

Legal Counsel Approval BW

RL 22-159

Introductory No. R22-62

Permanent No. R22-62



**THE COUNCIL OF THE CITY OF BINGHAMTON
STATE OF NEW YORK**

Date: June 22, 2022

Sponsored by Council Members: Scaringi, Resciniti, Riley, Friedman, Burns, Scanlon, Strawn

Introduced by Committee: PW/Parks

RESOLUTION

entitled

A RESOLUTION AUTHORIZING THE MAYOR
TO ENTER INTO AN AGREEMENT WITH
BINGHAMTON UNIVERSITY TO ALLOW THE
PHYSICAL THERAPY DEPARTMENT TO
PERFORM FIELD WORK AT THE FIRST WARD
SENIOR CENTER

WHEREAS, the Commissioner of Parks and Recreation, recommends the Mayor to enter into an agreement with Binghamton University to allow the Physical Therapy Department to perform field work at the First Ward Senior Center as set forth in the agreement attached hereto.

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session, does hereby:

RESOLVE that the Mayor, or his designee, is hereby authorized to enter into an agreement, approved as to form and content by the Office of Corporation Counsel, with Binghamton University to allow the Physical Therapy Department to perform field work at the First Ward Senior Center as set forth in the agreement attached hereto.

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Strawn

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The within Resolution was adopted by the Council of
the City of Binghamton.

Date 6/22/22
City Clerk Jamie Faulder

Date Presented to Mayor 6/23/22

Date Approved 6/23/22
Mayor JLMTL

	Ayes	Nays	Abstain	Absent
Councilman Scaringi	✓			
Councilwoman Resciniti	✓			
Councilwoman Riley	✓			
Councilwoman Friedman	✓			
Councilman Burns	✓			
Councilman Scanlon				✓
Councilman Strawn	✓			
Total	<u>6</u>	<u>0</u>	<u>0</u>	<u>1</u>

Code of the City of Binghamton

Adopted Defeated

6 Ayes 0 Nays 0 Abstain 1 Absent

I hereby certify the above to be a true copy of the legislation adopted by the Council of the City of Binghamton at a meeting held on 6/22/22 Approved by the Mayor on 6/23/22. (S)

**AFFILIATION AGREEMENT
BETWEEN
THE STATE UNIVERSITY OF NEW YORK,
BINGHAMTON UNIVERSITY
AND
XXXXXXX**

THIS AGREEMENT made this **XX** day of **XXXX** 2022, by and between the State University of New York, an educational corporation organized and existing under the laws of the State of New York, and having its principal place of business located at H. Carl McCall SUNY Building, Albany, New York 12246, for and on behalf of the State University of New York, Binghamton University, located at PO Box 6000, 4400 Vestal Parkway East, Binghamton, New York 13902-6000, hereinafter referred to as "University," and "**HOST NAME**," located at **ADDRESS**, hereafter referred to as "Host."

WHEREAS, University has undertaken an educational program in the discipline of Physical Therapy; and

WHEREAS, University and Host desire to have an association for the purpose of carrying out said educational program.

NOW, THEREFORE, it is agreed that:

1. The University shall assume full responsibility for planning and executing its educational program in the discipline of physical therapy including programming, administration, curriculum content, faculty appointments, faculty administration and the requirements for matriculation, promotion and graduation, and shall bear all costs and expenses in connection therewith. The University further agrees to coordinate the program with Host's designee.
2. The University shall be responsible for assigning students to the Host for practical experience. University shall notify the Host one (1) month in advance of the planned schedule of student assignments to practical duties including the dates, number of students and instructors. The schedule shall be subject to written approval by the Host.
3. The University, at its sole cost and expense, shall provide faculty as may be required for the teaching and supervision of students assigned to the Host for practical experience.
4. Students and faculty members shall respect the confidential nature of all information that they have access to in accordance with the policies and procedures of the University and the Host.
5. Host may terminate any student's or faculty member's assignment from Host when a student or faculty member is unacceptable to Host for reasons of health, performance, or

for other reasons which, in Host's reasonable judgment and to the extent allowed by law, cause the continued presence of such student or faculty member at Host not to be in the best interest of Host. Host will report any such action to the University orally and in writing.

6. Host, as it deems necessary and proper, shall make available for student experience classrooms and other facilities, including equipment and supplies, libraries, and cafeteria facilities, consistent with its current policies concerning availability. Host shall also provide orientation for University faculty and students.
7. Host shall have no responsibility for the transportation of faculty or students.
8. University agrees that it shall secure Workers' Compensation Insurance for the benefit of all faculty and other University employees required to be insured by Workers' Compensation Law and shall maintain such coverage throughout the duration of this Agreement. The laws of the state where Host is located shall dictate whether a student is covered by Workers' Compensation Law.
9. Indemnification. Subject to the availability of lawful appropriations (pursuant to Section 41 of the New York State Finance Law) and consistent with Section 8 of the New York State Court of Claims Act, the University will hold the Host harmless from and indemnify it for any final judgment of a court of competent jurisdiction only to the extent attributable to the negligence of University or of its officers or employees when acting within the course and scope of their employment and within the scope of this Agreement.

The Host shall be responsible to and shall defend, indemnify, and hold harmless the University, SUNY, and the State of New York and their respective officers, trustees, directors, employees, and agents from and against for any and all losses, expenses, damages, and liabilities, including reasonable attorneys' fees, arising out of the intentional or negligent acts or omissions of Host, its officers, employees, agents, or licensees. This provision shall survive the termination of this Agreement. Notwithstanding anything to the contrary in this Agreement, the State reserves the right to join in any action, at its sole expense, when it determines there is an issue involving a significant public interest.

10. Insurance: The University shall maintain during the term of this Agreement general and professional liability insurance, in amounts not less than \$3,000,000 for bodily injury and property damage combined single limit; and the Host shall be an additional insured under such liability policy or policies. The persons insured under such policy or policies shall be the students of the State University of New York with respect to liability arising out of their participation in the program carried out under this Agreement. The University's faculty members are covered by the defense and indemnification provisions of section 17 of the Public Officers Law with respect to liability arising out of their participation in the clinical

program carried out under this Agreement. The University agrees to notify Host in writing no less than ten (10) days written notice prior to the cancellation, modification, or non-renewal of any insurance coverage. Notwithstanding the foregoing, Host shall remain liable for direct damages resulting from its negligence.

11. Non-Discrimination: Neither party shall discriminate on the basis of race, color, national origin, religion, creed, age, disability, sex, gender identity, gender expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or any other characteristic protected by applicable state or federal law. Furthermore, the parties hereby certify that they have institutional policies or practices (including training for employees) that prohibit harassment of, or discrimination against, individuals on the basis of their protected status under state and federal anti-discrimination laws and also provide a means for individuals to bring allegations of discrimination forward for redress.
12. FERPA: In accordance with the provisions of the Family Educational Rights and Privacy Act ("FERPA"), in order for the University to share information about the student from the student's educational records, Host must agree not to disclose the information to a third party without the student's consent, and to use the information only for the purposes for which it was disclosed. Host acknowledges that for the purposes of this Agreement it will be designated as a "school official" with "legitimate educational interests" in the University's Education records, as those terms have been defined under FERPA and its implementing regulations, and the Host agrees to abide by the limitations and requirements imposed on school officials. Host will use the Education Records only for the purpose of fulfilling its duties under the Agreement, and will not share such data with or disclose it to any third party except as provided for in this Agreement, required by law, or authorized in writing by the University.
13. Choice of Law and Jurisdiction: The laws of the State of New York, excluding New York's choice-of-law principles, and all claims relating to or arising out of this agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of New York, excluding that State' choice-of-law principles. Jurisdiction of any litigation with respect to the agreement shall be in New York State with venue in a court of competent jurisdiction located in Broome County or any other court having competent jurisdiction in the State of New York.
14. Assignment: In accordance with Section 138 of the State Finance Law, this Agreement or any of its provisions shall not be assigned, delegated, transferred, conveyed, sub-let, or otherwise disposed of without the prior written consents of the University, the New York State Attorney General and the New York State Office of the State Comptroller, and any attempts to assign, delegate, transfer, convey, sub-let, or otherwise dispose of this Agreement without said written consents shall be null and void.

15. New York State Freedom of Information Law: Host acknowledges that the University is a public entity and that Host's proprietary information may be subject to disclosure pursuant to New York Public Officers Law or other applicable law. The University is an agency of the State of New York, and as such, any and all agreements to which the University is a party are considered public record and subject to disclosure under the New York State Freedom of Information Law ("FOIL").

16. Term and Termination: The effective date of this Agreement shall be ~~XX/XX/XXXX~~ and shall continue in full force and effect for five (5) years or until terminated as set forth in this paragraph. If either party wishes to terminate this Agreement, written notice will be given to the other party at least thirty (30) days in advance of such termination. Reasonable efforts will be made to provide that students then enrolled in clinical fieldwork experience at Host will have the opportunity to complete the experience at Host.

17. Host represents and warrants that it is currently, and for the term of this Agreement will continue to be, in compliance with all applicable laws, regulations, and public directives, including, but not limited to, those issued in times of an emergency, regarding the health and safety of employees, the public, and student interns. Failure to comply with this provision will be considered a material breach of this Agreement.

18. Notices: Any notices must be in writing and will be deemed effective when (a) delivered personally; or (b) delivered by a reputable overnight courier with proof of delivery to the party and address set forth below or such other address(es) of which such party shall have given written notice.

19. For purposes of written notification:

To UNIVERSITY

State University of New York at Binghamton
Decker College of Nursing and Health Sciences
Division of Physical Therapy
PO Box 6000
Binghamton, NY 12902-6000

To HOST

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below:

By: _____
Matthew Schofield Date
Director of Procurement
State University of New York at Binghamton
PO Box 6000
Binghamton, NY 13902-6000

By: _____
Mario R. Ortiz, RN, PhD, FNAP Date
Dean and Professor
Decker College of Nursing & Health Sciences
Binghamton University

By: _____
Host Signatory Date
Title
Host Name
Address
