

ATHLETICO

PHYSICAL THERAPY

Athletico LTD. Agreement to Provide Athletic Training Services

This agreement to provide athletic training services (this "Agreement") is made and entered into as of this April 16, 2013 between Athletico LTD. ("Athletico") and the Wheaton Park District ("Client").

Preliminary Recitals

1. Athletico has established a program whereby a Certified Athletic Trainer, who is licensed under the Illinois Athletic Training Practice Act, shall provide athletic training services to "Client".
2. Client is located at:
Wheaton Park District
102 East Wesley, Wheaton, IL 60187
Michael Benard, Executive Director
P: 630.665.4710, mbenard@wheatonparks.org
Bradley Keene, Athletic Director
P: 630.510.5119, bkeene@wheatonparks.org
3. Client desires to engage Athletico as an independent contractor for the purpose of providing athletic training services to Client, all on the terms and subject to the conditions as set forth in this agreement.

NOW, THEREFORE, the parties hereto hereby AGREE as follows:

1. Preamble; Preliminary Recitals. The preamble and preliminary recitals set forth above are hereby incorporated in and made a part of this Agreement.
2. Engagement. Client hereby engages Athletico to provide athletic training services to Client on the terms and subject to the conditions set forth in this Agreement.
 - a. Services hereunder shall consist of the following: See Exhibit A
 - b. The athletic training services hereunder shall in no way be considered a substitute for the services of a physician. The athletic training services contracted for hereunder shall not involve the practice of medicine as regulated by the Illinois Department of Professional Regulations. Services provided by Athletico hereunder are regulated by the Illinois Department of Professional Regulation under the Illinois Athletic Training Practice Act.
3. Compensation. In compensation for Athletico's services under this Agreement, Client shall pay Athletico the sum of \$28 per hour for all services to be described in Section 2 hereof to be provided for May 17th through May 19th, 2013. Athletico will also be named as a Field Sponsor to include elements listed in Exhibit A. Total cost of service will be invoiced at the conclusion of last contract date listed above via mail based on actual athletic trainer coverage hours. Payment is expected in full, 2 weeks after invoice date.
4. Late Payments:
Subject to the Local Government Prompt Payment Act, all payments not received within 30 days after receipt of invoice shall bear an interest penalty of 1% of all unpaid amounts per month until final payment is made.
5. Term of Agreement. The term of this Agreement (the "Term") shall be for May 17th through May 19th, 2013.
Either party may terminate this Agreement:
 - a. Immediately if the other party shall apply for or consent to the appointment of a receiver, trust or liquidator of itself or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admits in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law, or if an order, judgment or decree shall be entered by a court of competent jurisdiction, on the application of a creditor, adjudicating such party a bankrupt or insolvent or approving a petition seeking reorganization of such party or appointing a receiver, trustee or liquidator of such party or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstated and in effect for any period of sixty (60) consecutive days; and
 - b. in the event of a material breach of this Agreement by the other party.
6. Insurance. Athletico and the Client shall, during the term of this Agreement, procure and maintain the insurance coverage set forth in this section from financially responsible insurance companies duly authorized to provide such insurance in the State of Illinois. All insurance shall be in full compliance with Illinois statutory requirements.
 - a. Athletico shall procure and maintain Professional Liability coverage for athletic training services with limits of not less than Three Million Dollars (\$3,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the annual aggregate.
7. Indemnification.
 - a. Athletico. Athletico shall indemnify, defend, and hold harmless, Client, its officers, agents and employees from and against any and all liability, suits, claims, losses, damages, costs and expenses whatsoever, including but not limited to reasonable attorney's fees and court costs, caused by or as a result of any act or omission of Athletico, its athletic trainer, and any other of its agents or employees, in performing this Agreement.
 - b. Client. Client shall indemnify, defend and hold harmless, Athletico, its officers, agents and employees, including Athletico's athletic trainer, from and against any and all liability, suits, losses, damages, costs and expenses whatsoever, including but not limited to reasonable attorney's fees and court costs, caused by or as a result of any act or omission of Client, its teachers, staff, and any other of its agents or employees, in performing this Agreement.

- c. **Participant Waiver of Liability.** Client is responsible for collection and maintenance of participant liability waivers which includes consent to have Athletico athletic trainers, physical therapists, massage therapists or other personnel to provide participant with medical assistance and/or treatment and agree to save and hold harmless and indemnify each and all Athletico personnel referenced above as released from all liability, loss, cost, or other claim of damage whatsoever, including, injury, death or damage to property except claims arising from willful and wanton conduct of Athletico or its personnel. If participant is under the age of 18, waiver must also have parent or legal guardian signature. Client shall also grant Athletico access to such waivers upon written notice.
8. **Notices.** Any and all notices, demands, requests, and any other communication required or permitted to be served on or given by either party to the other shall be in writing and delivered personally, by nationally-recognized overnight courier or by deposit in the United States Mail, first class postage prepaid, certified or registered mail, return receipt requested, addressed to the party to whom it is to be given at the hereinafter set forth below or at such other or additional address in Illinois as the other party may designate by notice to the other:

If to Client: Wheaton Park District
C/o Mike Benard
102 E. Wesley St., Wheaton, IL 60187

And
If to Athletico: Athletico LTD.
C/o Jason Bannack
625 Enterprise Drive, Oak Brook, IL 60523

Copy to: Fox, Hefter, Swibel, Levin & Carroll
C/o Martin Carroll
200 West Madison, Suite 3000; Chicago, IL 60606


Each party will promptly notify the other party in writing within five (5) business days of any changes of its business address; any legal or governmental action initiated against it which could materially affect this Agreement; and any other known occurrence that could materially impair the party's ability to carry out its duties and obligations under this Agreement.

9. **Miscellaneous.**

- a. **Governing Law/Jurisdiction.** This Agreement is made in and shall be construed and enforced in accordance with the laws of the State of Illinois. The parties agree that in the event of any dispute arising from this Agreement that jurisdiction shall be solely fixed in DuPage County, Illinois.
- b. **Severability.** If any provision of this Agreement is held to be invalid as applied to any fact or circumstance, it shall not effect the remaining provisions or the same provision as applied to any other fact or circumstance.
- c. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same agreement.
- d. **Attorney's Fees.** In the event any action or proceeding is brought by either party against the other party under this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable costs and attorney's fees incurred in such action or proceeding, including any such fees and costs of appeal.
- e. **Entire Agreement.** This Agreement contains the entire agreement between the parties and supersedes any and all other agreements between parties, either oral or in writing, with respect to the subject matter of this Agreement.
- f. **Change in Law.** In the event of any change in any applicable statute, rule, regulation, or other law, or of any order or directive of any applicable governmental authority or regulatory body, which invalidates or is otherwise inconsistent with the terms of this Agreement or which would cause one or both of the parties to be in violation of the law, the parties shall negotiate in good faith in an effort to agree on appropriate revisions to this Agreement.
- g. **Inability to Perform.** Each party's obligations under the Agreement shall immediately cease if the party is unable to perform its obligations by reason of physical disaster, governmental acts, labor difficulties or strikes, or other circumstances beyond the control of such party, but shall resume when such party is no longer unable to perform.
- h. **Assignment/Change of Control.** Notwithstanding anything to the contrary contained herein, Athletico LTD. may, without Client's consent and without being subject to any fee of any kind, assign this agreement with whom Athletico LTD. merges, consolidates or engages in any reorganization, or any entity succeeding to all of a substantial portion (a substantial portion meaning at minimum a controlling interest) of the business and assets of Athletico LTD. or of any business unit of Athletico LTD. (each a "Permitted Transfer"). Client shall be notified of assignment and be given a copy of such assignment promptly after the Permitted Transfer. As used in this Agreement, the term "Affiliate" means any corporation, partnership, Limited Liability Company or other business entity which controls is controlled by or is under common control with the party in question. Notwithstanding anything to the contrary contained herein, Athletico LTD.'s granting of membership interests in Athletico LTD. to managers and employees of Athletico LTD. shall not be deemed an assignment or transfer for purposes of this Agreement and shall not require Client's consent.
- i. **No Discrimination.** Neither party shall discriminate against any person on the grounds of race, color, national origin, religion, age, or handicap in discharging their duties and responsibilities under this Agreement.
- j. **Waiver of Breach.** No assent or waiver, express or implied, of any breach of any one or more of the provisions of this Agreement shall be deemed a waiver of any other provision or a waiver of any subsequent breach of the same provision.
- k. **Captions.** The captions used in this Agreement as headings of the various sections are for convenience only and are not and shall not be used to construe any part of this Agreement.
- l. **Authority to Execute.** Each person executing this Agreement hereby represents and warrants that he or she has full authority to execute this document on behalf of the parties to the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year of the first above written. Client also understands that the terms outlined in this Agreement will be monitored for future consideration of yearly renewal of said contract with Athletico LTD. No portion of this agreement may be reproduced, duplicated or revealed in any manner without the prior written consent of Athletico LTD, except as may otherwise be required by law.

Athletico LTD

By: 
Jason Bannack, Director of Athletic Training Services

Date 5-3-13

Wheaton Park District

By: 
Mike Benard, Executive Director

Date 4/30/13

EXHIBIT A

CLIENT TO PROVIDE:

- a. Client must submit schedule changes within fourteen (14) business days prior to event in question. Failure to do so will mean possible forfeiture of coverage, depending on available personnel.
- b. Name Athletico as "The Official Provider of Physical Therapy and Athletic Training for the Wheaton Wings Spring Classic Tournament" in all press releases, radio spots, newsletters, related materials and website. Athletico will be designated as the exclusive provider in the Physical Therapy, Occupational Therapy, Athletic Training, Work Rehab, and Sports Medicine Category.
- c. Owners, Board Members, and Coaches of the Client will educate the players and parents of their club on the importance of medical care and follow-up necessity with an Athletico facility after injury.
- d. Client will be responsible for any cost incurred for vacuum splints that are used for emergency purposes and not returned to Athletico, or are damaged and unusable.
- e. Establish a link, logo, and information pertaining to all Athletico services to Client website.
- f. Opportunity for Athletico to provide a promotion flyer to be included in the welcome bag for each participant (approx. 2,000).
- g. Provide link and logo to Athletico for usage within Athletico.com website affiliation section.
- h. Allow Athletico to display banners at event sites.
- i. During the term of this Agreement, before Client may enter into an agreement with a third party for Physical Therapy or Athletic Training services or sponsorship the designated rehabilitation category described, Client shall first offer the opportunity to Athletico on the same terms and conditions as are offered by the third party. Athletico shall have 30 days during which to accept said offer. If Athletico does not accept said offer within 30 days, Client shall be free to accept the third party offer. If Client does not enter into an agreement with the third party on said terms and conditions and close the transaction within 90 days, Client's right to enter into the agreement shall expire and the procedure described in this Section shall again be applicable.
- j. Client will offer Athletico first right of refusal following the conclusion of this agreement.
- k. All terms of this agreement are confidential.

ATHLETICO TO PROVIDE:

- a. On-site injury care and evaluation as well as assistance on all matters pertaining to the health and well being of the athletes.
- b. The use of modalities as indicated by the Illinois Athletic Training Practice Act.
- c. Maintenance of complete and accurate records of all athletic injuries and treatment rendered.
- d. Athletico will educate the owners, board members, coaches, student-athletes, and families of the Client on the importance of medical care and follow-up if necessary.
- e. All participants, coaches, board members, families of the Client will have access to all Athletico centers for complimentary injury assessments. These players will be referred, if needed, to the appropriate physician based upon location, insurance, and specialty.
- f. Athletico will provide, when needed, athletic training supplies (excluding ice), marketing handouts, and complimentary screen cards.

Services hereunder shall consist of the following:

Friday, May 17, 2013

Seven Gables Park: 4:30 pm-8 pm (6 fields) – 1 AT

Graf Park: 4:30 pm-9 pm (6 fields) – 1 AT

Saturday, May 18, 2013

Seven Gables Park: 8 am-8 pm (7 Fields) – 1 AT

Graf Park: 7:30 am-7:30 pm (6 Fields) – 1 AT

Sunday, May 19, 2013

Seven Gables Park: 7:30 am-7:30 pm (10 Fields) – 2 ATs 8a-12p, 1 AT 12p-7:30p

Graf Park: 7:30 am-7:30 pm (2-3 Fields) – 1 AT

Location Address: Seven Gables Park, 1750 Naperville Rd, Wheaton, IL 60189

Graf Park, 1855 Manchester Rd, Wheaton, IL 60187