

Memorandum of Understanding

Between the Tomahawk School District and

This agreement is a joint effort being entered into on this _____ day of _____, 2014 whereas, the School District of Tomahawk (District) agrees to establish a joint venture with _____ (Provider) to provide mental health counseling and/or substance abuse services for students enrolled in the Tomahawk School District.

PREAMBLE

WHEREAS, Provider is engaged in the business of providing mental health counseling services (“Services”) for student populations; and

WHEREAS, Provider wishes to have access to the District’s facilities in order to provide mental health counseling services for students in the District, who would otherwise seek such services, subject to the terms and conditions contained herein; and

WHEREAS, the District recognizes that offering mental health and substance abuse treatment services onsite provides significant benefits to the students without substantial disruption to the educational process.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. INDEMNIFICATION AND INSURANCE

(a) Indemnity. Provider hereby holds harmless, defends and indemnifies the District (and all affiliates, officers, directors, employees and representatives) from and against each and every demand, claim, loss, liability, or damage of any kind, including actual attorney’s fees and expenses, whether in tort or contract, whether personal injury or property damage, that the District may incur by reason of, or arising out of, (i) any claim made by any third party with respect to the Services or any work product provided as part of the Services, or (ii) any misrepresentation made in, or breach of the terms or warranties of, this Agreement, including without limitation any claim or action of any type or nature by or related to Provider’s infringement or misappropriation of any copyright, trade secret, patent or other intellectual property right with respect to the distribution, use or creation of such work product.

(b) Insurance. Provider shall, during the term of this Agreement, maintain, at his/her own expense, all necessary insurance, including but not limited to malpractice insurance and general liability insurance. The insurance policy shall list the Tomahawk School District as an “additional insured” on any insurance policy and the policy shall include language indicating that the district will receive notice directly from the insurance carrier in the event of any modification or cancellation of the policy. Upon request, Provider shall provide the District with a certificate of insurance evidencing such coverage.

2. MAINTENANCE OF LICENSURE

Provider shall maintain all appropriate licenses/certifications required by the State of Wisconsin. The Provider must ensure that all licensed clinical staff providing service in schools has the necessary training and education for provision of services to the age of students served. The practice of psychotherapy or substance abuse treatment shall be within the scope of practice of the clinician. If at any point the Provider has allowed his/her licenses to lapse, expire, or otherwise become invalid, or if the Provider has his/her license and/or certification revoked or suspended, or any other actions or omissions of Provider render him/her unfit or unable to perform the Services, the provider will immediately notify the District of loss and this Agreement shall immediately terminate. Furthermore, failure to notify the district will result in the automatic termination of this agreement. Copies of current Wisconsin clinical licenses shall be provided to the district and prominently displayed at each school branch office.

3. ASSUMPTION OF RISK

Provider assumes all risk of property loss or damage and of personal injury or death, other than that caused solely by the gross negligence of the District, or its employees, which may be sustained by Provider or as a result of or arising in connection with performing Services.

4. EQUIPMENT, SUPPLIES & RECORDS

(a) Equipment. The district will provide basic office furniture (desk and chairs), however the Provider will be responsible for the care of this furniture and will be liable for the cost of repairs and/or replacement if damaged or destroyed. The Provider shall provide, at no cost to the District, all other equipment and/or supplies necessary for Provider to perform the Services.

(b) Space within the school for use by the school branch office, including storage of records, will be identified and will ensure the privacy and confidentiality of students and family members receiving services from the school branch office. The secure and confidential storage of client records will be the responsibility of the Provider and only the Provider will have access to such records.

(c) Records. Provider shall maintain appropriate records for all patients and maintain such records according to the requirements of the Health Insurance Portability and Accountability Act and other applicable state and federal laws. Records maintained by Provider are not pupil records (Wis. Stat. 118.125) or public records (Wis. Stat. 19.31-19.39). Further, Provider shall not have access to any pupil records maintained by the District without express written consent from the parents/pupils in accordance with Board policies and Administrative Regulations.

(d) Notice. The District may provide periodic written notice to students and families about the Services offered by Provider and the method to be used to access the Services. All communication to families and students about the school branch office will clearly specify the school branch office is co-located in the school for the benefit and convenience of students and families seeking clinic services and is not an agent of the school. If provider intends to advertise the Services offered at the District's facility, Provider must submit such advertisement to the District and obtain written approval from the District before publishing/issuing it. Such advertisements must include explicit language stating that the Services are NOT SCHOOL-SPONSORED SERVICES.

(e) Fees. The District shall provide Provider with access to an adequate facility(ies) within the District, to provide the Services to the students in the District. However, Provider's access to such facility is not use of District facilities, in accordance with District Policy related to fee for use of district facilities. As such, Provider shall not be required to pay fees to the District related to the use of the District's facilities. To the extent Provider charges students for the Services provided, the District shall not be involved in any recordkeeping or collection related thereto.

(f) Hours of Access. The District shall establish the schedule when Provider is permitted to offer Services at the facility(ies) within the District, in order to avoid interfering with the operations of the District. Upon request, Provider shall provide the District with his/her schedule within those approved times. Nothing herein shall be interpreted as the District regulating or monitoring Provider's hours of work. Provider maintains control over his/her hours of work.

(g) Client Rights information shall be prominently displayed at each school branch office.

5. POLICIES AND PROCEDURES

The Provider shall adhere to school established procedures specific to the delivery of services in a school setting. These procedures include, but are not limited to:

(a.) Entrance and egress policies

(b.) Operating hours

(c.) Parameters for school staff access to branch office (e.g., maintenance and cleaning, emergencies)

(d.) Adherence to school rules, including participation in emergency drills and procedures

(e.) Supervision of students

(f.) Appropriate clinician responses in case of violent outbursts by students, including communication with school staff and law enforcement.

6. CONFIDENTIALITY

(a.) Co-location of a school branch office in school does not in any way waive the confidentiality of treatment records or pupil records as defined in state or federal law. Communication of any confidential information between the school branch office and the school is done only with consent or as otherwise authorized in statute. Clinical records created in the school branch office are the property of the certified clinic. Pupil records of students receiving services in the school branch office are in the custody of the school. Access to records or information is via properly created and executed releases of information or as otherwise authorized in the law, consistent with s. Chapter 51 and 118, stats.; 42CFR2; and 34 CFR99 (Family Education Rights and Privacy Act).

(b.) Referral for assessment for mental health or substance abuse services to certified clinics shall originate from the parent/guardian. Arrangements for the student to be released from class for appointments and/or assessments will be made only after the parent/guardian has authorized the release for services.

(c.) Information from school branch office assessments, treatment plans, school evaluations and educational plans may be shared to inform and support each other **only** with the informed consent of the parent/guardian.

7. RELATIONSHIP

(a) Provider shall perform under this Agreement as an independent outpatient mental health branch office provider, and not as an agent, employee or representative of the District. Neither party shall have any right, power nor authority to act or create any obligation, expressed or implied, on behalf of the other party, except as otherwise provided herein.

(b) Rights of Provider. Provider shall have the right to perform work for others as long as Provider does not provide services for others within the district school branch office.

(c) Taxes of Provider; indemnity. Provider shall pay and report all applicable taxes and assessments, including without limitation federal, state and local income tax withholding, social security, Medicare and similar taxes, and unemployment insurance, if applicable. Provider shall file all required forms and make all required payments, as applicable. Provider acknowledges that because Provider is not an employee of the District, the District will not provide Provider with any benefits of employment, such as health or disability insurance, retirement or welfare benefits, and the like. Provider shall maintain his/her own liability insurance. Provider hereby indemnifies the District, and each of its officers, directors and employees from and against all payments, losses, costs, liability, expenses, damages, fines, penalties or judgments (including without limitation actual attorney's fees and expenses) as a result of a failure by Provider: (i) to pay all the taxes due in connection with the compensation paid to Provider under this Agreement; (ii) to respond to any administrative inquiry concerning Provider's payment of such taxes; or (iii) to defend against any administrative or judicial proceeding with respect to Provider's payment of such taxes.

(d) Non Assignment of Rights or Obligations. Provider shall not assign his/her rights or obligations under this agreement or any other Agreement entered into between Provider and the District.

(e) Compliance with Board Policies and Administrative Regulations. Provider shall comply with all applicable Board policies and Administrative Regulations, including, but not limited to those, governing his/her presence on school grounds and interactions with staff, students, and community members. Provider shall not, however, be obligated to disclose confidential information to the District, its officers or agents, except as required by law.

(f) Non-Exclusive Relationship. The District may enter into an Agreement with another individual/entity to provide similar (or the same) services to the students in the District, as those provided by Provider. The District has no obligation to notify Provider, in writing or otherwise, upon entering into such an Agreement with another individual/entity.

8. COMPLIANCE WITH STATUTES AND REGULATIONS

(a.) Both parties warrant and certify that in the performance of this Agreement, they will comply with all applicable statutes, rules, regulations and orders of the United States, and of any state or political subdivision thereof, including laws and regulations pertaining to labor, wages, hours and other conditions of employment; and that the Services delivered hereunder shall be produced in compliance with the Fair Labor Standards Act and any other applicable labor law. Provider is solely responsible for payments related to any medical, disability, retirement or other welfare or pension benefits to which he/she is entitled. Provider shall maintain any necessary liability insurance. Provider shall comply with all requirements of the Health Insurance Portability and Accountability Act, the Family Educational Rights

and Privacy Act, and Wisconsin Pupil Records law. During the performance of this Agreement, both parties will comply with any applicable federal, state or municipal law or regulation governing nondiscrimination and affirmative action in employment as may be applicable. Provider shall treat all persons he/she encounters on a work assignment with respect and dignity and will not engage in any type of harassment or discrimination prohibited by state, federal or local law. Provider hereby indemnifies the District for any expenses and/or damages arising from a lawsuit that may be brought against the District based on Provider's discriminatory or harassing behavior. Provider and the District shall pay and report all applicable taxes and assessments, including without limitation federal, state and local income tax withholding, social security, Medicare and similar taxes, and unemployment insurance, if applicable.

(b) The Provider must adhere to Department of Health Services (DHS) reviews of school branch office staffing records, policy and procedure or clinical records at branch offices, or requests for branch office samples for review at main clinic reviews or investigations. Reviews may include unannounced site visits at school branch offices for the purpose of evaluating compliance or investigating complaints. Site visits will comply with local school building rules regarding visitors, student access, emergency drills and procedures, and entrance and egress policies and procedures.

9. WAIVERS

No waiver of any right or remedy with respect to any occurrence or event shall be deemed a waiver of such right or remedy with respect to such occurrence or event in the future. No waiver of any of Provider's obligations under this Agreement shall be effective unless in writing and signed by the District. No failure on the part of either party to exercise, and no delay in the exercising of, any right or remedy shall operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or future exercise thereof or the exercise of any other right or remedy granted hereby, by any related document or by law.

10. AMENDMENTS

This Agreement may not be and shall not be deemed or construed to have been altered, modified, clarified, amended, rescinded, canceled or waived in whole or in part, except by written instrument signed by the parties hereto.

11. GOVERNING LAW; INJUNCTIVE RELIEF

This Agreement is governed by laws of the State of Wisconsin, without regard to its conflict of laws provision.

12. SEVERABILITY

It is agreed that if any provision, or part of a provision, of this Agreement is held to be invalid or unenforceable under any applicable statute or rule of law, then the parties shall use their best efforts to replace the invalid or unenforceable provision with a provision that, to the extent permitted by applicable law, achieves the purposes intended under the original provision. The balance of this Agreement shall remain valid, unchanged and in full force and effect.

12. TERMINATION

Either party may terminate this Agreement at any time with or without cause, with or without a hearing, by providing written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Agreed and Accepted:

Mental Health Branch Office Provider

Tomahawk School District

_____, 2014

_____, 2014

*The MOU will be signed annually and be in place prior to the beginning of the school year unless otherwise permitted.