

CONTRACT FOR HEALTH CARE SERVICES

This Agreement is entered into by and between Bigfork Public Schools (SS: 0484), P.O. Box 188, Bigfork, Montana, 59911 ("School District") and The Summit Medical Fitness Center, 205 Sunnyview Lane, Kalispell, Montana 59901 ("Service Provider"), effective on the date of the last signature below ("Effective Date"). School District and Service Provider are referred to herein at times individually as a "Party" and collectively as the "Parties".

RECITALS

School District operates public school facilities in Bigfork, Montana and requires that certain health care services be provided to them. The Service Provider agrees to perform those services for School District at those schools listed in Exhibit A, attached hereto and incorporated herein, under the terms and conditions set forth in this Agreement.

AGREEMENT

In consideration of the mutual promises set forth herein, it is agreed between School District and Service Provider as follows:

- I. **Services.** The services to be provided by Service Provider under this Agreement are those set forth in Exhibit A, attached hereto and incorporated herein.
- II. **Payment/Monthly Statement.** As part of its community benefit program, the Service Provider agrees to provide the services at no cost to School District. The Service Provider will transmit to School District each month a statement describing the character and amount of services provided during the previous month.
- III. **Service Provider Representations.** The Service Provider hereby represents and warrants that:
 - A. It has familiarized itself with the terms of this Agreement and the Exhibits to this Agreement and that it has investigated and fully understands: (1) the conditions under which it will be providing services; (2) the character, quality, quantity and scope of the work required of it; and (3) the requirements of this Agreement and Exhibit "A" to this Agreement;
 - B. It will render the services called for under this Agreement with care, skill and diligence in accordance with the generally accepted practices and standards of the profession in which it is engaged;
 - C. It has the methods and means to provide the services called for under this Agreement, including but not limited to the necessary infrastructure, plant, equipment, capital and staff; and
 - D. It is engaged in an independently established trade, occupation, profession or business and that the services it is providing under this Agreement are being rendered in the course of such trade, occupation, profession or business;
- IV. **Relationship of the Parties.** The Parties intend that an independent contractor relationship be created by this Agreement. The School District is interested only in the results to be achieved and responsibility for the conduct and control of the work will lie solely with Service Provider. Service Provider undertakes and agrees to furnish and pay for all labor, supervision and other overhead costs necessary to perform any services hereunder, except where School District has otherwise agreed herein in writing.

The Service Provider is not to be considered an agent or employee of School District for any purpose, The

Service Provider shall be responsible for all applicable federal and state taxes and for complying with all state workers' and/or unemployment compensation laws pertaining to the employees that it may utilize in providing services to School District under this Agreement. Neither Service Provider nor its employees shall be eligible for any benefits provided by School District to its employees including, but not limited to, social security, unemployment insurance, sick leave, vacation leave, public employee's retirement benefits

V. **Staffing/Subcontractors/Assignment.** The Service Provider agrees to provide a qualified workforce of sufficient size to perform the services called for under this Agreement. The Service Provider will identify its staff members to School District by name and qualifications and School District expressly reserves the right to terminate this Agreement should staff qualifications not be adequate to insure completion of the work in a professional and timely manner and/or if the costs of the work are determined to be excessive as a result of Service Provider's failure to comply with this requirement.

The Service Provider also agrees to identify any and all subcontractors, firms or other individuals that will perform work on behalf of Service Provider and are not employees of Service Provider, The Service Provider agrees that it will not assign or subcontract any of its rights or obligations under this Agreement, in whole or in part, without the express written approval of School District. All subcontracted work must be approved by School District in advance and Service Provider agrees to ensure that each of its subcontractors is bound to it by the same terms and conditions of this Agreement.

VI. **Access to Facilities.** The School District agrees to provide Service Provider with such access to its facilities, supplies, and equipment as may be necessary to allow Service Provider to perform its obligations under this Agreement, The Service Provider will be responsible for maintaining the security of any keys or other forms of access mechanisms provided to it by School District and shall promptly notify School District in the event that such keys or other forms of access mechanisms are lost or otherwise compromised.

VII. **Record Confidentiality and Retention.** School District and Service Provider agree to comply with state and federal privacy requirements that each may be subject to, including the Family Educational Rights and Privacy Act (20 USC 1232g) ("FERPA") and the Health Insurance Portability and Accountability Act ("HIPAA"), as applicable.

VIII. **Compliance with Laws/Nondiscrimination.** The Parties agree to conduct their relationship under the Agreement in full compliance with applicable federal, state, and local laws. In addition, the Parties certify that they, and their respective subcontractors, will not violate the Anti-Kickback Statute and the Stark Law with respect to their performance of the Agreement. The Service Provider agrees that any hiring that it or its subcontractors may undertake in the performance of this Agreement will be made on the basis of merit and qualifications and that it will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, national origin or any other category protected by law.

IX. **No Referral Requirement.** The Parties agree that there is no requirement that the School District, student athletes, and/or the student athlete's parents will be required to choose to use Service Provider's providers or services for any necessary follow up healthcare services.

X. **Dispute Resolution/Severability/Wavier.** If controversies arise that cannot be resolved by the Parties through informal meetings and discussions in good faith or through mediation, the Parties agree to submit the matter to final and binding arbitration, The arbitration will be conducted pursuant to the Montana Uniform Arbitration Act, MCA 27-5-111 et seq., and where not inconsistent, in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") now or hereafter in effect. The Parties will first attempt to agree upon a neutral and independent individual to serve as arbitrator to arbitrate the matter. If the Parties are able to agree upon an arbitrator, then each Party shall select one arbitrator. The selected arbitrators shall then agree upon and appoint a final arbitrator who shall hear and resolve the matter on behalf of

the Parties, Any arbitration proceeding will be held in Kalispell, Montana, for the convenience of the Parties. The Parties agree that the decision of the arbitrators will be final and binding. The Parties acknowledge that each Party is giving up its right to adjudicate any disputes arising from this Agreement in a state of federal court. The Parties further agree that that a judgment in a court of competent jurisdiction will be entered upon the award made pursuant to the arbitration.

In the event that any provision of this Agreement may be held to be invalid or otherwise unenforceable by law, the remaining provisions shall be binding upon the Parties. Any waiver by either Party of any of the terms or conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of any such term or condition for purposes of establishing any subsequent breach of the term or condition.

XI. Indemnity/Insurance. The services to be provided by Service Provider under this Agreement will be performed entirely at Service Provider's risk. Each Party agrees to defend, indemnify and hold the other Party and its officers, directors, trustees and employees harmless from and against any and all claims, demands, causes of action, losses, liabilities costs and expenses (including reasonable attorneys' fees and costs awarded by a duly appointed arbitrator, based upon, arising out of or in any way attributable to (i) such Party's negligence, intentional wrongdoing or misrepresentation, (ii) the failure of such Party to perform its obligations under this Agreement, or (iii) such Party's violation of any law or regulation applicable to its duties under this Agreement, provided that the indemnified Party notifies such Party of the claim and grants such party authority and control of the defense of settlement of such claim, This indemnification shall survive the expiration or termination of this Agreement.

The Service Provider agrees to carry and maintain appropriate workers compensation coverage for all of its employees and will provide proof of such coverage to School District prior to commencing the provision of services under this Agreement.

The Service Provider further agrees to maintain appropriate professional liability insurance extending coverage to its activities under this Agreement. Any deductible or self-insured retention amount must be declared to School District. The School District shall be named as an additional insured on such coverage and each must contain at least a forty-five (45) day notice of cancellation provision.

XII. Miscellaneous.

A. Force Majeure. Neither Party shall be deemed to be in default under this Agreement for any delay or failure to perform under this Agreement which may be considered to result, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, terrorism, accident, fire, explosion, earthquake, flood, other weather conditions or natural disaster, failure of transportation, or strikes or other event that is not within the reasonable ability of the Party to avoid ("Force Majeure"), The Parties will use reasonable commercial efforts to avoid adverse effects from a Force Majeure event and perform as promptly as possible upon elimination of the event.

B. Notification. The Service Provider and School District agree to designate in writing a person authorized to act as their representative and to receive any notice called for under this Agreement. The School District will give prompt written notice to Service Provider whenever School District observes or otherwise becomes aware of any defect in the services or other event that may substantially affect Service Provider's performance under this Agreement.

SCHOOL DISTRICT REPRESENTATIVE:
Matt Porrovecchio, Activities Director,
Bigfork High School
406-837-7420

SERVICE PROVIDER REPRESENTATIVE:
Kelly Malmin, Youth Development Manager
The Summit Medical Fitness Center
406-758-7323

C. Term and Termination. The term of this Agreement shall be for one (1) year commencing on the Effective Date and will renew automatically for individual successive one (1) year terms unless one Party notifies the other Party in writing at least thirty (30) days prior to the annual renewal date that it will not renew the Agreement, Either Party may terminate this Agreement without being required to state a reason for termination upon at least sixty (60) days' advance written notice.

Either Party may terminate this Agreement by providing written notice of a breach of any material term or condition of this Agreement by the other Party ("Breaching Party") and allowing for such breach to be corrected within thirty (30) calendar days after written notice thereof is received by the Breaching Party, If such breach is not corrected within thirty (30) calendar days after written notice thereof is received by the Breaching Party, the party who provided the written notice of the breach may terminate this Agreement immediately thereafter. The notice of breach shall specify with reasonable particularity the nature and extent of the material breach for which notice has been made.

D. Entire Agreement/Modification. This Agreement represents the sole and entire agreement between the Parties and supersedes any and all prior negotiations, representations and agreements between them, oral or otherwise, including all Agreements between Glacier High School and School District relative to the subject matter hereof, This Agreement may be amended only by written instrument signed by both School District and Service Provider.

THE SUMMIT MEDICAL FITNESS CENTER
("SERVICE PROVIDER")

BIGFORK PUBLIC SCHOOLS (SS:0484)
("SCHOOL DISTRICT")



Signature

Signature

Kelly Malmin

Name

Name

Youth Development Manager SMFC

Title

Title

11/04/2020

Date Signed

Date Signed

EXHIBIT A

COVERED SCHOOLS

- Bigfork High School (LE: 0331) - One (1) full-time athletic trainer

EXHIBIT B

The Parties agree that Service Provider will provide professional athletic training services to School District as outlined below:

1. Provide services attendant to the recognition, evaluation, care and treatment of athletic injuries for all School District programs in accordance with NATA, MHSA and School District guidelines;
2. Provide guidance and direction to School District coaching staff with regard to the care and prevention of athletic injuries, including but not limited to the provision of information concerning optimum health and safety, nutrition, conditioning, preventative measures, etc.;
3. Coordinate injured athlete's follow-up treatment with their selected healthcare providers or rehabilitation specialists, and facilitate communication with injured athlete and family to allow for their prompt return to play;
4. Establish and maintain an effective system of record-keeping for records pertaining to a student athlete's physical, consent forms, medical release forms and other medical records;
5. Assist the coaching staff in the preparation and maintenance of travel med-kits;
6. Establish and maintain an effective system for documenting access to School District's training facilities by other health care providers, including but not limited to procedures to ensure that appropriate consent and authorization forms are secured by such providers from students and maintained as part of the records referred to in Item 5 above.
7. Effectively communicate with School District coaching staff concerning the status of injured athletes;
8. Effectively communicate with physicians, coaching staff, parents, and teachers concerning athletic training issues.

Service Provider will provide the above services at all varsity athletic events to the extent possible, recognizing that some varsity events occur simultaneously at different locations, and will be available to provide such services in and around the training room when other sub-varsity events are occurring. School District will provide a separate schedule of times when Service Provider will be required to be available to provide the services called for under this Agreement, and that Schedule shall be considered a part of this Exhibit B.