

SCHOOL BASED BEHAVIORAL HEALTH CENTER AGREEMENT

THIS SCHOOL BASED BEHAVIORAL 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. d/b/a Logan Health Medical Center, a Montana nonprofit corporation, on behalf of itself and its owned or controlled affiliates (collectively, “**Hospital**”), and Bigfork Public Schools (SS:0484) (collectively referred to herein as “**School District**”). Hospital and School District are referred to herein individual as a “**Party**” and collectively as the “**Parties**”.

RECITALS

1. School District owns the certain real properties in which are located the various rooms and spaces (collectively, “**School Spaces**”) that are listed on Exhibit A to this Agreement:

Bigfork Elementary –Middle School, 600 Commerce Street, Bigfork, MT 59911	120 sq. ft.
Bigfork Elementary - Middle School, 600 Commerce Street, Bigfork, MT 59911	464 sq. ft.
Bigfork High School, 600 Commerce Street, Bigfork, MT 59912	336 sq. ft.
Total Square Feet	920 sq. ft.

2. Hospital employs certain physician and non-physician providers who specialize in providing behavioral/mental health care services (“**Providers**”) and are available to provide behavioral/mental health care services at the School Based Health Center as defined below.

3. The Parties agree that the School Spaces are reasonably necessary for Hospital to provide SBHC Services as described in this Agreement.

4. School District desires to lease the School Spaces 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 Spaces from School District 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 behavioral/mental 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 District 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 District 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 District 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 District 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 District shall notify Hospital immediately in the event that School District 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 District, 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 District 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 District 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)(I) as amended and the regulations thereunder or any successor provisions.

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

6. **Lease Rate.** In exchange for lease of the School Space, the Hospital shall pay the amount of \$16.44 USD per square foot for an annual rate of \$15,782.40 USD per year ("**Lease Rate**"), which will be paid in twelve monthly installments of \$1,315.20 USD each, due and payable in advance on April 1 and October 1 of each year. The Parties agree that the Lease Rate represents what they believe to be commercially reasonable and consistent with fair market value for the lease of the School Space.

Hospital's Lease Rate for the School Space includes access to and use of the Space during School's normal hours of operation in accordance with a schedule to be mutually agreed upon by the Parties ("**Scheduled Hours**") for the following purposes: (a) Use of the School Space for Hospital and Hospital's Providers during Scheduled Hours; (b) Use of the common areas of the School District for Hospital and Hospital's Providers during Scheduled Hours; and (c) Utilities, including without limitation, gas, electric, and water.

7. **Term.** The initial term of this Agreement shall begin on the Effective Date and continue for 2 years. Upon the expiration of the initial term, this Agreement shall automatically renew for consecutive 1 year periods unless either Party gives written notice of its intent to terminate this Agreement at least 30 days prior to the expiration of the then-current term.

8. **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. If the Agreement is terminated by either Party for any reason other than cause, Hospital shall be entitled to a pro rata refund of any unused lease payment.

(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.

9. **Indemnity.**

(a) School District 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 District, its directors, officers, employees, agents, representatives, assigns, successors or subcontractors in connection with School District'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 District 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 District 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.

10. **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 District shall maintain or cause to be maintained industry standard property insurance and general liability insurance covering School District, 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.

11. **Duties of Hospital.** While providing the SBHC Services in the School Spaces and while utilizing any common area of the School District, 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 Spaces 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 Spaces, identifying identification, such as a name badge which shall differentiate Hospital's Providers from employees of School District and identify Hospital as a business unrelated to School District; 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.

12. **Maintenance of the Premises.**

(a) **Keys; Security System.** Hospital shall keep the doors of the office locked during Hospital's absence. School District will not be responsible for any article lost, missing, or stolen from the Premises. Hospital has received office keys. Hospital shall not install different locks on any doors or windows in the premises without written permission from School District. Hospital must obtain written authorization from School District to install a security alarm system. If School District provides this written authorization, Hospital must also provide School District with information indicating where and how the sensors are installed, provide School District with a current access code, and list School District as an authorized person to enter the office with the alarm company.

(b) **Nails.** Hospital shall not drive nails or screws into trim, doors, or cabinets. Hospital may use small nails or pins for hanging pictures. Ceiling hooks are not permitted. Hospital shall not install any outside satellite dish or antenna without School District's written authorization.

(c) **Smoke & CO2 Detectors.** Pursuant to § 70-24-303, MCA, one or more carbon monoxide detectors and one or more smoke detectors (as those terms are defined at § 70-20-113, MCA) have been installed on the premises and are in good working order. Hospital shall keep the detectors in working order at all times, including replacement of batteries and shall notify School District if any of the detectors become inoperable.

(d) **Access to Premises.** Hospital will allow School District access to the Premises at all reasonable hours for the purpose of examining or exhibiting the Premises, and making any necessary repairs that the School District may deem fit for the benefit of or related to any part of the Premises. School District will provide Hospital with at least 24-hour notice of entry, when such entry is necessary. School District may enter the Premises without the consent of Hospital in the case of an emergency.

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

13. **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 District. Neither Hospital nor School District shall be liable, except as otherwise expressly provided in this Agreement, for any obligations or liabilities incurred by the other.

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

15. **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 District, and no assignment shall relieve Hospital of any of its responsibilities under this Agreement.

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

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

18. **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.

19. **FERPA.** School District 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.

20. **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 District 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 District and Hospital.

21. **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 District:

Bigfork Public Schools
600 Commerce Street
Bigfork, MT 59911
Attn: Superintendent

If to Hospital:

Logan Health Medical Center
310 Sunnyview Lane
Kalispell, MT 59901
Attn: Chief Legal Officer

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

22. **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 District certifies that neither School District 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.

23. **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.

24. **Miscellaneous.**

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

(b) **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.

(c) **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.

(d) **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.

(e) **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.

(f) **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.

(g) **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.

(h) **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.

(i) **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 District 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.

(j) **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.

(k) Hospital shall comply with the School District's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones and will require compliance with those policies and zones by Hospital's employees, agents, and all other persons carrying out the Agreement on behalf of Hospital ("Covered Hospital Employees and Agents"). Hospital shall require all of Covered Hospital Employees and Agents, while on School District's property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with students and employees.

(l) School District prohibits all weapons, alcohol, tobacco, nicotine and forms of discriminatory or harassing behavior on School District's property. This prohibition extends Covered Hospital Employees and Agents. The weapon prohibition applies whether or not the School District thereof has a permit for a concealed weapon. Hospital shall enforce the School District's alcohol-free, drug-free, tobacco-free, harassment-free, discrimination-free and weapon-free policies and zones. Hospital shall require all Covered Hospital Employees and Agents, while on School District's property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying weapons, speaking profane and/or offensive language, or engaging in any inappropriate or discriminatory behavior interactions of any nature whatsoever with students and employees. School District's designee will make final decisions regarding compliance with these expectations. HOSPITAL RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE SCHOOL FOR NON-COMPLIANCE WITH SCHOOL'S DRUG-FREE, ALCOHOL FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE 3 ZONES, OR CRIMINAL LAW BY COVERED HOSPITAL EMPLOYEES AND AGENTS. Any Covered Hospital Employee or Agent found by School District to have violated these restrictions is subject to permanent removal from the site, at School District's request.

(m) All Covered Hospital Employees and Agents will complete a screening process that includes a criminal history and child protective service background check prior to their employment. Proof of successful completion of background check for each Covered Hospital Employee or Agent that will be present on School District's property will be provided to the School District prior to commencement of services. Any Covered Hospital Employees and Agents that have not successfully completed a background check will not be permitted on school property. Hospital will not assign any Covered Hospital Employees and Agents with a disqualifying criminal history work at School District. If Hospital receives information that a Covered Hospital Employee or Agent has a reported disqualifying criminal history, then Hospital will immediately remove the Covered Hospital Employee or Agent from the site and notify the School District in writing within three business days. If the School District objects to the assignment of a Covered Hospital Employee or Agent on the basis of the Covered Hospital Employee or Agent's criminal history record information, then Hospital agrees to discontinue using that Covered Hospital Employee or Agent to provide services as part of this Agreement. Hospital will take precautions to ensure that the Covered Hospital Employee or Agent with disqualifying criminal history will not be present on School District's property. Hospital will ensure that these precautions or conditions continue throughout the time services are provided.

School District will decide what constitutes direct contact with School District's students. "Disqualifying criminal history" means any conviction or other criminal history information designated by the School District's policy that would normally render a potential School District employee unfit to work in a public school within the School District. Copies of written School District's policies are available upon request.

(n) Neither shall use the image or likeness of the other party's facilities, official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of other party, without the other party's prior written consent. Hospital shall not have any authority to advertise or claim that School District endorses Hospital's services, without School District's prior written consent.

(o) Hospital shall not disclose any confidential information that comes into the possession of Hospital at any time during the Agreement, including but not limited to, the location and deployment of security devices, security access codes, student likenesses, student record information or employee information.

(p) The parties acknowledge that, as a public entity in the State of Montana, School District and entities contracting with School District must comply with the open records laws of the State.

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

above.

**BIGFORK PUBLIC SCHOOLS
("SCHOOL"):**

**KALISPELL REGIONAL MEDICAL CENTER, INC.
D/B/A LOGAN HEALTH MEDICAL CENTER
("HOSPITAL"):**

Name

Name

Title

Title

Signature

Signature

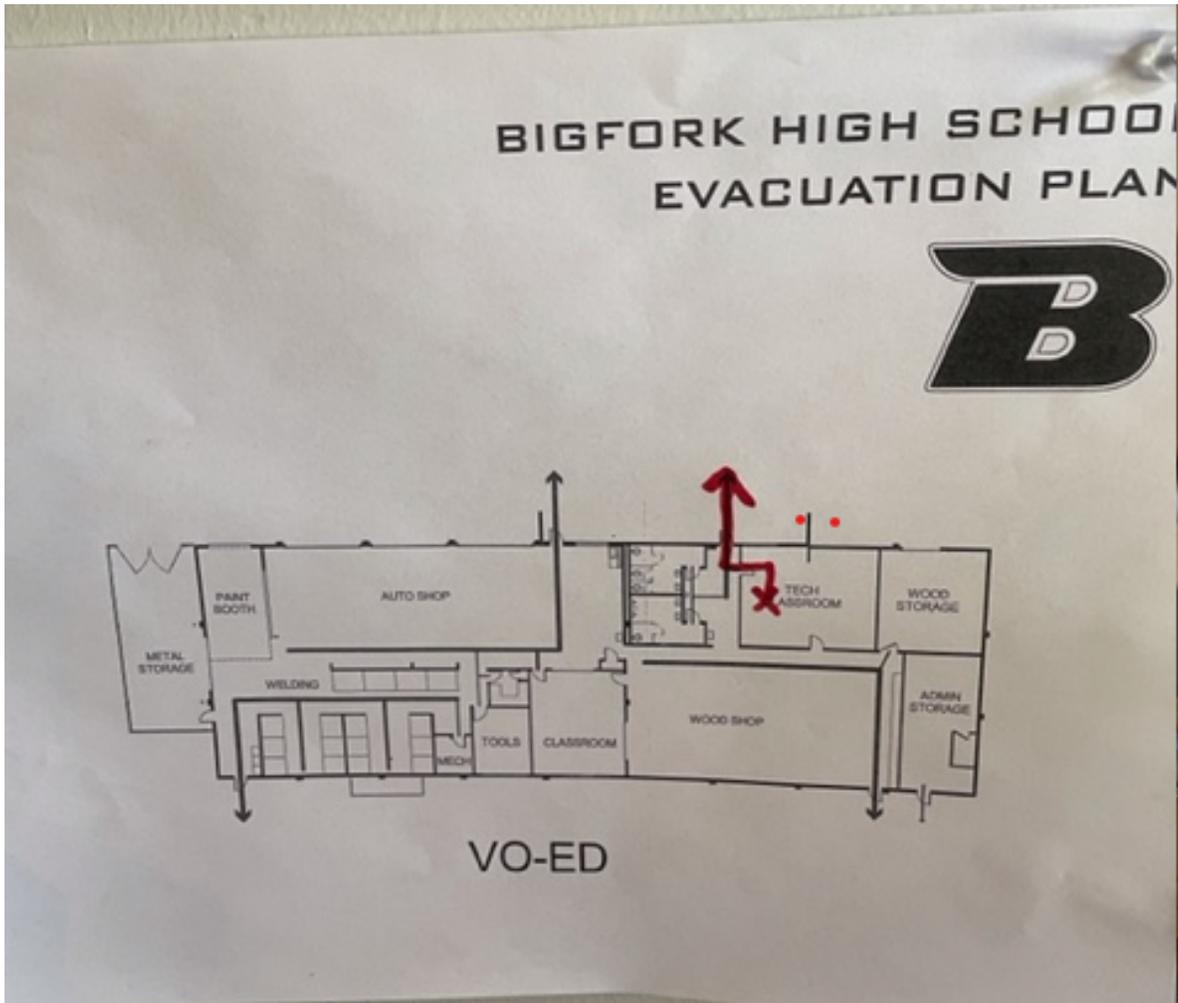
Date Signed

Date Signed

EXHIBIT A

SCHOOL SPACES AND SQUARE FOOTAGE

1. Bigfork High School, 600 Commerce Street, Bigfork, MT 59912



2. Bigfork Elementary and Middle Schools, 600 Commerce Street, Bigfork, MT 59911

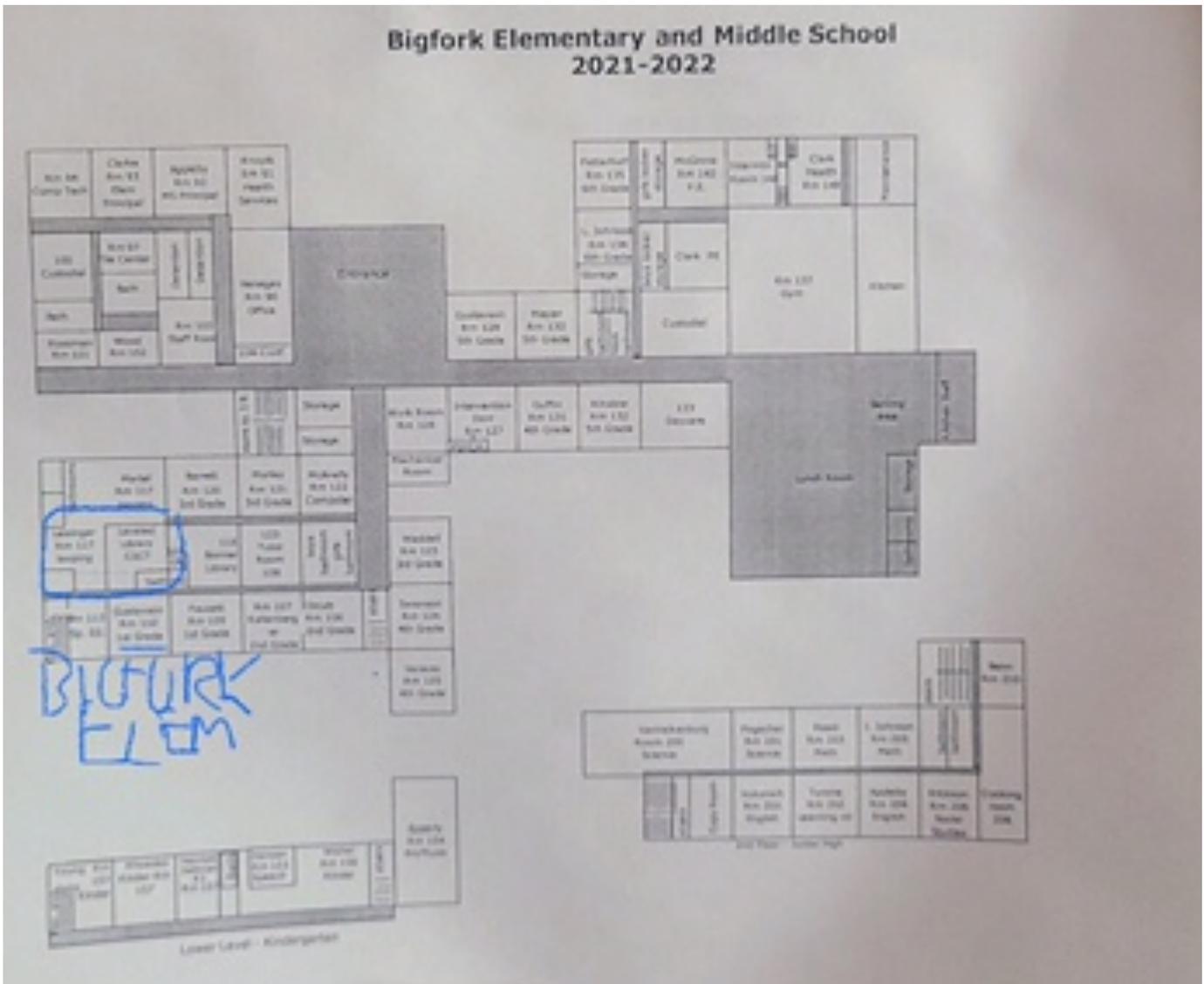


EXHIBIT B

DESCRIPTION OF CLINIC SERVICES

- Behavioral/mental health assessment and treatment