

KPHD

Kennewick Public Hospital District
Board of Commissioners
SPECIAL MEETING
Packet

Thursday, Mar. 19, 2020
10 N. Washington Street
Kennewick, WA
6:00 p.m.

**KENNEWICK PUBLIC HOSPITAL DISTRICT
BOARD OF COMMISSIONERS
BOARD MEETING
AGENDA**

SPECIAL MEETING

Thursday, March 19, 2020 | 10 N. Washington Street, Kenn., WA

CALL TO ORDER

I. DISTRICT BUSINESS

- A. Overview of Resolution 2020-2 regarding the District's membership interest in Tri-Cities Cancer Center – Lee Kerr and Gary Long**
- B. Resolution 2020-2 Approving Agreement Regarding Membership Interest in Tri-Cities Cancer Center***
- C. Discussion on board meeting and committee procedures during COVID-19 restrictions***

II. COMMISSIONER COMMENTS

ADJOURNMENT

AGREEMENT REGARDING MEMBERSHIP INTEREST

THIS AGREEMENT REGARDING MEMBERSHIP INTEREST (“Agreement”) is entered into as of March 16 2020 (“Effective Date”), by and among Tri-Cities Cancer Center, a Washington nonprofit corporation (“TCCC”), Kennewick Public Hospital District, a Washington public hospital district (“KPHD”), and Kadlec Medical Center, a Washington nonprofit corporation (“Kadlec”) (as to Section 5 only). TCCC and KPHD are sometimes referred to herein individually as a “Party” and together as the “Parties.”

RECITALS

A. KPHD and Our Lady of Lourdes Hospital at Pasco, a Washington nonprofit corporation (“OLOL”) (the “Withdrawing Members”) are members of TCCC and on August 1, 2019, each delivered to TCCC a notice of withdrawal from membership in TCCC.

B. The Parties desire to enter into this Agreement to provide for the terms of the withdrawal of KPHD and the termination of its participation in TCCC as of the Closing Date (defined below).

AGREEMENT

NOW, THEREFORE, in consideration of the agreements and covenants set forth below, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto hereby agree as follows:

1. **Closing**. The closing of the transactions described in this Agreement (the “Closing”) shall take place at the offices of TCCC, 7350 W. Deschutes Avenue, Kennewick, WA 99336, at 10am Pacific Standard Time, on or before March 23, 2020 (the “Closing Date”). Prior to the Closing Date, OLOL and TCCC shall enter into an agreement on substantially the same terms as the Agreement regarding the termination of OLOL’s rights as a member of TCCC. This Agreement is subject to the approval of KPHD’s Board of Commissioners. KPHD shall call a Special Meeting of KPHD’s Board of Commissioners for this purpose, to be held within three (3) business days following the Effective Date hereof. This Agreement shall terminate if approval is not received on or before March 23, 2020.

2. **Membership Interest**. Effective as of the Closing Date, KPHD shall no longer be a member of TCCC. All rights of KPHD as a member of TCCC shall terminate at Closing, including, *inter alia*, its rights to approve amendments to Articles of Incorporation or Bylaws of TCCC and any other rights and privileges under the Articles of Incorporation, Bylaws or organizational documents of TCCC.

3. **Resignation**. Any members of the board of directors of TCCC who have been appointed by KPHD or who serve *ex officio* due to holding a KPHD office (“Resigning Directors”) shall be deemed to have resigned effective as of the Closing. The Resigning Directors shall provide written notices of resignation to TCCC, on or before the Closing Date and effective as of the Closing.

4. **Payment.** TCCC shall pay to KPHD a lump sum withdrawal payment at Closing in the amount of Three Hundred Forty-One Thousand Dollars (\$341,000).

5. **Members' Agreement.** Effective as of the closing of the withdrawal of each Withdrawing Member, the obligations and duties of KPHD (and Kadlec with respect to KPHD) under the Members' Agreement, dated as of February 10, 1993, as amended ("Members' Agreement"), by and among the Withdrawing Members and Kadlec shall terminate. KPHD hereby releases Kadlec and TCCC from losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including professional fees and attorneys' fees (collectively, "Losses"), that are incurred by KPHD, known or unknown, which KPHD had, now has, or may acquire with respect to the Members' Agreement. Kadlec and TCCC hereby release KPHD from Losses that are incurred by Kadlec or TCCC, known or unknown, which Kadlec or TCCC, respectively, had, now has, or may acquire with respect to the Members' Agreement.

6. **Representations, Warranties, and Covenants of KPHD.** KPHD represents, warrants, and covenants to TCCC now and on the Closing Date the following:

(a) **Authorization.** The execution, delivery, and performance of this Agreement by KPHD and the consummation of the transactions described herein have been duly authorized and approved by the appropriate governing body of KPHD, and no other corporate action is necessary to authorize the execution, delivery, and performance of this Agreement.

(b) **No Violation.** The execution, delivery, and performance of this Agreement and the consummation of the transactions described herein will not violate, conflict with, result in a material breach or termination of the terms, conditions, or provisions of, or constitute a default under (i) any of the governing documents of KPHD, (ii) any agreement, including any agreement with RCCH Trios Health, LLC (or its successors or affiliates), or (iii) any applicable law.

(c) **No Transfer.** KPHD has not transferred its membership interest in TCCC, or any portion thereof, at any time prior to the Closing Date.

(d) **Tax-Exempt Status.** KPHD is a public hospital district, exempt from federal income taxation. KPHD will promptly notify TCCC of any change in such status.

(e) **Statutory Purposes.** The withdrawal payment paid hereunder to KPHD shall be used solely for its statutory purposes as a Washington public hospital district, and no portion of the Purchase Price shall be used in any other manner.

(f) **Notice of Public Records Requests for Pinnacle Appraisal Report.** KPHD agrees that it shall provide TCCC with notice as provided in Section 15 hereof in the event that KPHD receives a request to provide a copy of the Pinnacle Appraisal Reports dated January 23, 2020, and February 7, 2020, or any of their contents.

7. **Representations, Warranties, and Covenants of TCCC.** TCCC represents, warrants, and covenants to KPHD now and on the Closing Date the following:

(a) Authorization. The execution, delivery, and performance of this Agreement by TCCC and the consummation of the transactions described herein have been duly authorized and approved by the appropriate governing body of TCCC, and no other corporate action is necessary to authorize the execution, delivery, and performance of this Agreement.

(b) No Violation. The execution, delivery, and performance of this Agreement and the consummation of the transactions described herein will not violate, conflict with, result in a material breach or termination of the terms, conditions, or provisions of, or constitute a default under (i) any of the governing documents of TCCC, (ii) any agreement to which TCCC is a party, or (iii) any applicable law.

8. Expenses. Each Party shall bear its own out-of-pocket expenses incurred in connection with this Agreement and the matters addressed herein, including, without limitation, all legal, accounting, and other similar fees and expenses.

9. Counterparts. This Agreement may be executed in counterparts, all of which will constitute the same Agreement. Delivery of signed counterparts may be by facsimile or electronic mail with scan attachment.

10. Indemnification. KPHD shall indemnify and hold harmless TCCC and its members, officers, directors, employees, affiliates, successors, and assigns (collectively, "TCCC Indemnified Party") against any and all Losses caused by KPHD arising from or related to any breach or non-fulfillment of any representation, warranty, or covenant under this Agreement by KPHD, or any failure by KPHD to comply with any applicable laws in the performance of its obligations under this Agreement. TCCC shall indemnify and hold harmless KPHD and its members, officers, directors, employees, affiliates, successors, and assigns (collectively, "KPHD Indemnified Party") against any and all Losses caused by TCCC arising from or related to any breach or non-fulfillment of any representation, warranty, or covenant under this Agreement by TCCC, or any failure by TCCC to comply with any applicable laws in the performance of its obligations under this Agreement.

11. General Release and Waiver of Claims. The Parties hereby release and discharge each other, and their members, officers, directors, employees, attorneys, affiliates, successors, and assigns (collectively, the "Released Parties" and individually, a "Released Party"), and each of them from any and all claims, demands, debts, liabilities, accounts, obligations, costs, expenses, causes of action, and remedies of any nature whatsoever, known or unknown, which such Party had, now has, or may acquire arising from or related to: (a) any matter that is directly or indirectly related to this Agreement; (b) KPHD's membership in TCCC; or (c) any Losses resulting from any action or omission by or on the part of the Released Party. **Notwithstanding the foregoing, this Agreement does not release claims, causes of action, or damages arising out of or relating to any ground lease where TCCC is the ground lessee.**

12. Governing Law. This Agreement is governed by and shall be interpreted under the laws of the State of Washington without giving effect to any choice of law principles.

13. Non-Waiver. Except as expressly set forth herein, neither the failure nor the delay on the part of either Party to exercise any right, remedy, power, or privilege under this

Agreement will operate as a waiver thereof, nor will any single or partial exercise of any such right, remedy, power, or privilege preclude any other or further exercise of the same or any other right, remedy, power, or privilege, nor will a waiver of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver with respect to any other occurrence. No waiver will be effective unless it is in writing and signed by the Party granting such waiver.

14. Entire Agreement; Assignment. This Agreement, including the respective exhibits hereto, constitute the full and entire understanding and agreement between the Parties with regard to the subjects hereof and thereof, and neither Party shall be liable or bound to the other Party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein. Any prior agreements, understandings or representations with respect to the subject matter hereof are superseded by this Agreement and shall have no further force or effect. The provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the Parties hereto. Notwithstanding the foregoing, this Agreement does not supersede, amend, affect, or terminate any ground lease where TCCC has an interest.

15. Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, or otherwise delivered by electronic mail, by hand or by messenger, addressed:

- a. If to TCCC;

Tri-Cities Cancer Center
7350 W. Deschutes Avenue
Kennewick, WA 99336
Attn.: Chief Executive Officer
Email: chuckdegooyer@tccancercenter.org

or at such other address as TCCC shall have furnished, with a copy to:

Buchalter
1420 Fifth Avenue, Suite 3100
Seattle, WA 98101
Attn.: Mitchell J. Olejko
Email: molejko@buchalter.com

- b. If to KPHD:

c/o Leland Kerr, Superintendent
P.O. Box 6974
Kennewick, WA 99336
Email: lkerr@kenphd.com

or at such other address as KPHD shall have furnished, with a copy to:

Ogden Murphy Wallace

901 5th Avenue Suite 3500
Seattle, WA 98164
Attn: Adam G. Snyder
Email: asnyder@omwlaw.com

c. If to Kadlec:

Kadlec Regional Medical Center
888 Swift Boulevard
Richland, WA 99352
Attn: CEO

or at such other address as Kadlec shall have furnished, with a copy to

Providence St. Joseph Health
Office of the General Counsel
801 Lind Avenue SW
Renton, WA 98057

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered if delivered personally, if sent by electronic mail, the first business day after the date of confirmation that the electronic mail has been successfully transmitted to the email address for the Party notified, or, if sent by mail, at the earlier of its receipt or 72 hours after the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid.

16. Severability. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision, which shall be replaced with an enforceable provision closest in intent and economic effect as the severed provision; provided that no such severability shall be effective if it materially changes the economic benefit of this Agreement to either Party.

17. Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

18. Cumulative Remedies. All rights and remedies of the Parties are cumulative of each other and of every other right or remedy such Party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

19. Legal Representation. Each Party hereto acknowledges that it has been fully, separately and individually apprised and advised of its legal rights and financial liabilities and responsibilities arising from or related to this Agreement and each has in addition thereto made independent inquiry and investigation with respect to all of the same. Each Party further acknowledges that it has had the opportunity to have this Agreement and the documents related thereto reviewed by, and to consult with its own separate counsel prior to executing the same.

20. No Third-Party Beneficiary Rights. The Parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties.

(Signature page follows)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Tri-Cities Cancer Center

By: _____
Name: _____
Title: _____
Date: _____

Kennewick Public Hospital District

By: _____
Name: _____
Title: _____
Date: _____

Kadlec Medical Center
(as to Section 5 only)

By: _____
Name: _____
Title: _____
Date: _____

**KENNEWICK PUBLIC HOSPITAL DISTRICT
BENTON COUNTY, WASHINGTON
RESOLUTION NO. 2020-2**

**A RESOLUTION OF THE COMMISSION OF KENNEWICK PUBLIC HOSPITAL
DISTRICT, APPROVING AGREEMENT REGARDING MEMBERSHIP INTEREST IN TRI-
CITIES CANCER CENTER**

WHEREAS, the District is currently a member of Tri-Cities Cancer Center; and

WHEREAS, the District, while continuing to be supportive of Tri-Cities Cancer Center, desires to withdraw as a member of Tri-Cities Cancer Center; and

WHEREAS, an agreement has been reached between the District, Tri-Cities Cancer Center, and Kadlec Medical Center relating to the District's withdrawal;

NOW, THEREFORE, BE IT HEREBY RESOLVED that the withdrawal is hereby approved in accordance with the attached Agreement Regarding Membership Interest between the District, Tri-Cities Cancer Center and Kadlec Medical Center, and that the execution of the Agreement by Gary Long on behalf of the District is hereby ratified and approved.

IT IS HEREBY FURTHER RESOLVED that Gary Long is hereby authorized and directed to execute all documents associated with the implementation of the resolution upon behalf of the Kennewick Public Hospital District.

ADOPTED AND APPROVED by the Commissioners of Kennewick Public Hospital District, Benton County, Washington, at a regular public meeting thereof this 18th day of March, 2020, the following Commissioners being present and voting:

KENNEWICK PUBLIC HOSPITAL DISTRICT
BENTON COUNTY, WASHINGTON

Gary G. Long, President & Commissioner

Steve Blodgett, VP, Treasurer, and Commissioner

Marv Kinney, Secretary and Commissioner

Richard L. Reil, Commissioner

Wanda L. Briggs, Commissioner

Leonard Dreisbach, Commissioner

Mike McWhorter, Commissioner