

SCHOOL BASED HEALTH CENTER AGREEMENT

THIS SCHOOL BASED HEALTH CENTER AGREEMENT (“Agreement”) is entered into effective as of the date of the last signature below (“**Effective Date**”), by and between Kalispell Regional Medical Center, Inc., a Montana nonprofit corporation, on behalf of itself and its owned or controlled affiliates (collectively, “**Hospital**”), and Bigfork School District #38 (“**School**”). Hospital and School are referred to herein individual as a “**Party**” and collectively as the “**Parties**”.

RECITALS

- I. School owns certain real property located at 600 Commerce Drive, Bigfork, MT 59911.
- II. Hospital employs certain physician and non-physician providers who specialize in providing primary care services (“**Providers**”) and are available to provide health care services at the School Based Health Center as defined below.
- III. The School includes a certain 555 square foot space, consisting of a 506 square foot main room and a 49 square foot storage room (“**School Space**”), more particularly described in the floor plan attached hereto as Exhibit A and incorporated herein by this reference.
- IV. The Parties agree that the School Space is reasonably necessary for Hospital to provide SBHC Services as described in this Agreement.
- V. School desires to lease the School Space to Hospital under the terms of this Agreement for the sole purpose of providing SBHC Services by and through Hospital’s Providers (“**SBHC**”), and Hospital desires to lease the School Space from School to provide SBHC Services by and through its Providers in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. **Effect of Recitals.** The above recitals are true and correct and by this reference are incorporated into the terms of this Agreement.
2. **Hospital Services.** Hospital shall provide office-based primary health care services to Enrollees (defined below) as described on Exhibit B (“**SBHC Services**”)
 - (a) For purposes of this Agreement, “Enrollees” shall mean any student of School who has obtained and provided to Hospital appropriate parent/guardian consent to receive Services or who has provided their own consent if 18 years of age or older, as well as any School staff members who have provided appropriate consent.
 - (b) Subject to the limitations of the SBHC Services, the availability of appointment time, and the Hospital's Financial Assistance Policies, Hospital shall not turn away any Enrollee because of insurance status, health status, or because an Enrollee has an existing primary care provider. If an Enrollee requires a referral, Hospital shall refer the Enrollee to Enrollee's regular primary care provider or another appropriate provider. If an Enrollee does not have a regular primary care provider, Hospital shall provide Enrollee with a list of primary care providers in the community.
 - (c) Hospital shall have the sole right to bill and collect reimbursement for the SBHC Services.
3. **Representations and Warranties.**
 - (a) Hospital represents and warrants that neither it nor any of its Providers have been: (i) convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid, or any other federal or state health care program; or (ii) excluded from participation in any federal health care program, including Medicare and Medicaid. Hospital shall notify School immediately in the event that Hospital or any of its

Providers are convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid, or any other federal or state health care program, or in the event Hospital or any of its Providers are excluded from participation in any federal health care program, including Medicare and Medicaid.

(b) School represents and warrants that neither it, nor any of its employees or contractors have ever been (a) convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid, or any other federal or state health care program; or (b) excluded from participation in any federal health care program, including but not limited to Medicaid. School shall notify Hospital immediately in the event that School or any of its employees or contractors are convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid, or any other federal or state health care program, or in the event School, or any of its employees or contractors are excluded from participation in any federal health care program, including but not limited to Medicaid.

4. **Records.**

(a) Medical Records. The ownership and right of control of all medical records, reports, progress notes, and supporting documents Hospital and the SBHC shall belong to and remain the property of Hospital. Such information shall not be released by Hospital to School unless required by law.

(b) Access to Records. For a period of four (4) years after the termination or expiration of this Agreement, the School shall make available to the Secretary of the U .S. Department of Health and Human Services, the U.S. Comptroller General, and their representatives, this Agreement and all books, documents and records necessary to certify the nature and extent of the costs of those services and will provide such documentation as they may require pursuant to Section 1861(v)(1) of the Social Security Act (42 U.S.C. § 1395(x)(v)(1)(1) as amended and the regulations thereunder or any successor provisions.

6. **Leased Property**. School hereby leases the School Space to Hospital for the exclusive purpose of providing the SBHC Services, and Hospital hereby leases the School Space from School for the exclusive purpose of providing the SBHC Services ("**School Space Lease**"). Hospital shall have access to the School Space in accordance with the schedule attached hereto as Exhibit C.

7. **Lease Rate.**

(a) Lease Rate. In exchange for lease of the School Space, the Hospital shall pay the amount of \$ 12.00 per square foot for an annual rate of \$ 6600.00 per year ("**Lease Rate**"), which will be paid in twelve monthly installments, due and payable in arrears on or before the 5th of each month.

8. **Term**. The initial term of this Agreement shall be one (1) year, beginning on the Effective Date. Upon the expiration of the initial term, this Agreement shall automatically renew for consecutive one (1) month periods unless either Party gives written notice of its intent to terminate this Agreement at least thirty (30) days prior to the expiration of the then-current term.

9. **Termination.**

(a) This Agreement may be terminated by either Party, with or without cause, at any time upon at least 90 days' prior written notice to the other Party.

(b) If a Party fails to perform any of its duties or responsibilities under this Agreement, the non-defaulting Party may immediately terminate this Agreement after providing written notice to the defaulting Party notifying such Party of the breach and that this Agreement has been terminated; provided, however, that in the event a failure to perform can be remedied within 30 days after notice is given, such notice shall be null and void in the event the failure is remedied within such thirty 30 day period; and provided further, that should the non-defaulting Party, in its sole judgment, determine that the other has, in good faith, taken substantive steps to cure, the non-defaulting Party may voluntarily extend the cure period by giving written notice to the defaulting Party.

10. **Indemnity.**

(a) School shall indemnify, defend, and hold harmless Hospital and its directors, officers, employees, agents, representatives, successors, assigns, and subcontractors against all actions, claims, demands, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees, to the extent resulting, directly or indirectly, out of an actual or alleged injury to a person or to property as a result of the negligent or intentional act or omission of School, its directors, officers, employees, agents, representatives, assigns, successors or subcontractors in connection with School's obligations under this Agreement, except to the extent any such action, claim, demand, liability, loss, damage, cost, or expense was caused by the negligent or intentional act or omission of Hospital or its directors, officers, employees, agents, representatives, assigns, successors, or subcontractors.

(b) Hospital shall indemnify, defend, and hold harmless School and its directors, officers, employees, agents, representatives, successors, assigns, and subcontractors against all actions, claims, demands, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees, to the extent resulting, directly or indirectly, out of an actual or alleged injury to a person or to property as a result of the negligent or intentional act or omission of Hospital, its directors, officers, employees, agents, representatives, assigns, successors or subcontractors in connection with Hospital's obligations under this Agreement, except to the extent any such action, claim, demand, liability, loss, damage, cost, or expense was caused by the negligent or intentional act or omission of School or its directors, officers, employees, agents, representatives, assigns, successors, or subcontractors.

(c) The obligations of this Section 10 shall survive the termination of this Agreement for any reason.

11. **Insurance.**

(a) Hospital shall maintain or cause to be maintained professional and general liability insurance of covering Hospital, its agents, and its employees with minimum limits of \$1,000,000 USD per occurrence and \$3,000,000 USD annual aggregate.

(b) School shall maintain or cause to be maintained industry standard property insurance and general liability insurance covering School, its agents, employees, property and premises with minimum limits of \$1,000,000 USD per occurrence and \$3,000,000 USD annual aggregate.

(c) Hospital shall obtain and maintain workers' compensation insurance covering Hospital and its Providers.

(d) Upon request, each Party shall deliver to the other Party a certificate or certificates evidencing the insurance coverages required to be maintained pursuant to this Section 11.

12. **Duties of Hospital.** While providing the SBHC Services in the School Space and while utilizing any common area of the School, Hospital shall:

- (a) Be qualified and licensed to provide healthcare services in the State of Montana;
- (b) Ensure its Providers maintain appropriate licensure necessary to provide the SBHC Services;
- (c) Provide all of the medical supplies and equipment necessary to provide the SBHC Services;
- (d) Dispose of all medical and bio-hazardous waste generated while using the School Space in accordance with local, state, and federal law, and pay for the costs of such disposals;
- (e) Ensure all required consents are obtained from Enrollees in advance of providing the SBHC Services, unless such consents are not required under Montana law;
- (f) Bill payers and collect monies due for all Services provided under this Agreement, and all such collections shall belong to Hospital;
- (g) Assist Enrollees in enrolling in Medicaid and the State Children's Health Insurance Program;
- (h) Ensure its Providers wear, at all times while providing Services in the School Space, identifying

identification, such as a name badge which shall differentiate Hospital's Providers from employees of School and identify Hospital as a business unrelated to School; and

(i) Provide all Services under this Agreement in accordance with Hospital's policies and procedures, including Hospital's charity care or financial assistance policies, and all applicable state and federal laws.

13. **Maintenance and Repair.** Hospital agrees to keep the School Space in good repair and operating condition, ordinary wear and tear excepted. Hospital shall promptly notify School of any needed repairs to the School Space and School shall be responsible for the cost of any such repairs, unless such repairs are necessary due to Hospital's actions. School will be responsible for cleaning and daily maintenance of School Space, with the exception of disposal of bio-hazardous material.

14. **Background Checks.** All Hospital employees providing services within the SBHC are required to have a satisfactory Background Check. Background Checks will include confidential criminal justice information as defined in Section 44-5-103(3), MCA. The School shall obtain the Background Check through the Montana Department of Justice. The School shall maintain the evidence of satisfactory background checks for all employees employed within the SBHC.

15. **Relationship of the Parties.** The relationship created between the Parties by this Agreement is that of landlord, tenant and independent contractors and no other. Nothing contained in this Agreement shall create or be construed to create a partnership, joint venture, or employment relationship between Hospital and School. Neither Hospital nor School shall be liable, except as otherwise expressly provided in this Agreement, for any obligations or liabilities incurred by the other.

16. **Tenant's Acceptance.** Hospital has had ample opportunity to examine and investigate the School Space and by executing this Agreement acknowledges that the School Space is in good, clear and tenantable condition.

17. **Assignment and Subletting.** Hospital may not assign or sublet the whole or any part of the School Space without the prior written consent of School, and no assignment shall relieve Hospital of any of its responsibilities under this Agreement.

18. **Alterations.** Hospital may not make any alterations, additions or changes to the School Space without the prior written consent of School.

19. **Authority.** Hospital represents to School that Hospital has the full right, power, and authority to enter into this Agreement and perform its obligations hereunder, and School represents to Hospital that School has the full right, power, and authority to enter into this Agreement and perform its obligations hereunder.

20. **HIPAA Compliance.** The Parties agree to maintain the privacy and security of Enrollees' protected health information (as defined under HIPAA) in accordance with all relevant state and federal statutes and regulations, including, but not limited to, the privacy and security standards of the Health Insurance Portability and Accountability Act of 1996 set forth at 45 C.F.R. parts 160 and 164 (collectively "HIPAA"), and agree to take such actions as are necessary and appropriate in connection therewith.

21. **FERPA.** School shall not use or disclose students' health information maintained in their educational records in a manner that would violate the requirements of the Family Educational Rights and Privacy Act ("FERPA") or Montana law. The Parties acknowledge and agree that the Clinic records maintained by Hospital are not subject to FERPA.

22. **Contract Modifications for Prospective Legal Events.** In the event any state or federal laws or regulations, now existing or enacted or promulgated after the Effective Date of this Agreement, are interpreted by judicial decision, regulatory agency, or legal counsel in such a manner as to indicate that the terms of this Agreement may be in violation of such laws or regulations, School and Hospital shall negotiate in good faith for a reasonable period to amend this Agreement as necessary to comply with said laws or regulations to the maximum extent possible. Any such amendment shall preserve the underlying economic and financial arrangements between School and Hospital.

23. **Notice.** All notices provided for pursuant to this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered in person; (ii) sent by Federal Express or other nationally recognized overnight delivery service, charges paid by the sender; or (iii) deposited in the United States mail, first class, registered or certified, return receipt requested, with postage prepaid as follows:

If to School:

Bigfork School District
600 Commerce Drive
Bigfork, MT 59911
Attn: Matt Jensen, Superintendent

If to Hospital:

Kalispell Regional Medical Center
310 Sunnyview Lane
Kalispell, MT 59901
Attn: General Counsel's Office

Notices given pursuant to (i), (ii), and (iii) above shall be deemed received and effective upon receipt by the addressee above. The foregoing addresses for notices shall apply unless and until a Party provides notice of a new address to the other Party for the giving of notices

24. **Not Excluded from Medicare.** Hospital certifies that neither Hospital nor its Providers have been excluded or otherwise prohibited from participating in, or providing goods or services for which reimbursement might be obtained from, Medicare, Medicaid, or any other federal health care program. School certifies that neither School nor its employees or contractors have been excluded or otherwise prohibited from participating in, or providing goods or services for which reimbursement might be obtained from, Medicare, Medicaid, or any other federal health care program.

25. **Attorneys' Fees.** If either Party incurs any costs or expenses, including reasonable attorneys' fees, in successfully enforcing the terms of this Agreement or defending against any dispute arising out of any of the provisions of this Agreement, then the other, or unsuccessful, Party shall reimburse the prevailing Party on demand. The "Prevailing Party" shall be determined by the court or arbitrator (if the Parties agree on arbitration) which decides the matter.

26. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Montana.

27. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of the provisions to other persons or circumstances shall not be affected thereby, and the intent of this Agreement shall be enforced to the greatest extent permitted by law.

28. **Entire Agreement.** This Agreement embodies the entire agreement between the Parties, and supersedes all prior negotiations, understandings, and agreements, if any. This Agreement may be amended, modified, or supplemented only by an instrument in writing duly executed by both Parties hereto.

29. **Waiver of Breach.** No failure on the part of either to exercise and no delay in exercising any right, power, or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or remedy hereunder preclude any further exercise thereof or the exercise of any other right, power, or remedy. Each and all of the several rights and remedies of the Parties contained in or arising by reason of this Agreement shall be construed as cumulative unless otherwise explicitly provided, and no one of them is exclusive of any other or of any right or priority allowed by law or equity.

30. **Assignment.** Neither this Agreement, nor any of the rights, interests, or obligations hereunder shall be assigned or delegated by either of the Parties hereto (whether by operation of law or otherwise) without the prior written consent of the other Party.

31. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. As used herein, "Counterparts" shall include full copies of this Agreement signed and delivered by facsimile transmission, as well as photocopies of such facsimile

transmission.

32. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective legal representatives, successors, and assigns.

33. **Headings.** The headings used herein are for convenience only, and shall not be construed as a part of this Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

34. **Compliance with Laws.** 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 will not violate the Anti-Kickback Statute and the Stark Law with respect to their performance of the Agreement. The Parties hereby agree that: (a) the fees payable hereunder reflect the fair market value of the School Space Lease; (b) the terms of such fees have been negotiated in an arms-length transaction between School and Hospital; (c) such fees have not been determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the Parties for which payment may be made in whole or in part under a federal health care program; and (d) the SBHC Services performed hereunder do not involve the counseling or promotion of a business arrangement or activity that violates any state or federal law.

35. **No Third Party Beneficiaries.** Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as a third party beneficiary or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date written above.

BIGFORK SCHOOL DISTRICT #38
(“SCHOOL”):

KALISPELL REGIONAL MEDICAL CENTER, INC.
(“HOSPITAL”):

Name

Name

Title

Title

Signature

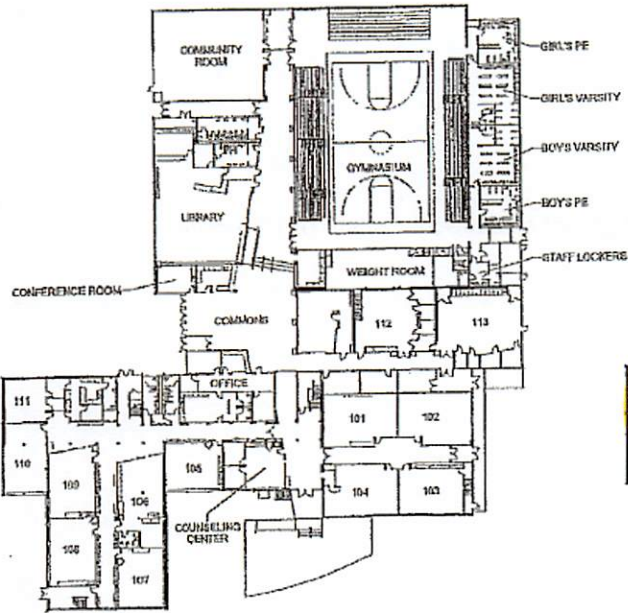
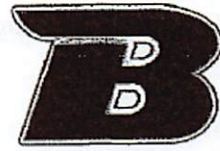
Signature

Date Signed

Date Signed

EXHIBIT A
SCHOOL SPACE

BIGFORK HIGH SCHOOL



FIRST FLOOR



SECOND FLOOR

EXHIBIT B

DESCRIPTION OF CLINIC SERVICES

- Wellness and Sports Physical Exams
- Health care for illness and injury
- Health education for students/staff
- Follow-up for chronic conditions
- Behavioral health assessment and treatment
- Some CLIA waived lab services

EXCLUDED SERVICES

- Imaging
- Advanced Imaging
- Other services deemed necessary by the providers, which are not suitable for a small office setting

EXHIBIT C

SCHEDULED HOURS & Lease Rate

1. Scheduled Hours.

- Hospital shall provide the Services in accordance with the following schedule (“**Scheduled Hours**”):
 - Starting at two half days per week with adjustment as deemed necessary and agreed to by the parties to accommodate volumes.

2. Lease Rate.

- Hospital's Lease Rate for the School Space includes the following:
 - Use of the School Space for Hospital and Hospital's Providers during Scheduled Hours;
 - Use of the common areas of the School for Hospital and Hospital's Providers during Scheduled Hours;
 - Utilities, including without limitation, gas, electric, and water;