



MERCY HEALTH

Children's Developmental Center



April 2, 2023

Dear Clearview Local Schools:

Please accept the following as our proposal for school-based therapy services to the Clearview Local school system.

Mercy Health has enjoyed providing therapy services to your school system this year. Our mission to provide cost-effective, quality care that supports the students, parents, teachers and administration is ongoing. We hope that Mercy Health will continue to be your provider of choice for therapy services into the 2023-2024 school year.

We appreciate the opportunity to submit the attached proposed agreement. Our proposal includes all disciplines, in case you have additional needs above our existing agreement as the school year progresses.

We are proposing continuation of our services with a one-year term at the rate of \$86.00/hour. If you are interested in continuing with our services, **please complete the below sections of the agreement:**

- (1) Add district name to first page of therapy services agreement.**
- (2) Complete Section P of therapy services agreement.**
- (3) Obtain signature on second to last page of therapy services.**
- (4) When completed, please scan to deanna.schreiber@mercy.com. Once the agreement is signed by Gilbert Palmer, M.D., President, Mercy Health – Lorain Hospital, a copy will be mailed directly to the address provided in the agreement.**

We sincerely thank you for your consideration. Should you have questions, please contact one of the below leaders of our rehabilitation team.

John Capple, Director of Rehabilitation (330) 207-8623
Carrie Rittenhouse, Manager of Speech and Occupational Therapy (419) 571-6254
Deanna Schreiber, Manager of Physical Therapy (440) 668-3724

THERAPY SERVICES AGREEMENT

This Therapy Services Agreement (“**Agreement**”) is made by and between Mercy Health Regional Medical Center LLC, an Ohio nonprofit limited liability company, d/b/a/ Mercy Health - Children’s Developmental Center (“**MCDC**”) and the Clearview Local Schools, an instrumentality of the State of Ohio (“**District**”). MCDC and District are referred to individually in this Agreement as a “**Party**” and collectively as the “**Parties.**”

RECITALS

- A. District has occasional need to contract for physical, occupational and speech therapy services for the benefit of students of District.
- B. MCDC is qualified and able to perform the therapy services required by District.
- C. MCDC desires to provide the therapy services described in this Agreement on the terms set forth in this Agreement and District desires to receive the services from MCDC.

NOW, THEREFORE, in light of the exchange of good and valuable consideration, the receipt and sufficiency of which is acknowledged by each Party, the Parties agree as follows:

1. **Scope of Work.** MCDC shall provide the following services on the terms set forth in this Agreement:

- (a) **Requests for Evaluation:** The District, acting through agents (e.g., school health professionals, counselors) in schools governed by the District (“**Schools**”) may request evaluation of School students as to the need for and benefits of physical, occupational and speech therapy or therapies (individually or collectively, “**Therapy**” or “**Therapy Services**”). In all cases, the Parties shall comply with all applicable laws concerning prescriptions or referrals for therapy from a doctor of medicine, a doctor of osteopathy, a chiropractor, a physician’s assistant or an advanced practice registered nurse (anyone of the foregoing a “**Licensed Person**”). In any event, should MCDC make a reasonable determination that a prescription or referral from a Licensed Person (an “**Order**”) is required before an evaluation or Therapy can begin, or at any time continue, the District shall use reasonable good faith efforts, and, upon request, cooperate with MCDC to obtain the required Order. If MCDC withholds performance because MCDC has a good faith reasonable belief that an evaluation or Therapy cannot be performed or continued without an Order, such withholding of performance shall not constitute a breach of this Agreement.
- (b) **Evaluation and Provision of Therapy Services.** MCDC will evaluate each student referred by District to determine the need for Therapy. For those students for whom an evaluation indicates Therapy would be beneficial (each “**Student**” or, collectively, “**Students**”), MCDC shall develop an individual plan for on-going Therapy. MCDC shall provide the appropriate Therapy to a Student throughout the school year, in the classroom or in the Student’s home as necessary or until

established goals in a Student's plan of Therapy have been accomplished. Reevaluation will be provided to each Student as determined to be indicated by a Therapist or a Student's physician.

- (c) **Personnel:** MCDC shall provide adequate personnel to manage the Therapy Services and provide them in an ethical and proper manner. All MCDC personnel rendering Therapy Services who are licensed physical therapists, licensed physical therapy assistants, occupational therapists, certified occupational therapy assistants and licensed speech pathologists as well as any other MCDC personnel performing any other services requiring specialized backgrounds or credentials (individually, a "Therapist" or collectively, "Therapists") shall hold an Ohio license or other appropriate professional licensure, certification or authorization ("Credentials") which are valid and in effect allowing the Therapist to render services in the State of Ohio. Upon reasonable request, MCDC shall make available to District a Therapist's Credentials. District acknowledges that the Therapists are satisfactorily qualified to perform Therapy Services. MCDC shall retain the discretion as to which of its personnel shall perform Therapy Services. Any Therapist assigned by MCDC shall perform services in accordance with: (i) applicable laws, rules and regulations; (ii) applicable rules, regulations, policies and standards of MCDC; and (iii) the Ethical and Religious Directives for Catholic Health Care Services, a copy of which is available at <http://www.usccb.org/about/doctrine/ethical-and-religious-directives/>.

Upon request by the District, a Therapist will submit to a criminal background check performed at the District's expense. MCDC represents to the District that neither the MCDC nor any of its principal officers, owners, directors or managers are: (a) excluded from participation in any federal health care program, as defined under 42 U.S.C. § 1320a-7b(f), for the provision of items or services for which payment may be made under such federal health care programs; or (b) have not been convicted (as that term is defined under 42 U.S.C. § 1320a-(7)(i)) of a criminal offense related to health care; and (c) that no final adverse action, as such term is defined under 42 U.S.C. § 1320a-7e(g), has occurred or is pending or threatened against MCDC or any Therapist.

The District, subject to all applicable civil rights laws and acting reasonably, has the right to direct by notice to MCDC that a Therapist not be allowed to continue performing services under this Agreement. In such event the MCDC shall furnish a replacement employee or agent for the work but for a reasonable period of time shall be excused for any nonperformance occurring under this Agreement because of MCDC's exercise of its rights under this paragraph.

Should the District determine that a Therapist should receive any training in District or school policies and procedures or as to any other matters under the control of the District or should participate in educational or learning sessions mandated by the District ("District Training"), the District shall have the responsibility to provide

the District training at the District's expense and the District shall compensate MCDC per Exhibit A.

- (d) **Collaborative Efforts**: The Therapy provided to Students is provided through collaborative efforts of the District and MCDC. Therefore, (a) how the work results of any Therapy are achieved, (b) the method or manner in which Therapy is provided, or (c) the specific details of the Therapy provided will be determined by the educational team, of which the therapist is a member, at a Therapy planning meeting for each student. In all events, MCDC shall retain authority to determine which MCDC personnel are assigned to perform Therapy Services.

- (e) **Recordkeeping**: MCDC shall prepare and maintain appropriate records to document each Student's evaluation, goals of a Student's Therapy, the course of Therapy and progress toward the goals. These records constitute "protected health information" or "PHI" as defined in and for the purposes of the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations promulgated thereunder ("HIPAA"). MCDC, as a "covered entity" as defined in HIPAA, shall preserve and protect the privacy and security of all Student PHI and shall not be requested where obligated to disclose or make further use of any Student PHI except as expressly permitted under HIPAA.

D. **Consents**. Evaluations of candidates for Therapy and Therapy itself shall be provided by MCDC to a student only if there is on file in the records of MCDC or provided to the MCDC, on behalf of the Student, prior to the provision of any services under this Agreement, a fully completed and properly signed "Parental/Guardian Consent to Services" substantially in such form as is acceptable to MCDC in the reasonable exercise of MCDC's discretion. ("**Consent**"). In all cases, the District shall be responsible for obtaining and making available to MCDC a properly completed and executed Consent. District expressly acknowledges that MCDC may not provide any Therapy Services to a Student without Parental or Guardian Consent.

E. **Compensation**. The District shall compensate MCDC in accordance with the amounts and terms set forth on Exhibit A to this Agreement for Therapy and other services rendered by MCDC.

F. **Equipment and Supplies**. In the event a Therapist recommends in good faith that the District should purchase certain equipment, supplies, disposable or other items the Therapist deems necessary to successfully carry out Therapy Services for students, the Therapist shall notify the District and the District, acting reasonably and in good faith, shall consider the request and its benefit to delivery of services listed on the education plan and within a reasonable amount of time after submission of the request, advise MCDC of the District's decision regarding the proposed purchase. Any items purchased by or at the expense of the District for use by MCDC in providing Therapy Services, shall be, and upon termination of this Agreement remain, the property of the District, reasonable wear and tear or consumption of disposable excepted.

G. **No Exclusivity.** This Agreement does not confer on MCDC an exclusive right to perform Therapy Services for Students and the District may contract with other persons to provide services the same as or similar to the Therapy Services provided by MCDC under this Agreement. Likewise, MCDC may, during the term of this Agreement, provide to any other person services the same as or similar to the Therapy Services provided by MCDC under this Agreement.

H. **Term and Termination.** The term of this Agreement begins on August 1, 2023 and concludes on July 31, 2024. Either Party may terminate the Agreement by giving 60 days' prior written notice to MCDC.

I. **Default: Remedies.** Should MCDC fail to perform its obligations under this Agreement in any material respect, the District may declare default by giving MCDC notice of the alleged failure. Thereafter, MCDC shall have 30 days to remedy the failure without penalty or termination of this Agreement. However, if MCDC fails to remedy the failure within the 30-day period or fails to undertake steps to remedy the failure that cannot reasonably be completed within that 30-day period remedy, this Agreement shall terminate. Subject to any setoff for damages sustained by the District, the MCDC upon default shall be entitled only to payment for the work performed and accepted by the District as of termination of the Agreement for default. If the Agreement includes prepayment for all or part of the work, the MCDC shall be entitled to retain only that part of the prepayment representing reasonable compensation for the work performed and accepted by the District as of termination of the Agreement for default, and subject to any claim of the District for damages. In addition to the terms of this section, the District reserves all rights and remedies in law or in equity with respect to enforcement of contracts and remedies for breach.

J. **Liability Insurance.**

- (a) At all times when this Agreement is in effect, MCDC shall maintain the following insurance coverages for MCDC employees, agents or contractors providing services professional liability with limits of \$1,000,000.00 per occurrence and \$3,000,000.00 in the aggregate and, as to MCDC employees, workers compensation insurance which complies with Ohio statutory requirements. MCDC further agrees to secure and maintain, in conjunction and connection with Therapist's performance under this Agreement, professional liability coverage of at least \$1,000,000 per occurrence and \$3,000,000 in the aggregate.
- (b) District shall maintain comprehensive general liability coverage and property liability coverage of not less than \$1,000,000.00 each occurrence and \$2,000,000.00 in the annual aggregate, and shall, upon request by the MCDC, provide the MCDC with a certificate of insurance. District agrees to provide at least 30 days' advance written notice of any change in this insurance coverage.
- (c) All insurance coverages under this Section shall be provided by means of a policy or policies of insurance written by and secured from companies rated no less than B+ in accordance with the latest edition ratings published by A.M. Best Company,

Inc. (or approved by Bon Secours Mercy Health Risk & Insurance Services); provided, however, that MCDC may cover its insurance requirement(s) through a self-funded arrangement. Each party shall furnish, upon request by the other, certificate(s) of insurance for the coverages under this Section. Each party shall provide the other with at least thirty (30) days advance written notice of cancellation, termination, nonrenewal, or material change of such coverage.

- (d) District agrees to notify the MCDC of any actual, potential or alleged claims arising from services.
 - (e) District agrees to cooperate with the MCDC in the defense of claims arising from services, if appropriate, and to assist the MCDC in claims management, including but not limited to, risk identification, claims investigation and control processes.
 - (f) Each Party shall be responsible for any personal injury (including death) or property damage caused by willful misconduct, negligent acts or negligent omissions of or by that Party or of, by or through any agent, employee or contracted servant of the Party and, in the case of District, any Student attending a District school, and each Party shall defend itself as to and pay any judgments and costs associated with any claims arising out of any such willful misconduct, negligent acts or negligent omissions, and nothing in this Agreement shall impute or transfer to or make a Party liable or responsible in any way for any responsibility or liability for, or any obligation to defend as to the acts or omissions of the other Party.
 - (g) This Section shall survive the termination of this Agreement.
- K. **Independent Contractor Status.** MCDC shall provide services under this Agreement as an independent contractor. District is contracting for the performance of Therapy Services and the means and personnel by which the Therapy will be provided are responsibilities of MCDC. Neither MCDC nor its employees or agents shall be considered agents or employees of the District for any purpose, and MCDC, its employees or agents are not entitled to any of the benefits or statutory rights that are provided for employees of the District. District shall not provide any compensation or fringe benefit of any kind to any Therapist except when required by Ohio law. The District shall not control the compensation, fringe benefits, or hours of work of any Therapist. Despite the Parties' agreement that MCDC is an independent contractor, in the event that the State Teacher's Retirement System (STRS) or the State Employees Retirement System (SERS) makes a final determination that MCDC is subject to STRS or SERS contributions, then in that event MCDC shall be liable for all such contributions, including the employer and employee share. It is the responsibility of MCDC to determine its status under the STRS or SERS rules.
- L. **Non-Solicitation.** District agrees that during the term of this Agreement, any extension or renewal thereof, and for a period of one (1) year after termination of this Agreement, District shall not interfere with the relationship of MCDC and any of its employees, agents, independent contractors, or representatives. By way of amplification and not

limitation of the foregoing, District agrees that it will not, directly or indirectly, for itself or any third party: (a) employ and/or contract with a person who was or is in the employ of or in a contractual relationship with MCDC; (b) solicit, induce, recruit, or cause a person in the employ of MCDC to terminate his/her employment; or (c) cause a person in a contractual relationship with MCDC to terminate his/her contractual relationship, for the purpose of joining, associating, contracting or becoming employed with District to provide services, goods and equipment of a nature similar to those provided under the terms of this Agreement, for or on behalf of District.

M. Compliance with Laws and Regulations. To the extent applicable, each Party shall comply in all material respects with all federal and state-mandated regulations, rules or orders applicable to creation, maintenance, privacy, security and retention of health records, including without limitation, rules and regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Family Education Rights and Privacy Act, 20 USC 1232g ("FERPA"), as those may be applicable. MCDC shall maintain legally required health records for services provided under this Agreement in confidence and securely. The ownership and right of control of all reports, records, and supporting documents prepared in connection with this Agreement shall belong exclusively to MCDC. It is understood that the contents of such documents are confidential, and disclosure shall be made only in accordance with MCDC policies and applicable state and federal law, including the requirement to obtain appropriate authorizations from Student or Student's parent(s)/guardian(s). To the extent legally permissible, MCDC shall provide District with documentation of services, provided that such information is only used in a manner consistent with applicable laws and regulations.

The Parties believe and intend that this Agreement complies with all relevant federal and state laws, as well as relevant regulations and accreditation standards, including but not limited to, the restrictions on MCDC by virtue of its tax-exempt status, the Federal Anti-Kickback Statute, the Federal Stark Law, and all of the rules and regulations promulgated pursuant to such statutes and laws ("Laws").

If, at any time, (i) this Agreement is found by a court, administrative body or other governing authority to violate any applicable provision of the Laws; or (ii) either Party provides to the other Party a copy of a written opinion of legal counsel to the effect that this Agreement creates a material risk of violating the Laws, then the Parties shall renegotiate the portion of this Agreement that creates the violation (or material risk of violation) of the Laws. If the Parties fail to reach agreement within 30 days following the date on which it is found that this Agreement violates the Laws or the date that a Party is provided a copy of a written opinion of legal counsel from the other Party, then this Agreement shall immediately terminate.

N. No Referrals. The Parties understand and agree that nothing contained in this Agreement shall in any way require or suggest that District shall be required to refer Students to MCDC, any Therapist, other health care provider, or any affiliate of MCDC at any time whatsoever. District shall be free to refer Students to any hospital, health care facility, provider, - Therapist or physician, and nothing contained in this Agreement is intended nor should be

construed to require or suggest that District otherwise generate business for MCDC, any Therapist, other health care provider, or any affiliate of MCDC.

O. **Exclusion from State or Federal Health Care Programs.** District represents and warrants that it is not: excluded from participation in any Federal health care program; debarred, suspended or otherwise excluded from participating in any other federal or state procurement or non-procurement program or activity; or designated a Specially Designated National or Blocked Person by the Office of Foreign Asset Control of the U.S. Department of Treasury. District further represents and warrants that to its knowledge, there are no pending or threatened governmental investigations that may lead to such exclusion. District agrees it shall notify MCDC in writing upon the commencement of any such exclusion or investigation within five (5) business days of receiving first notice of such exclusion or investigation. MCDC shall have the right to terminate this Agreement immediately upon learning of any such exclusion.

P. **Notices.** Any notice or other communication required under this Agreement shall be deemed received on the date sent by regular United States mail, postage paid and shall be sent to the Parties as follows:

If to District:

Clearview Local Schools
4700 Broadway Ave.
Lorain, Oh
44052-5542

If to MCDC:

Service Line Administrator
Mercy Health Lorain LLC
d/b/a Mercy Health – Children’s
Developmental Center
3700 Kolbe Rd.
Lorain, Ohio 44053

Q. **Miscellaneous.**

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes all prior representations, agreements and understandings, whether oral or in writing, between the Parties with respect to the same subject matter.
- (b) **Governing Law.** This Agreement shall be interpreted, enforced, and governed according to the laws of the State of Ohio. Both District and MCDC submit to the jurisdiction of the state and federal courts of Lorain County, Ohio for any action or proceeding arising under this Agreement.
- (c) **Assignment.** This Agreement shall not be assigned, whether by operation of law, agreement or otherwise, by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed; provided, however, that MCDC may assign its rights and obligations under this Agreement

without prior written consent to an affiliate or a purchaser of all or substantially all of MCDC's assets used in performing this Agreement.

- (d) **Binding Effect.** This Agreement shall be binding upon and inure only to the benefit of the Parties and their respective successors and permitted assigns.
- (e) **Modification.** This Agreement may not be amended or modified except in writing signed by the Parties.
- (f) **Headings.** The paragraph headings contained in this Agreement are for the purposes of convenience only and are not intended to define or limit the contents of said paragraphs.
- (g) **Waiver.** No waiver of any breach or default under this Agreement shall be considered valid unless in writing and signed by the Party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
- (h) **Severability.** If any provision or term of this Agreement is found to be void or unenforceable to any extent for any reason, it is the agreed-upon intent of the Parties that all remaining provisions or terms of the Agreement shall remain in full force and effect to the maximum extent permitted by law and that the Agreement shall be enforceable as if such void or unenforceable provision or term had never been a part of it.
- (i) **No Third-Party Beneficiaries.** Nothing in this Agreement confers, or is intended to confer, any rights or remedies under, or by reason of, this Agreement on any person or entity other than the Parties to this Agreement.
- (j) **Further Actions.** District and MCDC shall provide each other with information and shall execute such additional documentation as may be required to carry out the purposes of this Agreement, including the provision of information or documentation to any agency or entity which has provided grant funds for the work under this Agreement.
- (k) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.
- (l) **Access to Books and Records.** Until the expiration of four (4) years after the furnishing of services pursuant to this Agreement, MCDC shall, upon written request, make available to the Secretary of the Department of Health and Human Services (HHS), the Comptroller General, or any of their duly authorized representatives, this Agreement, and any books, documents and records that are necessary to certify the nature and extent of the costs incurred by MCDC under this Agreement. This provision will apply if the amount paid under the Agreement is \$10,000 or more over, a twelve (12) month period. The availability of MCDC's

books, documents, and records will at all times be subject to such criteria and procedures for seeking access as may be promulgated by the Secretary of HHS in regulations and other applicable laws. MCDC's disclosure under this provision will not be construed as a waiver of any legal rights to which either party may be entitled under statute or regulation. MCDC shall notify DPT immediately of any request received for access to information under this Section and shall consult in good faith with DPT regarding the response(s) to such request.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

MERCY HEALTH - REGIONAL MEDICAL CENTER LLC d/b/a MERCY HEALTH - CHILDREN'S DEVELOPMENTAL CENTER

DISTRICT:

Gilbert A Palmer, MD
Signature

Mary Ann Nowak
Signature

Gilbert Palmer, M.D.
Printed Name of Signer

Mary Ann Nowak
Printed Name of Signer

President, Mercy Health Lorain Hospital
Title of Signer

Treasurer / CFO
Title of Signer

Date Signed: August 2, 2023

Date Signed: *May 8*, 2023

EXHIBIT A
Compensation for Services and Terms of Payment

The District shall compensate MCDC at a rate of \$86.00 per hour for all Therapy services, rendered by a Therapist (as defined for purposes of this Agreement to include physical and occupational therapists and/or speech pathologists as well as therapy assistants), and all time spent by a Therapist on Compensable Activities as defined below. Partial hours shall be billed in quarter hour increments based on the above agreed upon per hour rate.

“Compensable Activities” shall mean each of the following activities related to Therapy Services provided by MCDC to District:

- Physical Therapy services
- Occupational Therapy services
- Speech Pathology services

- Preparation time
- Direct Treatment time
- Documentation time
- Meeting time
- Travel time between schools and to/from child's home if required
- Training time for training mandated by District

MCDC shall invoice District on a monthly basis for services rendered during the preceding month. Each invoice shall be itemized by Student, indicating the nature of the Therapy Services and the time spent by a Therapist providing those services to that Student and shall state separately, for any other Compensable Activities, the time spent providing and nature of the Compensable Activity provided.

Each invoice shall be paid within thirty (30) days of receipt by District, with date of receipt deemed to be three (3) business days following the date of delivery of invoice to District by MCDC. MCDC shall act reasonably in considering and acting upon reasonable requests from District for accommodations to any specific billing requirements of District, though a failure by MCDC to make all or some such accommodations shall not be deemed a breach of this Agreement.

Late payments shall bear interest at one percent per month, commencing on the 31st day following receipt of an invoice by the District.