

**Amended and Restated Memorandum of Understanding**

**Between SMDC Medical Center and Duluth Public School District, ISD #709**

This Amended and Restated Memorandum of Understanding ("Amended and Restated MOU") is between SMDC Medical Center ("SMDC") and Duluth Public School District, Independent School District #709 ("District") and is retroactively effective as of July 1, 2024 ("Effective Date").

**RECITALS**

WHEREAS, SMDC and District entered into a Memorandum of Understanding effective April 7, 2020 ("2020 MOU"); and

WHEREAS, although the 2020 MOU expired July 1, 2021 per its terms, the parties have continued to operate under the 2020 MOU as if it had not expired, and therefore the parties have agreed to make this Amended and Restated MOU retroactively effective to July 1, 2024; and July 1, 2024 – June 30, 2027

WHEREAS, SMDC is a Minnesota non-profit corporation and operates an outpatient mental health service principally for children, adolescents, and young adults, and such program is called the Amberwing Partial Hospitalization Program ("Program"), also known as Superior Academy for ISD 709, located at 615 Pecan Avenue, Duluth, MN 55811; and

WHEREAS, certain of the patients in the Program are enrolled in school in grades K-12 ("Students"); and

WHEREAS, while enrolled in the Program, Students would be unable to attend classes at their applicable school; and

WHEREAS, continuing of the Student's education is a requirement of the Program. SMDC and District wish to work cooperatively to facilitate Students maintaining the Students' educational curriculum while enrolled in the Program.

NOW, THEREFORE, the District and SMDC wish to enter into this Amended and Restated MOU.

**1. Roles of District ROLES AND RESPONSIBILITIES**

- a. District shall provide up to two teachers (the "Teachers") at District's expense, to be at Amberwing full time during regular school hours and days during the term to Teach the Students.
- b. Teachers shall facilitate the maintenance of educational curriculum of the Students which shall include assistance with homework, educational testing and assessment and group and individual instruction appropriate to grade and achievement levels ("Teach").
- c. District shall ensure, and shall provide such written confirmation to SMDC upon SMDC's request, that the Teachers are fully qualified to perform the Teaching duties, including being licensed and credentialed in the state of Minnesota as applicable, have successfully passed District and SMDC required background checks and verification of education or employment, and have obtained all immunizations as may be required by SMDC and/or the Program.
- d. District shall cause the Teachers to adhere to SMDC's and the Program's applicable policies and procedures while at Amberwing as long as there are no conflicts with the District's Teacher bargaining unit contract. If there is a conflict, this Amended and Restated MOU may be terminated by either party as set forth in General Terms below.

- e. District shall obtain all consents and releases as may be necessary to Teach the Students, including without limitation, parent and/or guardian consents and releases of information.
- f. District shall be responsible to comply with all applicable laws, rules and regulations including without limitation, Family Educational Rights and Privacy Act ("FERPA").

## 2. Roles of SMDC

- a. SMDC shall make two rooms available at Program to Teachers to serve as classrooms for Teaching ("Classrooms") during regular school hours and days during the term. District understands and acknowledges that District will not have exclusive use of the Classrooms during the term, and SMDC may be using that space when it is not being used for Teaching.
- b. SMDC shall make available for Teachers for Teaching in the Classrooms the standard equipment and furniture available in the rooms.
- c. SMDC shall orient Teachers to applicable SMDC and Program policies and requirements.
- d. SMDC shall be responsible to comply with all applicable laws, rules and regulations including without limitation, Health Insurance Portability and Accountability Act ("HIPAA").

## 3. General Terms

- a. This Amended and Restated MOU is retroactively effective as of July 1, 2024, and shall continue until and including June 30, 2027. At the end of the initial term, and each subsequent term, this Amended and Restated MOU will automatically renew for successive three (3) year terms unless terminated as set forth herein. This Amended and Restated MOU may be terminated at any time by either party or by written notice to the other party. Either party may terminate this Amended and Restated MOU immediately upon notice if it deems it to be in the best interests of or for the safety of the Students.
- b. If Essentia Health reasonably determines that the continued performance of this Amended and Restated MOU jeopardizes its or an affiliated entity's (i) licensure, (ii) participation in or recovery from any reimbursement or payment programs, (iii) accreditation status, or (iv) tax-exempt or bond-financing status, SMDC shall notify District so the parties may resolve the issues. If no resolution is reached within fifteen (15) days, SMDC may terminate the Amended and Restated MOU immediately and without penalty.
- c. Each party shall comply with all applicable laws, rules, and regulations in connection with their respective obligations hereunder.
- d. Neither party shall discriminate in the provision of services to patients based on race, color, national origin, ancestry, religion, gender, marital status, disability, sexual orientation, age, or any other legally prohibited basis, except as may be medically indicated.
- e. The parties are independent contractors and this Amended and Restated MOU is not intended to create a joint venture, partnership or any other employer- employee relationship. The Teachers are employees of District, and are not employees of SMDC for any purpose, and are not entitled to any benefits provided by SMDC to its employees. District is responsible for the payment of all wages, benefits and taxes for Teachers.
- f. Both parties agree to not disclose confidential information of the other party without the prior written consent of the other party unless such disclosure is authorized by law.

- g. Each party will obtain and maintain general liability and as applicable professional liability insurance, with limits not less than \$1,500,000 per occurrence and \$3,000,000 in the aggregate.
- h. The parties are each responsible for their own acts and omissions, and are not liable for the acts or omissions of, or the costs of defending, others. Nothing in this section shall preclude a finding of liability on the part of either party based on the doctrines of equitable indemnity, comparative negligence, contribution, or other statutory or common law basis for liability.
- i. Each party has in place a compliance program ("Compliance Program"), the goal of which is to ensure that all federal, state and local laws and regulations are followed. Each party's Compliance Program includes a commitment to uphold a high standard of ethical and legal business practices to prevent misconduct. Through the implementation of this Amended and Restated MOU, each party acknowledges its commitment to corporate compliance and agrees to conduct all transactions which occur pursuant to this Amended and Restated MOU in accordance with all applicable laws, rules and regulations and with the underlying philosophy and objectives of each party's Compliance Program. By signing this Amended and Restated MOU, each party represents and warrants that it is not, and has not been, excluded from participation in any federally and/or state funded health care programs, including Medicare and Medicaid. In the event that a party is excluded from participation in any federally and/or state funded health care programs during the term of this Amended and Restated MOU, such party agrees to notify the other within five (5) business days or less of the exclusion.
- j. In connection with the services to be rendered under the Amended and Restated MOU, the parties shall comply with the *Essentia Health Values* as set forth in the *Essentia Health Code of Integrity*, which is currently available at <https://www.essentiahealth.org/for-vendors/>.
- k. If required by 42 U.S.C. § 1395x(v)(1)(I), until the expiration of four (4) years after the termination of this Amended and Restated MOU, District shall make available, upon written request by the Secretary of the Department of Health and Human Services, or upon request by the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Amended and Restated MOU and such books, documents, and records as are necessary to certify the nature and extent of the costs of the services provided by District under this Amended and Restated MOU. If District carries out any of its duties under this Amended and Restated MOU through a subcontract with a value or cost of \$10,000 or more over a twelve (12) month period, such subcontract shall contain the same requirements.
- l. Each party hereby represents and warrants to the other that neither it nor any employee, contractor, or agent now or hereafter engaged by such party to provide services under the Amended and Restated MOU (collectively, a "Representative") is, and at no time has been, excluded from participation in any federally-funded health care program, including the Medicare and Medicaid programs. Each party hereby agrees to immediately notify the other of any threatened, proposed, or actual exclusion of such party or any Representative from any federally-funded health care program, including the Medicare and Medicaid programs. In the event that a party or any Representative is excluded from participation in any federally funded health care program during the Term of this Amended and Restated MOU, or if at any time after the Effective Date it is determined that a party or a Representative is in breach of this Section, the Amended and Restated MOU shall automatically terminate as of the date of such exclusion or breach; provided, however, that if the breaching party immediately removes a Representative who is so excluded or has otherwise breached the provisions of this Section from the performance of services under the Amended and Restated MOU, the Amended and Restated MOU shall not automatically terminate. Each party shall indemnify (the "Indemnifying Party") and hold harmless the other party against all actions, claims, demands and liabilities, and against all loss, damage, costs, and expenses, including reasonable attorneys' fees, arising directly or indirectly, out of any violation of this Section by the Indemnifying Party. The provisions of this Section shall survive the expiration or termination of the Amended and Restated MOU for any reason.

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Memorandum of Understanding as of the Effective Date first written above.

**Duluth Public School District, ISD #709**

Signed: Gimone Zurich Date: 8/9/24  
Name: Gimone Zurich  
Title: Exec. Dir. Business Services

**SMDC Medical Center**

Signed: Eric Nelson Date: 09/03/2024  
Name: ERIC NELSON  
Title: Senior Vice President