

## ***ATHLETIC TRAINING CONTRACTOR AGREEMENT***

This Contractor Agreement (this "Agreement") is made effective as of August 18, 2016, by and between the Santa Clara Unified School District on behalf of Wilcox High School and Santa Clara High School (collectively, the "Recipient"), of 3250 Monroe Street, Santa Clara, California 95051, and Los Gatos Orthopedic Sports Therapy, Inc. (the "Contractor"), of 16615 Lark Ave., Los Gatos, California 95032. In this Agreement, the party who is contracting to receive the services shall be referred to as "Recipient", and the party who will be providing the services shall be referred to as "Contractor."

**1. DESCRIPTION OF SERVICES.** Beginning on August 18, 2016, the Contractor will provide the following services (collectively, the "Services"): Athletic Training Services including first aid to athletes and staff, Athletic Training event coverage by a Certified Athletic Trainer (ATC) for the duration of competition and specified schedule (see below) depending upon season including First Aid kit, taping, crutches, splints, treatment table, etc. Certified Athletic Trainers provided by Contractor shall provide competent and professional athletic training services to the students and staff of Recipient and Recipient can reasonably rely on Contractor's representations concerning the experience, quality, competence, and professionalism of the Certified Athletic Trainers provided by Contractor.

**Proposed & Tentative (due to block scheduling) 2016-2017 High School ATC Schedule is as follows:**

**Fall:** M-Th 2:30-5:30 plus Fridays covering home and away Frosh-Soph & Varsity football games.

**Winter:** MWF: 3 days a week based on site need and availability generally 2:30-5:30 pm and cover home varsity basketball games maybe as two of those days

**Spring:** T-Th: 2 days per week generally 2:30-5:30 to Cover home track meets (typically 2-3 per site)

**Additional coverage:** Assisting with scheduling, planning pre participation physicals. Please check before working requested events from AD or school for budget reasons.

**Proof of credentials:** Athletic Training Certification in good standing, First Aid/CPR certifications and proof of Liability Insurance will also be provided and maintained.

Furthermore, the Contractor has the right of control over how the Contractor will perform the services. The Recipient does not have this right of control over how the Contractor will perform the services other than scheduling.

**Parental Consent** - Contractor agrees to obtain parental or guardian consent for all procedures and treatment beyond immediate first aid. In the case of injuries requiring treatment beyond immediate first aid, the Certified Athletic Trainers provided by Contractor shall stabilize the

student or staff member and stay with the injured student or staff member until released to parents or guardians or until paramedics arrive. Certified Athletic Trainers provided by Contractor shall follow established professional protocols for providing athletic training services to students and/or staff.

**Items the Recipient will need to provide:**

- District approved background and fingerprinting check for the ATC
- Coolers stocked with water and/or ice for games and competitions, plastic bags for ice packs
- Secure area designated for delivery of athletic training services, Athletic Training Room
- AED for emergency use for cardiac emergencies
- First aid kit restocking items: tape, pre wrap, bandages, latex gloves, splinting materials, scissors, etc.

**2. PAYMENT FOR SERVICES.** The Recipient will not pay compensation to the Contractor for the Services. Payments will be made as follows:

ATC Grant funding from the San Francisco 49ers and the NFL Foundation and Los Gatos Orthopedic Sports Therapy. The grant is to allow schools access to Athletic Training services with the goal of developing increased awareness and utilization of the skill set of the athletic trainer. The intent is for the school to develop a long term plan to fund raise or budget for this service in the future.

No other fees and/or expenses will be paid to the Contractor, unless such fees and/or expenses have been approved in advance by the appropriate executive on behalf of the Recipient in writing. The Contractor shall be solely responsible for any and all taxes, Social Security contributions or payments, disability insurance, unemployment taxes, and other payroll type taxes applicable to such compensation to the ATC. The Contractor has the right of control over the method of payment for services.

**3. TERM/TERMINATION.** This Agreement may be terminated by either party upon 30 days' written notice to the other party.

**4. RELATIONSHIP OF PARTIES.** It is understood by the parties that the Contractor is an independent contractor with respect to the Recipient, and not an employee of the Recipient. It is the intent of the Contractor and the Recipient that they shall not be considered joint employers of the Certified Athletic Trainers provided by Contractor. The Recipient will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of the Contractor.

**5. CONFIDENTIALITY.** Contractor may in the course of providing services under this Agreement gain access to proprietary, private and/or otherwise confidential information ("Confidential Information") of the Recipient or of the students and/or staff members to whom athletic training services are provided. Confidential Information shall mean all non-public information which constitutes, relates or refers to the operation of the business of the Recipient,



including without limitation, confidential medical information of students and/or staff members to whom athletic training services are provided as well as any and all confidential personal information concerning students and/or staff members. The nature of the information and the manner of disclosure are such that a reasonable person would understand that information was intended to be confidential. The Contractor will not at any time or in any manner, either directly or indirectly, use for the personal benefit of the Contractor, or divulge, disclose, or communicate in any manner any Confidential Information. The Contractor will protect such information and treat the Confidential Information as strictly confidential. This provision shall continue to be effective after the termination of this Agreement. Upon termination of this Agreement, the Contractor will return to the Recipient all Confidential Information, whether physical or electronic, and other items that were used, created, or controlled by the Contractor during the term of this Agreement.

**6. INSURANCE.** The Contractor acknowledges the Contractor's obligation to obtain appropriate insurance coverage for the benefit of the Contractor (and the Contractor's employees, if any), including at a minimum Workers' Compensation insurance in coverage amounts required by California State law, and professional liability with limit no less than \$1,000,000 per occurrence or claim and \$2,000,000 aggregate and general liability insurance in the coverage amount of at least \$2,000,000 per occurrence and \$4,000,000 general aggregate. The Contractor waives any rights to recovery from the Recipient for any injuries that the Contractor (and/or Contractor's employees) may sustain while performing services under this Agreement and that are a result of the negligence of the Contractor or the Contractor's employees. Contractor will provide the Recipient with a certificate naming the Recipient as an additional insured party by endorsement.

#### Claims Made Policies

If any of the required policies provide claims-made coverage:

a. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

b. Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work.*

c. If coverage is canceled or non-renewed, and not replaced *with another claims-made policy form with a Retroactive Date prior to* the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of *five (5)* years after completion of work.

#### **7. INDEMNIFICATION.**

a. Contractor shall indemnify, defend, and hold harmless Recipient, its Board Members, officers, employees, agents, volunteers, and other representatives from and against any and all claims, demands, losses, liabilities, damages, expenses (including reasonable attorney's fees) and causes of action for:

- i. Injury to, or death of, any person, including without limitation the employees, agents, volunteers, contractors, licensees, and invitees of Contractor or District caused by Contractor or Contractor's employees, agents, or representatives in the course of providing Services; or,
- ii. Any negligence or other wrongdoing of Contractor or Contractor's employees, agents, or representatives in the course of providing Services; or,
- iii. Damage to, or destruction of, any property, whether owned by Recipient or otherwise, arising out of the failure of Contractor to comply with the provisions of this Agreement or arising out of the acts or omissions of Contractor or any of Contractor's employees in the performance of the Services under this Agreement.

b. Such indemnification specifically includes, without limitation, any action brought against the Recipient, or any of its Board Members, officers, employees, agents, volunteers, or other representatives at any time by an employee of Contractor, or by an employee of any agent, contractor, or subcontractor of Contractor by reason of an injury asserted to have been sustained by such claimant during the course of such claimant's performance of a part of the Services defined in the Agreement.

c. Recipient and Contractor acknowledge and agree that the San Francisco Forty Niners Foundation and the NFL Foundation (collectively, the "NFL Entities") shall in no way be responsible for the performance of the Services under this Agreement and Recipient and Contractor jointly agree to release and hold the NFL Entities harmless from any claim related to this Agreement.

**8. NO RIGHT TO ACT AS AGENT.** An "employer-employee" or "principal-agent" relationship is not created merely because (1) the Recipient has or retains the right to supervise or inspect the work as it progresses in order to ensure compliance with the terms of the contract or (2) the Recipient has or retains the right to stop work done improperly. The Contractor has no right to act as an agent for the Recipient and has an obligation to notify any involved parties that it is not an agent of the Recipient.

**9. ENTIRE AGREEMENT.** This Agreement constitutes the entire contract between the parties. All terms and conditions contained in any other writings previously executed by the parties regarding the matters contemplated herein shall be deemed to be merged herein and superseded hereby. No modification of this Agreement shall be deemed effective unless in writing and signed by the parties hereto.

**10. WAIVER OF BREACH.** The waiver by the Recipient of a breach of any provision of this Agreement by Contractor shall not operate or be construed as a waiver of any subsequent breach by Contractor.




**11. SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**12. APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of California.

**SIGNATORIES.** This Agreement shall be signed by Andrew Lucia, Assistant Superintendent, on behalf of the Santa Clara Unified School District, Wilcox High School, and Santa Clara High School, and by Ross Nakaji, President on behalf of Los Gatos Orthopedic Sports Therapy. This Agreement is effective as of the date first above written.


**RECIPIENT:**

Santa Clara Unified School District, Wilcox High School, and Santa Clara High School

By:  9/22/16  
Andrew Lucia  
Assistant Superintendent

**CONTRACTOR:**

Los Gatos Orthopedic Sports Therapy, Inc.

By:  9/16/16  
Ross Nakaji  
President