounters. The District shall pay the invoice After Hours Encounters within thirty (30) days of the receipt of the invoice. Compensation from After Hours Encounters payments shall be used to compensate the Providers providing such services based on the number of encounters for each Provider. For purposes of clarity, the After Hours Encounters compensation is not subject to the Maximum Grant Amount.

7. **Term and Termination.**

- 7.1 **Term.** The term of this Agreement shall commence on October 1, 2018 (the "Effective Date"), and terminate on December 31, 2019.

8. **Termination Without Cause.** Either party may terminate this Agreement without cause at any time by providing the other with at least one hundred eighty (180) days written notice of termination. During the six (6) month notice period (the “**Wind Down Period**”), OFHC agrees to continue to provide the Services under the terms of this Agreement in exchange for receipt of the continued Grant payments from the District pursuant to Section 5. During the Wind Down Period, the parties shall discuss the possibility of transitioning the operations of OFHC to the District or another clinical operator. OFHC will use good faith efforts to minimize the amount of financial losses incurred by the OFHC during the Wind Down Period. If the term of this Agreement extends beyond December 31, 2019 for any reason the Quarterly Grant Amount shall be as agreed by the parties. If the parties are unable to reach agreement on such Quarterly Grant Amounts, the Quarterly Grant Amount shall be equal to \$82,500.

8.1 **Termination For Cause.** Either party may terminate this Agreement for cause if the other party fails to perform any term or condition of this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice of such failure to perform.

8.2 **Annual Budget.** OFHC shall present and discuss budget assumptions with the District for its proposed annual budget for the Clinic by September 1st of each calendar year. Based on these assumptions, OFHC shall prepare a preliminary operating budget by October 1st of the same year. The District shall have the right to review, comment on and approve the proposed budget, prior to November 1st of the same year. If the District fails to review and approve the budget, OFHC may terminate this Agreement upon one hundred eighty (180) days written notice to the District, provided that such notice is delivered to the District prior to November 30th of that year.

9. **Insurance and Indemnification.**

9.1 **Professional Liability Insurance.** OFHC shall, or OFHC shall ensure that each licensed healthcare provider performing services at the Clinic shall, procure, maintain or acquire during the term of this Agreement, such professional liability insurance as is reasonably necessary to protect OFHC and the Providers against liability arising from or incident to the operation of the Clinic. Coverage under such insurance shall be not less than One Million Dollars (\$1,000,000) for each occurrence and Three Million Dollars (\$3,000,000) annual aggregate. If this Agreement is terminated by either party, or any licensed healthcare provider performing services at the Clinic ceases to provide services hereunder, OFHC shall ensure that either (i) substantially similar insurance with equivalent coverage limits is continued, or (ii) an extended reporting policy is purchased which, in either event, shall cover any claims which are made during a period of thirty-six (36) months thereafter. Upon the District’s request, OFHC shall provide the District with a certificate of insurance evidencing the insurance coverage required under this Section 9.1. OFHC shall list the District and its Board of Commissioners as additional named insureds on the insurance required by this Section 9.1.

9.2 **General Liability Insurance.** OFHC shall maintain during the term of this Agreement such general liability insurance, workers compensation insurance, and such other insurance as is reasonably necessary to protect it and its employees against liability arising from or incident to the operation of the Clinic. Coverage under any general

liability insurance policy shall be not less than One Million Dollars (\$1,000,000) for each occurrence and Three Million Dollars (\$3,000,000) annual aggregate. Upon request, OFHC shall provide the District with a certificate of insurance evidencing the insurance coverage required under this Section 9.2. OFHC shall list the District and its Board of Commissioners as additional named insureds on the insurance required by this Section 9.2.

9.3 Cost of Insurance. The cost of all insurance required to be maintained by OFHC in this Section 9.3 shall be included as an expense used in determining the Clinic Net Loss.

9.4 Indemnification. OFHC hereby indemnifies and holds the District, its commissioners, officers, employees and agents harmless and agrees to defend the District, its commissioners, officers, employees and agents from and against any and all claims, actions, damages, liabilities and expenses of any kind whatsoever and including reasonable attorneys' fees, and costs ("Claims") resulting from or connected with any loss of life, personal injury, and damage to personal or real property, arising from or out of or occasioned by any negligent or intentional act or omission of OFHC, its officers, employees, agents, sublessees or contractors related to the OFHC's operation of the Clinic. OFHC's obligation to indemnify the District pursuant to this Section 9.4 shall survive the expiration or termination of this Agreement for any reason.

10. Miscellaneous.

10.1 Assignment; Amendments. Neither party shall assign (including by merger, consolidation, or acquisition) its rights, duties, or obligations under this Agreement without the prior written consent of the other, which consent may not be unreasonably withheld. This Agreement may be amended at any time by mutual agreement of the parties without additional consideration, provided that before any amendment shall become effective, it shall be reduced to writing and signed by the parties.

10.2 Notices. Any notices, demands and other communications to be given or delivered under this Agreement will be given in writing and will be deemed to have been given when personally delivered, received via facsimile where the sending party receives confirmation of transmission, or courier service where acknowledgment of receipt is provided or three (3) days after being mailed by certified first class mail, return receipt requested. Notices, demands and communications will, unless notice is given specifying another address, be sent to the addresses indicated below. Any party may change the address to which notices are to be sent by notifying the others of such change in writing pursuant to this Section 10.2.

The OFHC: Orcas Family Health Center
1286 Mt. Baker Road, Suite B102
P.O. Box 1055
Eastsound, Washington 98245
Attention: President & CEO

The District: San Juan County Public Hospital District No. 3
18 Haven Road, Second Floor
P.O. Box 226
Eastsound, Washington 98245
Attention: Superintendent and President

- 10.3 Governing Law.** This Agreement shall be governed by the laws of the State of Washington, without regard to the conflicts of law provisions of such state. Venue for any action in respect of this Agreement is in an appropriate court in San Juan County, Washington.
- 10.4 Authority to Execute.** If any party is a corporation, association, partnership or government agency, each individual executing this Agreement on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such entity, and that this Agreement shall be binding upon said entity in accordance with its terms.
- 10.5 Arbitration.** In the event of any dispute of rights or duties among the parties pertaining to this Agreement, the matter shall be submitted to binding arbitration. The arbitration shall be conducted in Anacortes, Washington, pursuant to the Commercial Arbitration Rules of the American Arbitration Association (“AAA”), which are deemed to be incorporated by reference into this Agreement. The arbitration shall be conducted by a single, neutral arbitrator. The parties to the arbitration shall be entitled to such discovery as would be available to them in a proceeding in the San Juan County Superior Court. The arbitrator shall have all of the authority of said court incidental to such discovery, including the authority to issue orders to provide documents or other materials and orders to appear and submit to deposition, and to impose appropriate sanctions, including entry of an award against a party, for failure to comply with any order. The arbitrator shall be the judge of the admissibility of the evidence offered and conformity to the legal rules of evidence shall not be necessary. Judgment on the arbitration award may be entered in any court of competent jurisdiction. Statutes of limitation applicable under Washington law shall apply to proceedings in arbitration.
- 10.6 Entire Agreement.** The provisions of this Agreement, along with Exhibits and Schedules attached hereto and which are incorporated herein by this reference, constitute the entire agreement of the parties regarding the subject hereof and shall supersede all prior agreements negotiations and understandings.
- 10.7 Severability.** The provisions of this Agreement shall be deemed severable and if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties.
- 10.8 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the legal representatives, successors, heirs and assigns of the parties.
- 10.9 Captions.** Any captions to or headings of the articles, sections, subsections, paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties, are

not a part of this Agreement, and shall not be used for the interpretation or determination of validity of this Agreement or any provision hereof.

10.10 Waiver of Provisions. Any waiver of any terms and conditions hereof must be in writing, and signed by the parties hereto. A waiver of any term or condition hereof shall not be construed as a future waiver of the same or any other term or condition hereof.

10.11 Counterparts. This Agreement may be executed in counterparts and each counterpart constitutes an original document. Signatures transmitted by facsimile, email or electronic signatures shall be deemed valid execution of this Agreement, binding on the parties.

10.12 Right to Audit. At any time, but no more than once during any calendar year, upon reasonable notice to the OFHC, the District shall have the right to have an independent, qualified, third-party financial firm perform an audit of the OFHC books and records and financial performance related to the OFHC and the calculation of the operating loss. Unless agreed to in writing by OFHC, the District shall bear the full cost and expense of any such requested audit; provided, however, that if such audit demonstrates that OFHC overstated its loss by more than ten percent (10%), in addition to refunding the District for any over payments of the Grant, OFHC shall reimburse the District for the full cost of such audit.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date written below.

DISTRICT:
SAN JUAN COUNTY PUBLIC HOSPITAL DISTRICT NO. 3

By: Richard Fralick
Its: President

Date: _____

OCHC:
ORCAS FAMILY HEALTH CENTER

By: _____
Its: President

Date: _____

**EXHIBIT A
FORM OF FINANCIAL STATEMENT**

DRAFT

Skills Summary for Island Medical Providers

❖ Preventive Care

- Adults
 - Well woman exams including contraception (including IUD placement and other long-term contraceptive provision by at least one provider), preconception counseling and postmenopausal issues
 - Pregnancy diagnosis and undesired pregnancy counseling
 - Well man exams
 - FAA pilot medical certification
 - Knowledge of appropriate screening exams (e.g. screening for cancer, diabetes, cholesterol)
 - Knowledge of age appropriate immunizations
- Children
 - Well infant and child exams and appropriate health screenings
 - Developmental and behavioral health screening
 - Sports physicals
 - Knowledge of age appropriate immunizations

❖ Chronic Disease Care Management

- Adults
 - Management of chronic medical conditions such as asthma, hypertension, diabetes, heart disease, obesity, COPD, arthritis, neurodegenerative conditions including Parkinsons and Alzheimers, etc.
 - Management of dermatologic issues including procedural skills such as skin biopsy, treatment of actinic keratoses, treatment of localized non-melanoma skin cancer as appropriate, excision of “lumps and bumps”
 - Management of chronic pain issues emphasizing non-narcotic treatments whenever feasible.
 - Management of opioid addiction and other substance abuse issues (including at least 1 practitioner providing suboxone or Subutex prescription and management)
 - Management of common behavioral health problems such as depression, anxiety, seasonal affective disorder and insomnia
 - Management of palliative care issues and coordination of care with home health and hospice when appropriate
 - Management of Geriatric care issues including dementia and other cognitive impairment in coordination with specialists including timely referrals and follow-up
 - Coordination of care with specialists including timely referrals and follow-up
- Children
 - Management of common childhood medical problems such as asthma and obesity
 - Management of behavioral health problems such as ADHD, anxiety, depression and eating disorders

- Management of simple dermatologic issues such as warts and eczema
- Coordination of care with specialists including timely referrals and follow-up

❖ **Acute Medical Illness**

- For adults -Assessment and management of mild and moderate acute medical illness such as acute infections, asthma or COPD flare, bronchitis, Congestive Heart Failure exacerbation, chest pain, abdominal pain, urinary tract issues, STDs, dehydration etc.
- For children – Assessment and management of acute illness such as febrile and other infectious illness, asthma flare, abdominal pain, etc.
- For women – initial miscarriage management, abnormal bleeding evaluation and management
- Evaluation and treatment of acute dermatologic problems such as insect bites and skin rashes
- Provision and interpretation of 12 lead ECGs, lab and imaging tests as appropriate
- Coordination of higher level of care on the mainland as medically appropriate

❖ **Acute and Subacute Injury**

- Evaluation and suturing of lacerations
- Management of other acute skin injuries such as burns, cutaneous foreign bodies, animal bites and abrasions
- Assessment of acute and subacute musculoskeletal injury and complaints
 - Management of acute sprains, strains
 - Management of sports injuries including concussions
 - Management of simple fractures including appropriate splinting and casting
 - Management and reduction of simple joint dislocations such as interphalangeal joints (fingers) and shoulder
 - Management of back pain, sciatica
 - Management of other joint pain and musculoskeletal problems including overuse issues
 - Initial assessment and management of other extremity fractures and injuries with the provision of braces and splinting and coordination of transfer of care to mainland orthopedist
 - Initial x-ray interpretation for orthopedic injuries (pending radiologist overread as indicated)
 - Coordination of care with other specialists as appropriate

❖ **Collaboration with EMS** providers directly to coordinate care for patients first encountered via EMS

❖ **Collaboration with County Public Health Department** on issues impacting community health such as outbreaks of infectious diseases

❖ **Other Desired (but not required) Acute Care Skills for each physician**

- ACLS, PALS and ATLS certifications ideal or a more unified program such as CALS
 - Airway management skills in conjunction with above life support skills to aid EMS in the event of local mass casualty event would be ideal
- ❖ **Other Desired skills/services (could be shared among providers – e.g. only 1 or 2 might provide any given service)**
- Prenatal care – provision of this care would be ideal in coordination with mainland obstetric providers since no certified providers are currently available on island
 - Circumcision
 - Exercise treadmill testing
 - Point of care ultrasound
 - Dermatoscopic exams
 - Obstetric management (deliveries, etc.) in collaboration with EMS if transport off-island is unavailable
- ❖ **Expected Other Services available at the clinics**
- Immunizations – all routine CDC recommended immunizations for children and adults
 - Provision of IV fluids when indicated
 - Provision of IV medications when indicated such as antibiotics, antiemetics, and pain medications
 - Starting dose medications for after hours patients (such as basic antibiotics, oral steroids, albuterol MDI)
 - Blood draws and other lab processing for all patients with a valid physician lab order
 - Point of care lab tests including rapid strep, pregnancy tests, urine dipstick, rapid influenza, point of care INR, wet mounts, KOH preps and other tests as appropriate
- ❖ **Desired Other Services Ideally available**
- Expanded lab capability including CBC, BMP or even better CMP, troponin, cholesterol panel