

## SERVICES AGREEMENT

This Services Agreement ("Agreement") is entered into this 1<sup>st</sup> day of December 2021 ("Effective Date") by and between New Hampton Community School District ("NHCS D") and Mercy Health Services – Iowa, Corp. dba MercyOne New Hampton Medical Center, a Delaware nonprofit corporation ("MercyOne").

### 1. MERCYONE DUTIES

- A. MercyOne shall provide NHCS D with the services ("Services") set forth in Exhibit A.
- B. MercyOne Personnel Qualifications. MercyOne shall ensure that all employees, agents and subcontractors or other persons or entities which provide any items or services on behalf of, or at the direction of MercyOne under this Agreement ("Personnel") have and maintain all the skills, experience, and qualifications necessary to provide the Services, including any required training, registration, certification or licensure.
  - i. Removal of Personnel. MercyOne shall, at all times, have the affirmative obligation to ensure that Services are provided only by qualified and experienced Personnel. NHCS D shall have the right to request the immediate removal of any individual Personnel upon written notice to MercyOne. The timing for replacement of Personnel shall be mutually determined in order to ensure continuation of key activities and minimize potential impacts on the Services and applicable engagement schedules. MercyOne is solely responsible for all costs related to the removal or replacement of Personnel. Removal of Personnel is an internal matter of MercyOne and MercyOne remains responsible for all matters associated with recruiting, hiring, employment, compensation, benefits, insurance, promotion, discipline, discharge and work environment of each Personnel.

### 2. COMPENSATION

- A. NHCS D shall pay MercyOne the amounts set forth in Exhibit B for the Services provided.

### 3. COOPERATION

- A. NHCS D shall cooperate with MercyOne in the performance of the Services, providing MercyOne with reasonable facilities and timely access to appropriate data, information and personnel of NHCS D. NHCS D will provide on-site MercyOne personnel with suitable supplies, equipment, and support which may be necessary in connection with MercyOne's performance of the Services. All such property, regardless of its physical location or use, will be deemed to be in the care, custody, and control of NHCS D.
- B. NHCS D shall perform those duties listed on Exhibit A in support of the Services.

### 4. TERM AND TERMINATION

A. Term. This Agreement shall commence on the Effective Date and shall remain in effect for a term of three (3) years (“Term”).

B. Termination.

i. Termination by Either Party. This Agreement may be terminated with or without cause by either party on sixty (60) days written notice.

ii. Termination for Material Breach. For a material breach of this Agreement for which a shorter correction period is not specified, this Agreement may be terminated by either party upon thirty (30) days prior written notice to the other party; provided, however, that if the material breach is cured within such thirty (30) day period, the termination notice shall be of no force and effect. Notwithstanding the foregoing, in the event of multiple material breaches of the same nature, this Agreement may be terminated by either party upon ten (10) days prior written notice.

iii. Either Party may terminate this Agreement immediately upon written notice to the other party if such other party becomes excluded, debarred or otherwise ineligible to participate in any governmental program.

C. Post Termination Obligations/Effect of Termination. MercyOne will cooperate with NHCS D in the orderly completion and/or transfer of applicable Services and return of all NHCS D data, including any work in progress. NHCS D shall compensate MercyOne for Services performed prior to notice of termination based on the percentage of the Services that have been completed.

## 5. COMPLIANCE WITH LAWS AND REGULATIONS

A. Compliance With Laws. MercyOne shall comply with all applicable federal and state laws, rules and regulations, including, but not limited to, those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. MercyOne has obtained or will obtain all permits, licenses and other authorizations that may be necessary for it to commence and continue its performance under this Agreement.

B. Exclusion from Governmental Programs. MercyOne warrants that MercyOne, including its Personnel, is not excluded from participating in the Medicare or Medicaid program and is not ineligible to participate in any governmental program. MercyOne is responsible for regularly screening its Personnel against the United States Department of Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities. MercyOne shall immediately notify NHCS D in the event MercyOne becomes debarred or suspended from any governmental program during the Term of this Agreement.

- C. On-site Policy. On-site MercyOne Personnel shall comply with all NHCS D requirements for on-site vendors. MercyOne Personnel shall follow and adhere to additional NHCS D policies and procedures applicable to the provision of the Services which have been communicated to MercyOne, either electronically or in writing.
- D. Medicare Records Access Requirements. If this Agreement is subject to the Medicare statutes and regulations governing access to books and records of subcontractors, then for a minimum of four (4) years after the expiration of this Agreement, MercyOne shall retain and allow the authorized representatives of NHCS D, the Comptroller General and the Department of Health and Human Services access to this Agreement and to the books, records, and other documents of MercyOne that are necessary to verify the nature and costs paid to MercyOne pursuant to this Agreement. If MercyOne carries out any duties of this Agreement by means of a subcontractor, including any organization related by ownership or control with MercyOne, and the cost or value of which is \$10,000 or more over a twelve (12) month period, then MercyOne shall require the subcontractor to comply with the provisions of this Section. In the event MercyOne receives a request for access, MercyOne agrees to promptly notify NHCS D.
- E. Nondiscrimination. MercyOne agrees that in the performance of its duties and obligations under this Agreement, it will not discriminate against any person or entity because of race, color, religion, sex, national origin, weight, height or any other characteristic protected from discrimination as set forth in applicable laws and regulations.
- F. Good Standing. MercyOne warrants that MercyOne is a legally organized entity in good standing under the laws of the state of its organization and, where required, in good standing under the laws of the State of Iowa.

## 6. CONFIDENTIALITY

- A. Confidentiality. Each party acknowledges and agrees that: (i) it may access, use, disclose or duplicate Confidential Information only in accordance with the provisions of this Agreement; (ii) will maintain all Confidential Information in confidence and restrict access to those employees or agents whose duties reasonably require access to such Confidential Information and (iii) it will take all commercially reasonable precautions necessary to safeguard the confidentiality of the other party's Confidential Information, including, at a minimum, those precautions taken by a party to protect its own Confidential Information of a similar nature, which will in no event be less than a commercially reasonable degree of care. Obligations of confidentiality survive termination or expiration of this Agreement for any reason.
  - i. Definition of Confidential Information. For purposes of this Agreement, Confidential Information shall be defined as including any and all information (i) related to patients or employees; (ii) protected by rights embodied in copyrights, patents, trade secrets, and any other intellectual property rights of a party; (iii) about NHCS D that is not known to the general public, including any information regarding the business,

- personnel and operations of NHCSD obtained during the course of MercyOne's work or association with NHCSD; (iv) non-public information that belongs or relates to third parties to whom NHCSD has an obligation of confidentiality, including other vendors and business associates; and (v) conveyed under this Agreement that is identified in writing as confidential at the time of its conveyance or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.
- ii. Limited Uses of Confidential Information. NHCSD shall have the right to use MercyOne's Confidential Information for its internal analysis and to disclose such information to third party consultants who assist in the performance of such analyses pursuant to a confidentiality agreement.
  - iii. Agreement Confidentiality. Except for internal business purposes, the existence of this Agreement and its terms is confidential. MercyOne may not make any public statement, including a press release, customer list or advertisement, describing NHCSD's relationship with MercyOne or NHCSD's endorsement of MercyOne without the prior written consent of NHCSD.
- B. Security. Each party must establish and maintain commercially reasonable security practices, including administrative, physical and technical safeguards, designed to ensure the following: (a) security and confidentiality of Confidential Information; (b) protection against anticipated threats or hazards to the security or integrity of Confidential Information; and (c) protection against the unauthorized access or use of Confidential Information. MercyOne will immediately notify NHCSD of any security breach involving its Confidential Information, including any actual or suspected theft, accidental disclosure, or loss of any Confidential Information and/or any unauthorized intrusions into the facilities or secure systems which contain Confidential Information. Such notice shall include a detailed description of the security breach, including the nature of the Confidential Information disclosed and the corrective action MercyOne has taken to prevent further security breaches.

## **7. INSURANCE AND INDEMNIFICATION**

- A. Indemnification by MercyOne. MercyOne shall indemnify and hold harmless NHCSD and its affiliates, employees, agents, directors, and officers, against any and all liability arising out of MercyOne's failure to comply with the terms or conditions of this Agreement or for injury, loss, claims or damages arising from MercyOne's negligence or willful misconduct, in performing under or in any way connected with this Agreement.
- B. Indemnification by NHCSD. NHCSD shall indemnify and hold harmless MercyOne and its affiliates, employees, agents, directors, and officers, against any and all liability arising out of NHCSD's failure to comply with the terms or conditions of this Agreement or for injury, loss, claims or damages arising from NHCSD's negligence or willful misconduct, in performing under or in any way connected with this Agreement.

- C. Both Parties Have Responsibility. If both parties have an obligation to the other under the foregoing provisions, tort comparative fault principles shall be applied to allocate payment between the parties.
- D. Insurance. MercyOne shall maintain in force, at MercyOne's sole cost and expense, the insurance coverage described below. MercyOne may provide insurance through a program of self-insurance. These limits may be satisfied in combination with applicable excess or umbrella coverage, following form of the general liability insurance.
- i. General liability insurance, covering bodily and personal injury, property damage, and contractual liability, in a minimum amount of One Million Dollars (\$1,000,000) per claim and Five Million Dollars (\$5,000,000) in the annual aggregate.
  - ii. If applicable to the Services provided, professional liability insurance in the minimum amount of One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) in the annual aggregate.
  - iii. Workers compensation insurance in an amount to satisfy state minimums.

## 8. MISCELLANEOUS

- A. Independent Contractors. At all times hereunder, the parties shall be independent contractors. Neither MercyOne, nor MercyOne's Personnel, shall be deemed to be agents or employees of NHCS D. This Agreement is not intended to establish a partnership, joint venture, employer-employee or joint employer relationship. MercyOne is responsible for all salaries, payroll taxes and other taxes, benefits, fees, and other charges or insurance required by any federal, state and local law, statute or regulation (including, but not limited to, unemployment taxes, Social Security contributions, workers' compensation premiums and all similar taxes, payments, and any penalties and fines relating thereto), attributable to each of its Personnel. Neither MercyOne nor any MercyOne Personnel shall have any power or authority to bind NHCS D to contractual or other obligations.
- B. Employee Inducement. During the Term of This Agreement and for one (1) year thereafter, NHCS D will not directly or indirectly, whether as an individual, advisor, employee, agent, or otherwise take any action to induce any employee to cease his or her employment with MercyOne.
- C. Access to Audit. MercyOne shall permit NHCS D (or its agents) access to conduct periodic audits of its records relating to MercyOne's compliance with the terms of this Agreement, including without limitation, use of NHCS D data, invoices, volume reports and discounts. The audits shall be conducted upon reasonable advance notice during regular business hours and in such a manner as not to unduly interfere with MercyOne's operations.
- D. Notices. Notice shall be given in writing and shall be effective upon depositing the notice in first-class mail or certified mail, return receipt requested, at the addresses below or

upon actual receipt by the other party. Either party may change the address to which notices are to be sent by notice given in accordance with the provisions of this Section.

NHCSD: New Hampton Community School District  
710 W. Main Street  
New Hampton, Iowa 50659

MercyOne: MercyOne New Hampton Medical Center  
308 North Maple Avenue  
New Hampton, Iowa 50659  
Attn: CEO

- E. Notification of Incidents. MercyOne agrees to notify NHCSD within a reasonable time after becoming aware of any incidents, occurrences, asserted or unasserted claims, or patient-related causes of action involving MercyOne's performance under this Agreement.
- F. Dispute Resolution. MercyOne and NHCSD will attempt to settle any claim or controversy arising from this Agreement through negotiation in good faith. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary. Unless either party has issued a notice of termination, the parties will continue to fulfill their obligations under this Agreement while working towards resolution of any dispute.
- G. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Iowa without regard for principles of choice of law.
- H. Entire Agreement and Amendment. This Agreement, including all Exhibits referenced herein, constitutes the entire agreement between the parties concerning the subject matter herein and may not be amended except by an agreement signed by an authorized representative of NHCSD and MercyOne.
- I. Waiver. Waiver of any provision(s) of this Agreement is not effective unless the waiver is in writing and signed by the party against whom enforcement of the waiver is sought. Failure to enforce any provision does not constitute a waiver.
- J. Enforceability. This Agreement is intended for the benefit of the parties only. There are no other intended third party beneficiaries.
- K. Subcontractors. MercyOne shall require that all subcontractors comply with the terms of this Agreement, including confidentiality requirements. MercyOne remains responsible for the performance of its subcontractors and the acts or omissions of MercyOne's subcontractors shall be deemed to be the acts or omissions of MercyOne.
- L. Assignment. Neither party may assign this Agreement without the prior consent of the other party, which will not unreasonably be withheld.

M. Survivability. Provisions surviving termination or expiration of this Agreement are those which on their face affect rights and obligations after termination or expiration and also include provisions concerning indemnification, confidentiality, warranty and choice of law.

**The signature page follows.**

IN WITNESS WHEREOF, the undersigned authorized representatives of the Parties have executed this Agreement, effective as of the Effective Date.

**FACILITY**

**MERCYONE**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Jay Jurrens

Name: Aaron Flugum

Title: Superintendent

Title: CEO

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_



## EXHIBIT A – SERVICES

In performing the duties required under this Agreement, MercyOne agrees to the following:

Provide the services of an Athletic Trainer ("Trainer"), who shall be a licensed Physical Therapist or a certified Athletic Trainer. Services include evaluation for injuries, recommendations for exercise or physical measures for minor injuries; prompt referral for medical follow up and communications to families, coaches and healthcare providers. Services will be provided in accordance with the following general understanding:

1. Trainer will be available to provide training services to athletes in grades 7-12 for approximately 2 hours per day, each instructional day of the school year. Trainer services during the summer vacation period will be agreed to between Hospital and School. Coverage will be provided primary at the high school with some injuries being cared for in MercyOne's Therapy Department. During wrestling season, the trainer will evaluate wrestling practices twice a week.
2. Trainer will provide event coverage (e.g. games, meets, matches, etc.) and will be available for the following events:
  - All (home and away) high school football games (excluding away JV football unless otherwise requested)
  - Home middle school football games
  - Home high school conference volleyball games with football taking priority
  - Home high school cross-country meets
  - Home high school conference basketball games
  - Home high school wrestling meets
  - Home high school and middle school track meets
  - Home high school soccer games
3. Trainer will lead a strength and conditioning class and afterschool program each instructional day. Trainer will assist with J-Term programming.
4. Trainer will lead a strength and conditioning/agility program for 8 weeks in the summer for a maximum of 25 hours per week.
5. Trainer will respond to special needs of the high school coaches or athletes as needed, subject to availability.

In support of the Services, NHCS D agrees to the following:

1. Meet with Trainer and MercyOne periodically to agree upon a proposed schedule of events.

2. Notify MercyOne with respect to a change in schedule as said change is known to School.
3. Provide other appropriate transportation to Trainer for all events outside of New Hampton, Iowa.
4. Furnish appropriate space and supplies necessary to provide athletic training services

## **EXHIBIT B – COMPENSATION**

NHCSD shall compensate MercyOne in the amount of Thirty-Five Thousand Dollars (\$35,000) annually. Payment shall be due in monthly installments.

If NHCSD requests coverage that is in addition to those set forth on Exhibit A, NHCSD will compensate MercyOne at the rate of Twenty-Five Dollars (\$25.00) per hour, with a minimum of two (2) hours per additional coverage request.

The parties agree that this amount is based on approximately one thousand (1000) hours of Services per year. In the event of a material deviation from this level of Services, either party may request to review the compensation under the Agreement. If such a request is made, the parties shall meet and discuss within thirty (30) days. If the parties are unable to reach resolution on revised compensation or Services level, either party may exercise its option to terminate without cause as provided for in the Agreement.