


REQUEST FOR BOARD ACTION

To: ESD Board of Education
From: ESD Finance Director, Ron Patera 
Date: August 6, 2014
Business Date: August 11, 2014
Subject: Children's Hospital Agreement

RECOMMENDATION:

Approve agreement as presented.

BACKGROUND AND FINDINGS:

To minimize district costs, the EHS Athletic Director has again negotiated an agreement with Children's Hospital to provide athletic trainer services for the school athletic teams. The contract in your packet has been previously reviewed by the law firm of Caplan and Earnest LLC.

FISCAL IMPACT:

The cost of the agreement is \$25,000.

Superintendent's Review: _____

SERVICES AGREEMENT
Children's Hospital Colorado and Elizabeth High School

This Services Agreement ("Agreement") is made and entered into this 11 day of August, 2014, by and between Elizabeth School District C-1 (hereinafter "District") with its principle office at 34500 County Road 13, Elizabeth, Colorado 80107 and Children's Hospital Colorado (hereinafter "CHCO"), a Colorado nonprofit corporation, with its principle office at 13123 E. 16th Ave., Aurora, Colorado 80045.

Background

- A. Elizabeth High School ("EHS") is a high school within the District, which provides public education for senior high school students from grades 9-12. In addition to basic education needs, the District provides for extracurricular programs, such as athletics. Due to budget constraints in the District, EHS is unable to provide consistent athletic training coverage and care for its extracurricular athletic programs.
- B. CHCO provides a comprehensive pediatric healthcare network including a licensed full-service hospital.
- C. The District has determined that it is in the best interests of its students to engage CHCO to provide injury prevention education related to sports activities at its high school and athletic trainers on site at EHS athletic events.
- D. Consistent with the mission of CHCO, the services contemplated under this Agreement provide a necessary community benefit by providing wellness, preventive and therapeutic care to teenage athletes that may not otherwise be available, accessible or affordable without the services and community commitment of CHCO.

AGREEMENT

In consideration of the compensation to be paid by the District and of the mutual agreements herein contained, the parties agree as follows::

- 1. **Term of Services.** The term of services under this Agreement is August 1, 2014 through and including July 31, 2015 ("Initial Term"). This Agreement may automatically renew for successive one-year terms (each year a "Renewal Term"). The Initial Term and Renewal Terms shall not collectively exceed three years.
- 2. **Services to be Provided by CHCO**
 - A. During the Service Term, CHCO will provide athletic trainer services to and for the benefit of the District and specifically EHS ("Services"), including but not limited to:
 - 1. CHCO will provide for use by EHS a certified athletic trainer ("ATC" in the singular or "ATCs" in the plural) who shall perform services within the scope of practice as defined by the Colorado Medical Practice Act, C.R.S. § 12-36-106 (3.5) and the Athletic Trainer Practice Act, C.R.S. § 12-29.7-101, et seq. ("ATPA"). The scope of the ATC's services is further defined in Exhibit A, which is attached hereto and incorporated herein by this reference. The ATCs are employees, contractors or agents of CHCO and are under the supervision and direction of CHCO.
 - 2. CHCO will provide one (1) ATC to EHS between the hours of 2:00 p.m. to 6:30 p.m., a four and one-half (4 ½) hour block of time, four (4) days per week, and/or during the time when athletics are otherwise scheduled at EHS. The ATC will provide a maximum of thirty (30) hours per week for EHS. The ATC will attend all home and traveling varsity football games and all home contests for all athletics listed in Exhibit C, which is

attached hereto and incorporated herein by this reference. The ATC is not required to be on the EHS campus when no practices or competitions are scheduled.

3. In addition to the ATC for EHS, CHCO will provide training and supervision of two (2) high school student trainers for the high school, who will assist in rehabilitation of athletes and prevention of injury. The nature and extent of the training will be mutually determined by CHCO and EHS and provided in accordance with the "ATPA."
- B. During the Term of this Agreement, upon the mutual agreement of the parties and subject to the terms of this Agreement, CHCO will provide an additional ATC for other athletic events at EHS, including but not limited to tournaments and meets. EHS or the District will pay the rate of Twenty-Seven Dollars and 50/100 Cents, (\$27.50), per hour for each additional ATC scheduled for said additional athletic events. The District or EHS must give CHCO notice of its need for an additional ATC at least two (2) weeks prior to the scheduled date that EHS or the District needs the ATC. CHCO cannot guarantee that it will be able to meet the request for an additional ATC(s).
 - C. CHCO will provide an ATC who will provide ATC Services for all home varsity athletic contests for all the high schools involving EHS students for the following sports, during the regular season and post-season play:
 - i. Football (all Varsity, home JV and freshman)
 - ii. Cross Country (Boys and Girls)
 - iii. Soccer (Boys and Girls)
 - iv. Basketball (Boys and Girls)
 - v. Wrestling
 - vi. Track
 - vii. Baseball
 - viii. Softball
 - ix. Gymnastics
 - x. Volleyball
 - xi. Cheerleading
 - D. The ATC will also provide services for EHS athletic teams of all levels, including varsity, JV, sophomore and freshmen at home games, meets, events or competitions. ATC services at non-varsity events must be agreed upon by CHCO and the District.
 - E. In the event of a varsity home game conflict, (i.e., more than one home event on the same date), the Athletic Director at EHS and the CHCO Sports Medicine Program Coordinator will decide which event shall be covered by the ATC.
 - F. ATC will contact the EHS Athletic Director and CHCO Sports Medicine Medical Director immediately in the case of a serious injury and/or when an ambulance is called. In the case of a non-serious injury ATCs will notify the EHS Athletic Director and CHCO Director when it is reasonably practicable but no later than twenty-four (24) hours.
 - G. ATC will provide assistance to coaches and athletes as it relates to athletic injuries, within their scope of practice. The ATC in fulfilling its responsibilities, hereunder, will not practice outside the ATC's scope of practice and will not render the services of a physician.
 - H. ATC will assist in establishing criteria for minimum requirements for supplies and equipment, which are supplied by the District or EHS.
 - I. CHCO will not directly or indirectly solicit referrals. The parties acknowledge that no consideration provided, paid or waived under this Agreement is intended to be, nor should it be construed to be, an inducement or payment for referral of patients from one party to another.

- J. CHCO will use Athletic Training Interns as appropriate in the training room and during varsity competition, at no additional charge to the District.

3. Obligation of EHS

In consideration of the Services provided by CHCO, the District or EHS shall be obligated to provide the following:

- The District shall pay CHCO in accordance with the following schedule.
 - Contingent upon appropriation of funds each year from the District, the District shall pay to CHCO the sum of Twenty Five Thousand Dollars (\$25,000.00) no later than September 1st of each year during the Term (or any renewal term) of this Agreement. Should the District fail to pay such amount to CHCO, CHCO shall be under no obligation to provide any Services specified herein to the District or EHS and shall be entitled to immediately terminate this Agreement.
- The District or EHS shall provide general supervision of all athletic contests enumerated above. This supervision shall be provided by athletic coaches or other school personnel as appropriate.
- EHS shall obtain medical releases (permission forms) for all students participating in any athletic event and shall provide the CHCO ATC access to such medical releases (permission forms). CHCO shall be specifically named as a released party in each medical release.
- The District and specifically EHS shall provide reasonable facilities, equipment, utilities and supplies for the ATC and their programs, as mutually agreed to by the parties.
 - EHS shall recognize CHCO for Services rendered at each athletic event:
 - ☑ via public address system (if available)
 - ☑ display for CHCO banner at each school site and stadiums
 - CHCO will be given advertising privilege in programs, rosters, and other formats at no cost to CHCO. (Camera-ready artwork will be furnished to EHS by CHCO). CHCO Sports Medicine banner may be displayed at all field locations, gymnasiums, training rooms, and at large tournaments
 - CHCO logo printed on all ATC uniform attire (however CHCO shall not be responsible for the cost of the uniforms)
 - Logo presence on scoreboards
 - Logo presence on all outgoing communications / materials to families (for example, Newsletter, individual sport programs)
 - Logo with link on EHS (or District) website
 - Program literature readily available at all locations (for example, Brochures)

4. Intellectual Property Rights of CHCO

- a. **License.** CHCO grants to the District and EHS specifically the limited, non-exclusive, non-assignable license to use the Balloon Boy Mark, USPTO Registration No. 3,337,350 (the "Mark") in connection with EHS's sporting events and activities provided for hereunder, on scoreboards and in advertising and promotion for the Services.
- b. **Method of Use; Control.** The District agrees to comply with any standards and requirements established by CHCO concerning the use of the Mark, including any requirements of claiming or disclaiming affiliation with CHCO or the Mark. The District shall permit authorized representatives of CHCO to make such inspection of materials bearing the Mark as such representatives shall consider appropriate to ascertain whether the District's or EHS's use of the Mark meets CHCO standards. If it is determined by CHCO that the use of the Mark does not meet

CHCO standards, then CHCO shall give notice to the District in writing of such deficiency, whereupon such deficiency shall be rectified promptly by the District. In no event shall any printed material utilizing the Mark be published without the prior written approval of the use of the Mark by CHCO.

- c. **Ownership.** The District agrees that ownership of the Mark and the goodwill relating thereto shall remain vested in CHCO both during the Term of this Agreement and thereafter, and the District further agrees never to challenge, contest or question the validity of CHCO ownership of the Mark or any registrations thereof by CHCO.

5. Relationship of Parties

The District and CHCO agree that CHCO is an Independent Contractor and neither CHCO nor any of its employees, contractors or agents will be treated as an employee of the District for any purpose, including, but not limited to, federal income tax purposes, state income tax purposes and worker's compensation purposes. CHCO is solely and exclusively responsible for paying all of its employees, contractors and agents, and any of their estimated income and employment taxes. CHCO and its employees, contractors or agents are not entitled to any benefits provided by the District and EHS employees, including, but not limited to, group insurance, withholding of federal and state taxes, health and dental insurance, unemployment insurance benefits and worker's compensation disability insurance.

CHCO shall provide competent and physically capable employees, contractors or agents in a number that is consistent with the scope of work specified in this Agreement. Where required, employees, CHCO contractors or agents shall be licensed and accredited. The District may require CHCO to remove an employee, contractor or agent it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued presence on District property is not in the best interest of the District.

CHCO will undertake good faith efforts to assure that the ATC complies with the Athletic Handbook as well as all codes, rules and regulations, laws and ordinances whether municipal, state or federal or as related to the District. In accordance with the District's policy regarding the use of tobacco and alcohol products and/or illegal drugs, no employee, contractor or agent of CHCO shall be permitted to use these substances when performing work on District property.

6. Liability and Insurance

Both parties agree to procure and maintain such policies of professional liability and other insurance, including workers' compensation, as shall be necessary to insure against any claim or claims for damages arising in connection with the performance of its duties under this Agreement. Certificates evidencing said insurance policies shall be provided upon request.

Both parties shall maintain general and professional liability insurance or self-insurance covering bodily injury and property damage to third parties with limits of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate and workers' compensation insurance in such amounts as required under applicable statutory limits for their employees or employer's liability.

7. Term and Termination

This Agreement may be terminated at any time without cause provided that thirty (30) days prior written notice has been given to the other party. In the event of a breach of this Agreement by CHCO, the District may terminate this Agreement upon five (5) days prior written notice. Upon termination, with or without cause, the District shall be obligated to compensate CHCO for Services performed to the date of termination only and all other obligations shall cease. For any unused credits currently on account with CHCO, those credits will be applied to any outstanding balances. In addition, any unused

portion of any payments made by the District shall be refunded by CHCO, not later than thirty (30) days after termination of Agreement.

Termination of this Agreement by the District, may include, but is not limited to, the District's inability to continue with this Agreement due to the elimination or reduction of funding.

8. Limitation of Delegation

This Agreement is personal in nature with respect to CHCO and CHCO employees, and no person or entity other than CHCO and its employees, contractors or agents shall perform such Services except upon written approval of the District.

9. Litigation: Attorney's Fees

- a. Any controversy or claim arising out of, or relating to, any interpretation, breach or dispute concerning any of the terms or provisions of this Agreement, whether involving a claim in tort, contract or otherwise, not settled in writing within thirty (30) days after it arises, may be pursued by any other available remedies.

10. **Responsibility for Own Acts.** Except as otherwise provided in this Agreement, each party shall be responsible for its own acts and omissions and any and all claims, liabilities, injuries, suits, demands and expenses of all kinds which may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by either party, their employees or representatives, in the performance or omission of any act or responsibility of either party under this Agreement. In the event that a claim is made against both parties, it is the intent of both parties to cooperate in the defense of said claim and to cause their insurers to do likewise. However, both parties shall have the right to take any and all actions they believe necessary to protect their respective interests.

11. **Illegal Aliens.** CHCO shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to the CHCO that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract.

- a. CHCO represents, warrants, and agrees that it has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Colorado Department of Labor and Employment Program. CHCO shall not use the E-Verify Program or the Department Program to undertake pre-employment screening of job applicants while the Agreement is being performed.

- b. If CHCO obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, CHCO shall:

- i. Notify the subcontractor and the District within three (3) days that CHCO has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

- ii. Terminate the subcontract if within three (3) days of receiving actual notice the subcontractor does not stop employing or contracting with the illegal alien, except that CHCO shall not terminate the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

- c. CHCO shall comply with any reasonable request by the Department of Labor and Employment (hereinafter referred to as the "Department") made in the course of an investigation that the Department is undertaking pursuant to C.R.S. § 8-17.5-102(5).

d. If CHCO violates the provisions of this Section 28.0 or C.R.S. § 8-17.5-101 *et seq.*, the District may terminate the Agreement for breach and CHCO shall be liable for actual and consequential damages.

11. General Provisions

- a. The validity, construction, performance and enforceability of this Agreement shall be governed by the laws of the State of Colorado.
- b. CHCO agrees to comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and any current and future regulations promulgated thereunder.
- c. The failure of any party to enforce at any time any of the provisions or terms of the Agreement shall not be construed to be a waiver of such provision or term, nor of the right of any parties thereafter to enforce such term or provision.
- d. This Agreement contains the complete understanding and agreement between the parties and shall, as of the effective date, supersede all prior understandings or agreements between the parties whether oral or written; that in any way relate to the subject matter of this Agreement. Any representations that may have been previously made by either party to the other are void. Neither party has relied on such prior representations or promises, whether written or oral, in entering into this Agreement other than those expressly stated herein.
- e. The terms of this Agreement cannot be modified except in writing signed by an authorized representative of the District and CHCO.
- f. Except as necessary in the ordinary course of performing Services hereunder, CHCO and its employees, contractors, agents and representatives shall not disclose to any third party any information concerning the Services rendered on the District's or EHS's behalf.
- g. CHCO agrees to comply with the Civil Rights Act of 1964, which Act provides that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program activity which is supported by federal funds. In the event of noncompliance, it is agreed that the District may withhold any further commensuration to CHCO which is derived for said funds until compliance can be assured to the satisfaction of the District. All invoices must certify that services performed hereunder have been provided in compliance with the Civil Rights Act of 1964.
- h. Any notices required to be given under this Agreement shall be in writing and delivered personally to the other party or mailed by certified mail, return receipt requested, postage prepaid, to the current address of the other party. Mailed notices shall be deemed received three (3) days after the date of mailing unless actually previously received. As of the date of this Agreement, the current addresses of the parties are:

NOTICES:

Children's Hospital Colorado	with a copy to:	13123 E 16 th Ave
Box B060	Children's Hospital Colorado	
Aurora, CO 80045		13123 E. 16 th Ave, B545
Attention:		Aurora, CO 80045
		Attention: General Counsel
Elizabeth School District C-1		
34500 County Rd 13		
Elizabeth, CO 80107		

Attention: Mr. Douglas Bissonette, Superintendent
Attention: Dr. Greg Wieman, Principal
Attention: Chris Cline, Athletic/Activities Director

- i. Counterparts. This Agreement and any amendments 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.
- j. No rights or interests in the Agreement will be assigned by CHCO (including the hiring of subcontractors to perform any part of Services) without the prior written consent of the District.

12. Authority

The individuals executing this Agreement of behalf of the parties hereto, hereby represent that they have full power and authority from their respective governing boards and entities to execute this Agreement.

The parties, intending to be legally bound, have caused this Agreement to be executed on the dates set forth below.

By: _____
Mr. Douglas Bissonette
Superintendent
Elizabeth School District C-1
Date: _____

Children's Hospital Colorado

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

Exhibit A – Scope of ATC Services

The scope of athletic trainer services rendered shall be within the Colorado “Athletic Trainer Practice Act”, *C.R.S. §12-29.7-101, et seq.* (“ATPA”) and the Colorado Medical Practice Act, *C.R.S. § 12-36-106 (3.5)*. Services shall include but not be limited to the following in accordance with the applicable athletic trainer rules and regulations:

- (I) The development and implementation of conditioning programs for athletes as defined in the Colorado Medical Practice Act, subsection (3.5);
- (II) The performance of strength testing using mechanical devices or other standard techniques;
- (III) The application of tape, braces, and protective device to prevent injury;
- (IV) The supervision of maintenance of athletic equipment to assure safety;
- (V) The assessment, during a screening process, of physical limitations, including those previously diagnosed by a physician, which may pose a risk of injury to an athlete;
- (VI) The determination of the level of functional capacity, decreased range of motion or muscular weakness of an injured athlete in order to establish the extent of an injury;
- (VII) The administration of standard techniques of first aid;
- (VIII) The use of emergency care equipment to aid the injured athlete by facilitating safe transportation to an appropriate medical facility;
- (IX) The referral of an athlete to appropriate medical personnel as needed;
- (X) The use of exercise and other therapies for which the athletic trainer has received formal training, not including drugs, to restore an injured athlete to normal function;
- (XI) The maintenance of athletic training records;
- (XII) The organization of a medical care service delivery system for athletes when needed;
- (XIII) The establishment of plans to manage an athlete's medical emergencies;
- (XIV) The education and counseling of athletes on sports health related topics;
- (XV) The instruction of student athletic trainers; and
- (XVI) The education and counseling of the general public with respect to appropriate athletic training programs.