

**AGREEMENT BETWEEN
BIGFORK SCHOOL DISTRICT 38 AND
CHILD DEVELOPMENT CENTER**

THIS AGREEMENT is made on the 21st day of August, 2019 by and between, the Child Development Center, a Montana nonprofit, (the "Contractor"), 1725 Montana HWY 35, Kalispell, MT 59901, and Bigfork School District 38, a Montana public education agency, ("BIGFORKSD"), 600 Commerce Street, Bigfork, MT 59911, hereinafter referred to as "Parties."

RECITALS

WHEREAS, Contractor is and has been in business as a provider of occupational therapy services; and

WHEREAS, BIGFORKSD provides special education services to students, and from time to time requires the services of independent, licensed therapists to provide therapy services to those students,

NOW THEREFORE, the parties do agree and contract to do the following:

1. **Purpose.** The purpose of this Agreement is to provide Occupational Therapy Services to designated students enrolled in BIGFORKSD special education programs and/or District programs ("the Students").

2. **Services.** Contractor agrees to perform occupational therapy services to the Students as requested by BIGFORKSD, together with related consultation and other services. The services are to be provided during the school year and include, but are not limited to, the following:

- Providing occupational therapy services to Students, including assessment, direct service to children according to their Individualized Education Program (IEP) and consultation services.
- Participation in and preparation for IEP meetings for the Students, drafting appropriate goals and objectives relating to occupational therapy, and implementation and monitoring of goals and objectives.
- Preparation of all customary documentation and reports.
- Collaboration with teachers, administrators and other persons providing services to the Students.
- Administration of occupational therapy, to include supervision of Contractor's therapy staff, case management, coordination of therapy services, and billing services.
- Occupational therapy services shall be provided at a school site, unless the student is not enrolled at a public school, in which case they shall be provided at Contractor's facilities or at another location agreed to by BIGFORKSD & Contractor.

- Drive time to and from schools/facilities/classrooms/offices where services are provided and meetings are held.

Contractor agrees to provide Occupational Therapy Services in accordance with all the professional standards and methods of practice set forth in Montana law and administrative regulations and the Student's IEP.

BIGFORKSD will coordinate student referrals to occupational therapy and obtain the necessary parents' or guardian's written consents for students to receive OT services pursuant to this agreement.

3. **Billing and Payment.** BIGFORKSD agrees to pay Contractor for the above-described therapy services at the rate of

- \$80.00 per hour for services provided by a licensed Occupational Therapist
- \$00.58 per mile for Contractor staff to travel to, from and between Child Development Center, 1725 Montana HWY 35, Kalispell, MT 59901, and BIGFORKSD sites.

Contractor shall submit monthly invoices to BIGFORKSD for work completed for that particular calendar month. Contractor will submit service logs in an agreed format on which services provided will be recorded. Invoices submitted by Contractor for payment will be paid by BIGFORKSD within thirty days after receipt of invoice.

Contractor understands that BIGFORKSD may seek and retain reimbursement from the Montana Department of Public Health and Human Services for qualifying services provided by Contractor on behalf of BIGFORKSD to Medicaid eligible students. Contractor will provide all data necessary for BIGFORKSD to process its reimbursement requests but does not guarantee reimbursement.

4. **Reimbursement.** BIGFORKSD agrees to reimburse Contractor for all reasonable and necessary specialized equipment and supplies (consumable and non-consumable) as required to implement this contract for occupational therapy services to students. Contractor will notify the BIGFORKSD Special Education Director or designee prior to ordering any items. BIGFORKSD will have 48 hours to respond to a notification regarding the Contractor ordering equipment and/or supplies. If after 48 hours, BIGFORKSD has not responded, Contractor can order the equipment and supplies and BIGFORKSD will reimburse the Contractor for the supplies and/or equipment.

5. **Qualifications.** Contractor shall retain only Licensed Occupational Therapists to provide services under this Agreement. Contractor maintains all credentials, licenses and permits required to perform occupational therapy services for BIGFORKSD. Contractor shall be responsible for verifying the credentials, certificates, and licenses of occupational therapists or any other evidence of such individuals' qualifications and fitness to provide the services. All staff shall be employees of Contractor and Contractor shall be responsible for providing, at its expense, and in its name, disability, worker's compensation or other insurance, as well as licenses and permits usual or necessary for providing the services hereunder.

Contractor agrees to provide certification that it has obtained criminal background checks for its Occupational Therapists performing services under this Agreement and that they have not been convicted of any felonies, crimes against children or crimes of violence. Contractor is not

required to obtain annual criminal background checks provided it obtained a criminal background check at time of hire.

6. **Term.** This contract begins August 27, 2019 and is effective until June 30, 2022 unless terminated earlier as provided herein.

7. **Termination.** Either party may terminate this Agreement for any reason or no reason with a sixty (60) day written notice with the effective date of termination specified in said notice.

8. **Independent Contractor.** In performance of the services hereunder, each party and its employees and agents are independent contractors and are not partners, agents or employees of the other party. A party's employees shall not be entitled to any income or benefits from the other party including, without limitation, worker's compensation, disability insurance, vacation, or sick pay. BIGFORKSD will not control or direct details, manner or means by which Contractor provides occupational therapy services. Contractor retains the right to contract to provide similar services to other individuals, entities or school districts.

9. **Insurance.** Contractor shall obtain, pay for and maintain in effect during the life of this Agreement the following policies of insurance issued by an insurance company rated not less than "A-,VI" in Best Insurance Rating Guide and admitted to do business in Montana: (1) commercial general liability insurance (including contractual, products and completed operations coverages, bodily injury and property damage liability insurance) with single combined limits of not less than \$1,000,000 per occurrence; (2) professional liability insurance (errors and omissions) with a limit of liability of not less than \$1,000,000 per occurrence; (3) worker's compensation insurance as required by law.

With the exception of Contractor's Workers Compensation Policy and Professional Liability policy each of Contractor's policies shall be endorsed naming BIGFORKSD as an additional insured insofar as this Agreement is concerned, and provide that written notice shall be given to BIGFORKSD at least 30 days prior to cancellation or material change in the form of the policy or reduction in coverage. Contractor shall furnish BIGFORKSD with a certificate of insurance containing the endorsements required under this section, and BIGFORKSD shall have the right to inspect contractor's original insurance policies upon request. Upon notification of receipt of a notice of cancellation, change or reduction in coverage, Contractor shall immediately file with BIGFORKSD a certified copy of the required new or renewal policy and certificates for such policy.

Nothing in this section concerning minimum insurance requirements shall reduce Contractor's liabilities or obligations under the indemnification provisions of this Contract.

10. **Indemnification.** Each party agrees to defend, indemnify and hold the other harmless from any and all claims, losses, liabilities or expenses (including without limitation attorney's fees) which may arise in whole or in part from:

- a. acts or omissions of the other party, its employees or agents;
- b. The negligence or willful misconduct of the other party, its employees or agents, and/or
- c. Breach by the other party of an obligation it has under this Agreement.

11. **Entire Agreement.** This document contains the entire agreement of the parties relating to the services, rights, obligations and covenants contained herein and assumed by the parties respectively. No inducements, representations or promises have been made, other than those recited in this Agreement. No oral promise, modifications, change or inducement shall be effective or given any force or effect.

12. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of Montana. This Agreement has been entered into and is to be performed in Flathead County. Venue for legal actions related to this Agreement shall be the Montana Eleventh Judicial District Court in Flathead County.

13. **Attorney Fees.** In the event a lawsuit is brought to enforce or interpret any aspect of this Agreement the prevailing party shall be entitled to recover its reasonable attorney fees

14. **Assignment.** Contractor shall not assign the obligations of Contractor pursuant to this Agreement without prior written consent from BIGFORKSD. Any purported assignment without the prior written consent of BIGFORKSD shall be void.

15. **Waiver and Severability.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained. If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired, or invalidated in any way.

16. **Authority to Bind Parties.** It is understood that neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

17. **Modifications of Agreement.** This agreement may be modified only in writing, signed by the parties in interest at the time of the modification.

18. **Confidentiality.** Each party agrees to maintain the confidentiality requirements of FERPA and HIPAA. Contractor will immediately refer third-party requests for student's protected educational information to BIGFORKSD. BIGFORKSD will immediately refer third-party requests for students' protected health information to Contractor.

As part of the obligation of confidentiality both parties agree to restrict dissemination and availability of confidential information received from the other to only its employees and agents who have a need to know .

Neither party will redisclose confidential, protected or proprietary information it receives from the other without written authorization.

Information in the public domain shall not be considered proprietary information.

BIGFORKSD shall consider Occupational Therapists assigned to provide services to BIGFORKSD to be "school officials" within the meaning of FERPA and BIGFORKSD's own policies adopted pursuant to the ACT. The Occupational Therapist may be deemed to have a legitimate educational interest in personal information contained within the educational records of students to whom they provide occupational therapy services under this agreement. Accordingly,

the school may provide the Occupational Therapist with those portions of any such student's educational records, including but not limited to IEP's and other records which may relate to the provision of OT services provided pursuant to this agreement. Contractor shall not use information in a student's educational record or any purposes other than providing OT services pursuant to this agreement.

The provision of this section shall survive the expiration or termination of this Agreement.

19. Records. Contractor will maintain full and accurate records in connection with this Contract and will make them available to BIGFORKSD for inspection at any time. Contractor will prepare such reports and analyses concerning the services provided as are requested by BIGFORKSD. In addition, Contractor shall participate in Individual Education Program meetings for the identified student, recommend appropriate goals and objectives, and implement and monitor those goals.

20. Compliance with Law. The parties shall observe and comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which will hereby be made a part hereof and incorporated herein by reference.

21. Captions and Interpretation. Paragraph headings in this agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. The parties acknowledge that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

22. Time of Essence. Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

23. Nondiscrimination. Neither party, nor any officer, agent, employee, servant or subcontractor of either party shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of sex, race, color, religion, national origin, ethnic group, marital or parental status, ancestry, age, sexual orientation or physical or mental disability or the perception of one or more of such characteristics, either directly, indirectly or through contractual or other arrangements.

24. Notices. All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited with the United States Postal Service, registered or certified, postage prepaid and addressed as follows:

To: BIGFORKSD
Bigfork School District
Attention: _____
600 Commerce Street
Bigfork, MT 59911

To: CONTRACTOR
Carolyn Prussen
Child Development Center
3335 Lt. Moss Road
Missoula, MT 59804

The address, to which the notices shall be mailed, may be changed by giving written notice to the other party as herein provided, but nothing contained herein shall preclude the giving of any notice by personal service.

25. Signature Authority. Each party has full power and authority to enter into and perform this agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this agreement.

IN WITNESS WHEREOF, EACH PARTY TO THIS Agreement has signed this Agreement upon the date indicated, and agrees, for itself, its employees, officers, partners, and successors, to be fully bound by all terms and conditions of the Agreement.

EXECUTED this 20th day of August, 2019.

Bigfork School District

By Matt Jensen, Superintendent Date

Child Development Center

 8-21-19

By Carolyn Prussen, Executive Director Date