




Decision Paper

To: Nelson County Board of Education

From:  Tim Hockensmith, Chief Operating Officer

cc: Mr. Wes Bradley, Superintendent

Date: May 15, 2018

Re: KORT contract for athletic training services for FY 2018-2021.

RECOMMENDATION: Approve the attached contract with KORT for athletic training services for the period 7/1/18 – 6/30/21.

RECOMMENDED MOTION: I move that the Nelson County Board of Education approve the attached contract for athletic training services as presented.

ATHLETIC TRAINING SERVICES AND SPONSORSHIP AGREEMENT

THIS ATHLETIC TRAINING SERVICES AND SPONSORSHIP AGREEMENT (the "Agreement") is made as of the ____ day of _____, 2018 by and between **NELSON COUNTY BOARD OF EDUCATION on behalf of Nelson County High School and Thomas Nelson High School** ("School") and **KENTUCY ORTHOPEDIC REHABILITATION, LLC**, for itself and on behalf of its subsidiaries and affiliates ("Contractor").

W I T N E S S E T H:

WHEREAS, the School desires to have certain athletic training services provided in connection with its athletic programs; and

WHEREAS, Contractor has agreed to perform such services for the School on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties, intending to be legally bound, and in consideration of the mutual covenants and agreements herein contained, agree as follows:

1. **Services, Exclusivity.**

- a) Contractor agrees to furnish those athletic training services as set forth on Exhibit A attached hereto (the "Services") during such times and at those events set forth on Exhibit B attached hereto. In the event Contractor's attendance would be required at more than one (1) event as set forth on Exhibit B as a result of multiple events being scheduled for the same time, the Athletic Director for the School will give Contractor reasonable prior notice as to whether Contractor shall divide its time between events or whether the Contractor shall only attend one (1) of the events. Contractor represents that its Services shall be provided in a first-class high quality and professional manner and that it has the background and expertise and personnel necessary to provide the Services for the School.
- b) During the term of this Agreement, Contractor shall be the **exclusive provider** of sports medicine and rehabilitation services to School. Contractor will also be the exclusive sports medicine and rehabilitation, physical therapy, and athletic training advertiser at School. In exchange for Contractor's Services, the School shall recognize Contractor as the exclusive sports medicine and rehabilitation provider of School and agrees not to enter into any agreements or arrangements to provide signage at the School's home venues with any other providers of athletic training, physical therapy, occupational therapy, occupational health, sports medicine and rehabilitation services.

- c) In consideration of the mutual covenants and agreements contained herein, the School will provide the deliverables set forth on Exhibit C.

2. **Responsibilities of the School.** At the School location, the School shall:

- a) Provide a dedicated area reasonably acceptable to Contractor (the "Athletic Training Room") to perform the Services, other than the Services provided at events.
- b) Provide all reasonably necessary and required supplies and equipment required in connection with the performance of the Services upon written request from Contractor. Any supplies and equipment furnished by the School and not used in the performance of the Services shall be returned to the School upon the expiration or earlier termination of this Agreement.
- c) Take such action and adopt such policies as are reasonable and desirable to facilitate communication between the School, its coaches and other representatives of its Athletic Department and Contractor.
- d) Designate the School's Athletic Director to serve as Contractor's primary contact for communication with the School.
- e) Provide Contractor with athletic event schedules approximately one (1) month prior to the first scheduled event each season and communicate revisions to the schedule to Contractor no less than two (2) weeks prior to any such revision.
- f) Provide Contractor with reasonable access to a telephone in, or in close proximity to, the Athletic Training Room.
- g) Cooperate with Contractor in all other respects to achieve the objectives of this Agreement.

3. **Compensation.** In addition to the consideration set forth in Exhibit C, coverage to the School for Services provided beyond those contractual obligations as specified in Exhibit B are subject to Contractor approval and will be billed to the School at a rate of \$30.00 per hour. This shall include any hours worked by a Certified Athletic Trainer over thirty (30) hours per week.

4. **Term.**

- a) The Agreement shall be effective beginning July 1, 2018 and continuing through June 30, 2021 (the "Term"). Thereafter, this Agreement shall automatically renew for successive one year terms under the same terms and conditions, unless earlier terminated as provided herein.

- b) Notwithstanding the foregoing, either the School or Contractor shall have the right to terminate this Agreement by giving thirty (30) days prior written notice to the other. Upon expiration of said notice period, this Agreement shall be terminated and the parties shall have no further obligation hereunder, except Indemnification obligations in Section 8 and Non-Solicitation obligations in Section 9, which survive the termination of this Agreement.

5. **Independent Contractor.** Contractor, in performing the Services, is acting in the capacity of an independent contractor, and is not an agent, servant, partner, or employee of the School. Contractor will have control over the performance of the Services and shall be solely responsible for payment of its federal and local taxes, salary for its employees, social security payments, subject to the School's indemnification obligation set forth herein. However, the School shall be responsible for reimbursing Contractor for mileage expenses at the then existing IRS standard business mileage rate, where Contractor is obligated to travel and present, at an off-site location due to construction or other events on the main campus. None of the benefits provided by the School to its employees, including, but not limited to, worker's compensation insurance, disability insurance, medical insurance, and employment insurance shall be provided by the School to any of Contractor's employees. Contractor has no authority hereunder to assume or create any obligation or responsibility, express or implied, on behalf or in the name of the School or to bind the School in any way whatsoever.

6. **Personnel Requirements.** Contractor shall furnish two (2) Certified Athletic Trainers (one at each School location) to perform the Services. If applicable, Contractor shall assist School in ensuring that Certified Athletic Trainer complies with all applicable laws regarding the ability to work with minors.

7. **Insurance.**

- a) Contractor, at its expense, shall maintain adequate insurance coverage for its activities in connection with this Agreement, which insurance shall be issued by an insurance carrier reasonably acceptable to the School, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate (subject to Contractor's applicable deductible or self-insured retentions) with the School named as an additional insured. The coverage provided shall insure Contractor and each employee thereof against any act, error or omission of Contractor and Contractor's employees. Contractor also shall provide worker's compensation insurance as may be required and consistent with state law. Contractor agrees promptly to furnish to the School evidence of the maintenance and continued effectiveness of the insurance obtained prior to the commencement of services.
- b) The School, at its expense, shall carry a policy or policies of general liability insurance, issued by an insurance carrier reasonably acceptable to Contractor, with minimum coverage limits of at least One Million Dollars

(\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. The insurance coverage provided shall insure the School and each employee thereof against any act, error or omission of the School and the School's employees. The School agrees to furnish to Contractor, prior to the effective date of this Agreement, written evidence of the maintenance and continued effectiveness of the insurance coverage required by this Section 7.

8. **Indemnification.**

- a) Contractor shall indemnify, defend, and hold the School harmless from and against any and all liability, judgments, costs, damages, claims or demands, including, without limitation, reasonable attorney's fees, arising out of the negligent acts or omissions of Contractor in the performance of the Services. Notwithstanding any other provision contained herein, Contractor and its employees, officers, directors, independent contractors, agents and representatives, shall not be liable to the School for any consequential, incidental or special damages, whether in contract or in tort, including, but not limited to lost profits, economic loss or other losses by the School arising out of, or in connection with, Contractor's obligations under this Agreement.
- b) The School shall indemnify, defend, and hold Contractor harmless from and against any and all liability, judgments, costs, damages, claims or demands, including, without limitation, reasonable attorney's fees, arising out of the negligent acts or omissions of the School's athletic programs or maintenance of its facilities.

9. **Non-Solicitation.** During the initial term and any renewal terms of this Agreement, and for a period of eighteen (18) months after the expiration or earlier termination of this Agreement, the School covenants and agrees that it will not, directly or indirectly (e.g. by hiring or contracting with or using another staffing agency, another company that provides athletic training services, or another company that hires or contracts with Contractor's employees or contractors in any capacity), through any director, officer, employee, agent, staffing agency, or affiliate, without the express written consent of Contractor (which consent may be withheld in Contractor's sole discretion for any reason), solicit, contract, engage, hire or employ any person who is, or at any time, was directly or indirectly involved in providing the Services to School.

10. **Notices.** All notices, requests, demands, directions and other communications required or permitted under the provisions of this Agreement, or otherwise with respect hereto, shall be in writing and shall be: (i) mailed by first class registered or certified mail, return receipt requested, postage prepaid; or (ii) sent by next day business courier (such as Federal Express or the like); or (iii) personally delivered, as follows:

If to Contractor, to:

Kentucky Orthopedic Rehabilitation, LLC
875 Pennsylvania Ave.
Suite A
Bardstown, KY 40004
Attention: Robbie Hinkebein

With a copy to:

Select Medical Corporation
4714 Gettysburg Road
P.O. Box 2034
Mechanicsburg, PA 17055
Attention: Legal Department

If to School, to:

Nelson County Board of Education
288 Wildcat Lane
Bardstown, KY 40004
Attention: Tim Hockensmith

Or to such other address(es) or to the attention of such other person(s) and officer(s) as the addressee of any such notice shall have previously furnished to the sender in writing. Each notice or communication which shall be transmitted in the manner described above shall be deemed sufficiently given, served, sent, or received for all purposes at such time as it is received by the addressee (with return receipt, delivery receipt being deemed conclusive evidence of such mailing, transmission or delivery), or at such time as delivery is refused by the addressee on presentation.

11. **Binding Effect: Assignment.** This Agreement shall inure to the benefit of and be legally binding on the parties hereto, their successors and assigns. Neither party shall assign this Agreement to another, without the prior written consent of the other party, to this Agreement, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Contractor may assign its rights and/or obligations arising under this Agreement to a subsidiary or affiliate without the prior consent of the School.

12. **Waiver of Breach.** The waiver by either party of any breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach hereunder. No waiver shall be valid unless in writing and signed by the party granting such waiver.

13. **Entire Agreement.** This Agreement contains the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes any prior written or oral agreements or understandings and any contemporaneous oral agreements or understanding, between them respecting the subject matter hereof. There are no representations,

agreements, arrangements or understanding, oral or written, between and among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein.

14. **Amendment or Modification.** This Agreement shall not be waived, changed, modified, extended, or discharged except by an agreement in writing, signed by both parties hereto.

15. **Severability.** If any provision of the Agreement shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid or unenforceable, such invalidity shall not affect, impair or invalidate the remaining provisions of this Agreement.

16. **Headings.** The heading used in this Agreement are for convenience of reference only, and shall not control or affect the meaning or construction, or limit the scope or intent, of any provision of this Agreement.

17. **Counterparts.** This Agreement may be executed in one or more counterparts, or with counterpart signature pages, each of which shall be deemed an original, but all of which together constitute one and the same Agreement. Signatures delivered by facsimile, email, or other electronic means shall be deemed originals and shall bind the signatory notwithstanding any subsequent failure or refusal to deliver an original signed in ink.

18. **No Rights in Third Parties.** Nothing in this Agreement shall be construed as creating or giving rise to any rights in any third parties or any person other than the parties hereto.

19. **Governing Law.** This Agreement shall be construed and interpreted and its validity shall be determined in accordance with laws of the Commonwealth of Kentucky, without regard to its conflicts of laws provisions.

20. **Compliance with Family Educational Rights and Privacy Act.** Both parties agree to comply with the requirements of the Family Educational Rights and Privacy Act (FERPA) and state law with regard to any personally identifiable student information or education records with which Contractor comes into contact with. For the purpose of this Agreement, compliance with FERPA, 20 USC §1232g and 34 C.F.R., Part 99 (“FERPA”) means that Contractor agrees that it shall not disclose to any third party any personally identifiable information from an education record as defined by FERPA that Contractor, its agents, employees and/or assigns, creates or receives in the course of providing Services under this Agreement with regard to any student without the prior consent of the student’s parent or legal guardian. Contractor agrees that in the event it uses, creates, receives, or accesses personally identifiable information from education records, said use, creation, receipt, or access shall only be for the purposes of providing Services under this Agreement, and not for any other non-school related purposes, including but not limited to, solicitation. Contractor agrees to return all student education records to the School at the termination of this Agreement and to abide by all other School policies with regard to student education and/or medical records.

21. **Right of First Refusal.** Should the Agreement terminate without cause, Contractor shall have the right of first refusal to continue to provide Services in the event that the School chooses to seek those Services again.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the day and year first above written.

NELSON COUNTY BOARD OF EDUCATION

By: _____
Name:
Title:

**KENTUCKY ORTHOPEDIC
REHABILITATION, LLC**

By: Select Medical of Kentucky, Inc., a Delaware corporation and its managing member

By: _____
Robbie Hinkebein, RVP KORT

EXHIBIT A

1. Contractor will supply two (2) Certified Athletic Trainer(s) employed or retained by Kentucky Orthopedic Rehabilitation, LLC or an affiliate or subsidiary thereof to provide the Services to the School at the times and during the events set forth on Exhibit B. The Services will be limited to (i) the evaluation and treatment of minor injuries; (ii) the application of first aid and other medical assistance as is reasonable and possible under the circumstances pending the arrival of ambulance services in the case of major injuries; (iii) preventative taping and strapping of athletes, as needed; (iv) providing nutritional information to student athletes; (v) providing basic educational information to student trainers and managers in the course of performing the Services; and, (vi) providing recommendations for exercise or other physical measures for minor injuries under the directions, supervision and review of a physician.
2. All Services will be provided on the School's premises with the exception of sports events at other schools where the School's athletes are the "visiting" team if Exhibit B requires such coverage, or if services require equipment or therapeutic modalities unavailable at School.
3. Contractor will provide the School with accurate records of treatment rendered for all athletic injuries for which Contractor renders treatment and of all rehabilitation procedures provided by Contractor.
4. In cooperation with the Athletic Director, Contractor will develop a list of locations of emergency phones and emergency phone numbers and emergency procedures to be distributed to student athletes and coaches.
5. Contractor will request from the School the equipment and supplies required to render the Services in sufficient time to permit the School to obtain such equipment and supplies when required by Contractor.
6. Contractor will facilitate communication among an injured athlete, the Athletic Director, parent/guardian and the team or family physician.
7. Contractor will provide consultation on equipment and program design when reasonably requested by the School.
8. Contractor's Certified Athletic Trainer(s) will be responsible for the Athletic Training Room while in attendance there, including opening and closing. Contractor will also advise the School on inventory status, requisitioning of supplies, and/or facility management.
9. Contractor will inspect and take an inventory of all team medical kits prior to the beginning of each season.

10. Contractor's Certified Athletic Trainer(s) is immediately responsible to the Athletic Director or his/her designee.
11. Contractor's Certified Athletic Trainer(s) will serve as speaker for educational programs in the School, provided that sufficient advance notice is provided to Contractor.
12. Contractor reserves the right to substitute an equally qualified Certified Athletic Trainer(s) if the need should arise. The Athletic Director will be notified in advance if any substitutions are to be made.
13. If for any reason a Certified Athletic Trainer(s) needs to be absent, Contractor will do whatever possible to provide a suitable replacement for that coverage time.
14. All changes in practice times and games must be made available to the Certified Athletic Trainer(s) within twenty-four (24) hours for those events to be covered properly.

EXHIBIT B

I. TOTAL COVERAGE

Two (2) Certified Athletic Trainers will be available for a maximum of thirty (30) hours per week per Certified Athletic Trainer, at the discretion of the Athletic Director. During this time, practice and home event coverage will be provided.

II. ATHLETIC TRAINING ROOM COVERAGE

A. Coverage Requirements

1. Contractor shall provide coverage for the Athletic Training Room, at each School location, at a maximum of thirty (30) hours per week, which includes operating an on-campus training room in the afternoon and coverage of home games.
2. Contractor shall not be required to provide Athletic Training Room coverage when Contractor is required to attend an event under Section III of this Exhibit B.

III. EVENT COVERAGE (to include pre-season and post-season)

A. Fall Sports Coverage

1. Football (home and away, Soccer, Cross-Country, Tennis, Golf, Volleyball, and/or any other KHSAA sanctioned sports played during this season.

B. Winter Sports Coverage

1. Soccer, Basketball, and/or any other KHSAA sanctioned sports played during this season.

C. Spring Sports Coverage

1. Baseball, Softball, Track and Field, Tennis, and/or any other KHSAA sanctioned sports played during this season.

EXHIBIT C

SPONSORSHIP

The School shall provide the following promotion items to Contractor:

- Inclusion of Contractor's logo and link to Contractor's website on School's website
- Promotion of Contractor on School's social media platforms
- Permitted to place a promotional banner at mutually agreed upon location at each home venue at which School participates as well as School's Athletic Training Rooms
- Full page advertisement in each of School's sports programs
- At least two (2) PA announcements regarding Contractor's Services at each of School's home events
- Advertisements in any School newsletter sent to alumni
- Opportunity to participate in any health fair or "career day" event at School
- Allowed to promote it is the "Official Sports Medicine/Rehabilitation Provider" at School
- Opportunity to conduct on-site promotions, give-a-ways and sampling at home athletic events with appropriate notice and approval from Athletic Director
- One (1) Contractor night per season for a home football, soccer, and basketball game (with booth/promotional material) and acknowledgement of Donation/Sponsorship at half-time of the home football game