

CONTRACT NAME: MEMORANDUM OF UNDERSTANDING BETWEEN COMMUNICARE HEALTH CENTERS AND DAVIS JOINT UNIFIED SCHOOL DISTRICT

BRIEF DESCRIPTION OF CONTRACT: This Memorandum of Understanding (MOU) between DJUSD and CommuniCare Health Centers is an agreement to provide mental health services to students in the case of an unexpected traumatic event.

CommuniCare Health Centers staff possess the necessary expert knowledge, experience, and ability to assist the District in providing professional mental health services in connection with the District's assessment of its students who are identified to be at risk for mental health issues following an unexpected traumatic event or crisis within the Davis community or Davis school system.

FISCAL IMPACT: This no cost to DJUSD associated with this agreement.

MEMORANDUM OF UNDERSTANDING
FOR
MENTAL HEALTH SERVICES

THIS MEMORANDUM OF UNDERSTANDING (the "Agreement") is made and entered into as of October 1, 2018 by and between DAVIS JOINT UNIFIED SCHOOL DISTRICT, a public school district of the State of California (the "District"), and COMMUNICARE HEALTH CENTERS, a California non-profit organization ("Consultant"). The District and the Consultant are collectively referred to in this Agreement individually as "Party" and collectively as the "Parties." This Agreement is made with reference to the following facts:

WHEREAS, the District has limited capacity to provide its students with professional mental health services in the case of an unexpected traumatic event.

WHEREAS, in the event of an unexpected traumatic event or crisis within the Davis community or District school system that affects District students, the District will need to enlist the services of additional mental health professionals in connection with its assessment of District students who are identified to be at risk for mental health issues. This service does not include routine mental health care or 5150 evaluation, independently of a mutually agreed on unexpected traumatic event that would require service for a limited amount of time within a crisis response situation impacting multiple students.

WHEREAS, Consultant possesses the necessary expert knowledge, experience, and ability to assist the District in providing professional mental health services in connection with the District's assessment of its students who are identified to be at risk for mental health issues following an unexpected traumatic event or crisis within the Davis community or District school system;

WHEREAS, the District desires to engage Consultant because of Consultant's expert knowledge, experience, and ability; and Consultant desires to be engaged by the District; and

WHEREAS, the District and Consultant desire to reduce to writing the terms and conditions of the District's engagement of Consultant; and

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the Parties hereby agree as follows:

ARTICLE 1.
SERVICES TO BE PERFORMED BY CONSULTANT

Section 1.1 Performance Of Services.

Consultant agrees to perform consulting services for the District as described in Appendix A to this Agreement (the "Services") and shall provide other consulting services as may be requested by the District from time to time. The Services will be provided on District school campuses or District affiliated site(s), except as may otherwise be provided in Appendix A.

Section 1.2 Method Of Performance And General Supervision.

Consultant will determine the methods, details, and means of performing the Services required by this Agreement. Subject to the foregoing, the District retains the right to inspect, to stop work, to prescribe alterations and generally to monitor Consultant's work to ensure its conformity with the terms of this Agreement.

Section 1.3 Employment Of Assistants.

Consultant may, at Consultant's own expense, employ such assistants as Consultant deems necessary to perform the services required of Consultant by this Agreement. District may not control, direct, or supervise Consultant's assistants or Consultants in the performance of those services.

Section 1.4 Consultant's Certifications, Representations and Warranties

Consultant makes the following certifications, representations and warranties for the benefit of the District. Consultant acknowledges and agrees that the District, in deciding to engage Consultant pursuant to this Agreement, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this Agreement and the course of Consultant's engagement hereunder.

(a) Consultant is qualified in all respects to provide to the District all of the services contemplated by this Agreement and, to the extent required by any applicable law, Consultant has all such licenses and/or governmental approvals as would be required to carry out and perform for the benefit of the District, such services as are called for hereunder.

(b) Consultant, in providing the services and in otherwise carrying out its obligations to the District under this Agreement, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws.

(c) Consultant will perform its services hereunder in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with, the current professional practices and standards of a professional practicing in California. The Consultant will furnish, at its expense, those services that are set forth in this Agreement and represents that these services as set forth herein are within the technical and professional areas of expertise of the Consultant or any sub-consultant the Consultant has engaged or will engage to perform the service(s).

(d) Consultant acknowledges and will abide by its obligation to comply with California Family Code section 6924 and California Health and Safety Code section 124260 regarding the treatment of minors.

**ARTICLE 2.
TERM AND TERMINATION**

Section 2.1 Term.

(a) This Agreement shall become effective on October,1 2018 (“Effective Date”) and shall continue through October 1, 2020 (the “Consulting Term”), unless the Agreement is earlier terminated by either Party in accordance with Section 2.2, below.

(b) This Agreement may be extended upon written agreement of the Parties.

Section 2.2 Termination.

(a) This Agreement may be terminated by either Party upon thirty (30) days written notice to the other Party.

(b) Either party may immediately terminate this Agreement if the other Party has materially breached this Agreement and has failed to cure such breach within ten (10) days of receiving notice of such breach.

(c) The Parties understand and agree that this Termination Article shall govern all termination rights and procedures between the Parties. Any termination provision that is attached to this Agreement as an Exhibit shall be void and unenforceable between the Parties.

**ARTICLE 3.
OTHER OBLIGATIONS OF CONSULTANT**

Section 3.1 Nonexclusive Services.

Consultant may represent, perform services for, and/or be employed by such additional companies, persons, or clients as Consultant, in Consultant’s sole discretion, chooses.

Section 3.2 Workers Compensation And Unemployment Insurance And Licenses.

Consultant shall be responsible for providing, at Consultant’s own expense, disability, unemployment and other insurance, workers’ compensation, training, permits and licenses for Consultant and for Consultant’s employees, agents and independent Consultants, as may be required by law.

Section 3.3 Materials And Equipment.

The District shall supply all materials and equipment required to perform the Services under this Agreement, except as may be otherwise specified in Appendix A.

Section 3.4 Licenses, Permits, Fees And Assessments.

Consultant shall obtain at Consultant’s sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the Services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes,

plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant's performance of the Services required by this Agreement.

Section 3.5 Fingerprinting.

For any work performed by Consultant at District facilities, if and when requested by the District, Consultant's employees are required to submit fingerprints to the Department of Justice where an employee may come into contact with students at any District site pursuant to Education Code section 45125.1. The Department of Justice will ascertain whether the employee has a pending criminal proceeding for a violent or serious felony, or has been convicted of a violent or serious felony as those terms are defined in Penal Code sections 667.5(c) and 1192.7(c), respectively. Consultant shall not permit an employee to come into contact with students until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code section 45125.1. Consultant shall provide District with a list of names of employees who may come into contact with students and must certify in writing to the District that none of its employees who may come into contact with students have been convicted of a felony as defined in Education Code section 45125.1. District may request the removal of an employee from a District site at any time. Failure to comply with any of the provisions of this Section may result in termination of this Agreement. The District will cover the cost of fingerprinting for CommuniCare employees.

Section 3.6 Protection Of Student Education Records And Information.

(a) Student Information. Student data, records and information ("Student Information") includes paper and electronic student education record information supplied by District, as well as any data provided by District students and parents to the Consultant, which is protected by federal and state law, including but not limited to, 20 U.S.C. section 1232(g) and Education Code sections 49060, *et seq.* Consultant acknowledges that the Agreement requires the Consultant access to Student Information to perform this Agreement. Consultant receives this Student Information in its capacity as a "school official" for purposes of performing its obligations under this Agreement. Both District and Consultant certify that they will abide by state and federal laws concerning confidential Student Information.

(b) Prohibition on Unauthorized Use or Disclosure of Student Information. Consultant agrees to hold Student Information in strict confidence. Consultant shall not use or disclose Student Information received from or on behalf of District, except as permitted or required by the Agreement, or as required by law. Consultant agrees that it will protect the Student Information it receives from or on behalf of District according to commercially acceptable standards and no less rigorously than the District protects its own confidential information.

(c) Return or Destruction of Student Information. Upon termination, cancellation, expiration or other conclusion of the Agreement, Consultant shall return all Student Information to District, or if return is not feasible as determined by District in written notice to Consultant, destroy any and all Student Information.

(d) District Remedies. If District reasonably determines in good faith that Consultant has materially breached any of its obligations under this Article, District, in its sole discretion,

shall have the right to provide Consultant with a fifteen (15) day period to cure the breach, or terminate the Agreement immediately if cure is not possible. District shall provide written notice to Consultant describing the violation and the action it intends to take.

(e) Maintenance of the Security of Student Information. Consultant shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all maintained or transmitted Student Information received from or on behalf of District or its students. These measures will be extended by contract to all subcontractors used by Consultant.

(f) Reporting of Unauthorized Disclosures or Misuse of Student Information. Consultant, within one day of discovery, shall report to District any use or disclosure of Student Information not authorized by the Agreement or in writing by District. Consultant's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the Student Information used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what Consultant has done or shall do to mitigate any effect of the unauthorized use or disclosure; and (v) what corrective action Consultant has taken or shall take to prevent future similar unauthorized use or disclosure. Consultant shall provide such other information, including a written report, requested by District.

(g) Indemnity. Consultant shall indemnify, defend and hold District harmless from all claims, liabilities, damages or judgments involving a third party, including District's costs and attorneys' fees, which arise as a result of Consultant's failure to meet any of its obligations under this Article.

Section 3.7 Insurance.

Consultant shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to District which will protect Consultant and District from claims which may arise out of or result from Consultant's actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

(a) Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California.

(b) Commercial General Liability Insurance with limits of \$1,000,000.00 per occurrence and \$3,000,000.00 in the aggregate.

(c) Errors and Omissions (E&O)/ Malpractice (Professional Liability) Insurance, including sexual molestation and abuse coverage, unless that coverage is afforded elsewhere in Commercial General Liability policy by endorsement or separate policy, in accordance with the laws of the State of California.

(d) Comprehensive general and auto liability insurance with limits of not less than \$500,000 combined single limit, bodily injury and property damage liability per occurrence, including:

- (i) owned, non-owned and hired vehicles;
- (ii) blanket contractual;
- (iii) broad form property damage;
- (iv) products/completed operations; and
- (v) personal injury.

Each policy of insurance required in Section 3.7 shall name District and its officers, agents and employees as additional insureds; shall state that, with respect to the operations of Consultant hereunder, such policy is primary and any insurance carried by District is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to District prior to cancellation; and shall waive all rights of subrogation. Consultant shall notify District in the event of material change in, or failure to renew, each policy. Prior to commencing work, Consultant shall deliver to District certificates of insurance as evidence of compliance with the requirements herein. In the event Consultant fails to secure or maintain any policy of insurance required hereby, District may, at its sole discretion, secure such policy of insurance in the name of and for the account of Consultant, and in such event Consultant shall reimburse District upon demand for the cost thereof.

Section 3.8 Indemnification.

To the fullest extent permitted by law, Consultant shall fully indemnify, defend and hold harmless the District, its employees, agents and independent Consultants from claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Consultant's services performed under this Agreement. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force.

Insofar as permitted by law, DJUSD shall assume the defense and hold harmless COMMUNICARE HEALTH CENTERS and/or any of its officers, agents or employees from any liability, damages, cost or expenses of any kind whatsoever, including attorneys' fees, which may arise by reason of the sole fault or negligence of DJUSD, its officers, agents or employees.

Insofar as permitted by law, COMMUNICARE HEALTH CENTERS shall assume the defense and hold harmless DJUSD and/or its officers, agents or employees from any liability, damages, costs, or expenses of any kind whatsoever, including attorneys' fees, which may arise by reason of the sole fault or negligence of COMMUNICARE HEALTH CENTERS, its officers, agents or employees.

It is the intent of DJUSD and COMMUNICARE HEALTH CENTERS that where negligence or responsibility for any harm to person(s) or property is determined to have been shared, the principles of comparative negligence shall be followed and each party shall bear the proportionate costs of liability, damages, cost or expenses attributable to that party.

DJUSD and COMMUNICARE HEALTH CENTERS agree to notify the other party of any claims, administrative actions, or civil actions determined to be within the scope of agreement within ten

(10) calendar days of such a determination. DJUSD and COMMUNICARE HEALTH CENTERS further agree to cooperate in the defense of any such actions. Nothing in this Agreement shall establish a standard of care for or create any legal right for any person not a party to this agreement.

Section 3.9 Return Of District Property.

On the termination of this Agreement or whenever requested by the District, Consultant shall immediately deliver to the District all property in Consultant's possession or under Consultant's control belonging to the District in good condition, ordinary wear and tear and damage by any cause beyond the reasonable control of Consultant excepted.

ARTICLE 4. CONSULTANT'S WORK PRODUCT

Section 4.1 Ownership Of Consultant's Work Product.

(a) Consultant agrees that any and all intellectual properties, including, but not limited to, all ideas, concepts, themes, computer programs or parts thereof, documentation or other literature, or illustrations, or any components thereof, conceived, developed, written, or contributed by Consultant, either individually or in collaboration with others, pursuant to this Agreement, shall belong to and be the sole property of District.

(b) Consultant agrees that all rights in all works prepared or performed by Consultant pursuant to this Agreement, including patent rights and copyrights applicable to any of the intellectual properties described in Subsection (a) above, shall belong exclusively to District and shall constitute "works made for hire."

(c) The provisions of this Section shall not apply to any of Consultant's rights in any invention for which no equipment, supplies, facilities, or trade secret information of District was used, which was developed entirely on Consultant's own time, and which:

(i) Does not relate, at the time of conception or reduction to practice of the invention, to District's business or to District's actual or demonstrably anticipated research or development; or

(ii) Does not result from any work performed by Consultant for District.

Section 4.2 Use Of Copyrighted Materials.

Consultant warrants that any materials provided by Consultant for use by District pursuant to this Agreement shall not contain any material that is protected under the Copyright Act or any other similar law, except to the extent of "fair use," as that concept is defined in the Copyright Act, and except to the extent that Consultant has obtained permission to use such work from the copyright holder. Consultant shall be solely responsible for ensuring that any materials provided by Consultant for use by District pursuant to this Agreement satisfy this requirement. Consultant agrees to hold District harmless from all liability or loss, including debt or exercise for attorneys' fees to which District is exposed on account of Consultant's failure to perform this duty.

**ARTICLE 5.
GENERAL PROVISIONS**

Section 5.1 Disputes Resolution.

In the event of any disputes or disagreement between the District and Consultant with respect to the interpretation of any provision of this Agreement, or to the performance of the Parties under this Agreement, each Party shall appoint a designated representative to meet in good faith, to resolve the dispute or to negotiate an adjustment to any provision of this Agreement. Such negotiations shall be conducted in a timely manner to avoid undue delay in resolving the dispute. No formal proceeding for judicial resolution of any dispute or disagreement shall be commenced until a Party concludes in good faith and provides written notice to the other Party that an amicable resolution of the matter at issue through continued negotiation does not appear likely.

Section 5.2 Default.

A Party will be considered in default of its obligations under this Agreement if such Party should fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement and such failure continues for ten (10) days after the non-defaulting Party gives the defaulting Party written notice thereof. In the event of default, the non-defaulting Party, upon written notice to the defaulting Party, may terminate this Agreement as of the date specified in the notice, and may seek such other and further relief as may be provided by law.

Section 5.3 Amendments.

This Agreement may not be altered or modified, except by a writing signed by the Parties.

Section 5.4 Status Of Consultant.

Consultant enters into this Agreement, and will remain throughout the term of the Agreement, an independent Consultant. Neither Consultant nor its employees, agents or independent Consultants shall become an employee, joint venturer, partner, agent or principal of the District while this Agreement is in effect. Consultant's employees, agents and independent Consultants shall not be entitled to the rights or benefits afforded to the District's employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave or any other employment benefit.

Section 5.5 Governing Law.

This Agreement shall be governed by and construed according to the laws of the State of California that would apply if all Parties were residents of California and the Agreement was made and performed in California.

Section 5.6 Notices.

All notices and demands between the Parties hereto shall be in writing and shall be served either personally or by registered or certified mail. Such notices or demands shall be deemed given when personally delivered or seventy-two (72) hours after the deposit thereof in the United States

mail, postage prepaid, addressed to the Party to whom such notice or demand is to be given or made. Such notices and demands may also be sent by telex, telegraph, telecopier or other similar electronic transmission device providing for a permanent record of the notice or demand, and, if so served, such notice or demand shall be deemed given and made at the time the device confirms to the sender delivery thereof to the addressee.

All notices and demands shall be given as follows:

To the District: Attn: Bruce Colby, Associate Superintendent of Business Services
Davis Joint Unified School District
526 B Street
Davis, CA 95616

To the Consultant: Attn: Sara Gavin, LMFT, LPCC Director of Behavioral Health
COMMUNICARE HEALTH CENTERS
215 West Beamer
Woodland, CA 95695

Each Party may designate in writing such other place or places that notices and demands may be given.

Section 5.7 Assignment.

This Agreement shall not be assigned by either Party without the prior written consent of the other Party.

Section 5.8 Order Of Precedence.

In the event of any conflict or inconsistency in the interpretation of this Agreement (including Attachments), such conflict or inconsistency shall be resolved by giving precedence to the body of this Agreement, then to the Attachments.

Section 5.9 Agreement Interpretation.

This Agreement is the result of arm's length negotiations between the Parties, and shall be construed as drafted by all Parties such that any ambiguities shall not be construed against either Party.

Section 5.10 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the Parties as of the Effective Date at such time as all signatories hereto have signed a counterpart of this Agreement.

Section 5.11 Entire Agreement.

This Agreement, including all Appendices, Exhibits and Amendments, contains the entire agreement between the Parties with respect to the subject matter of this Agreement and it supersedes all other prior and contemporary agreements, understanding, and commitments between the Parties with respect to the subject matter of the Agreement.

Section 5.12 Severability.

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 5.13 Effect Of Recitals.

The Recitals and Exhibits herein are deemed true and correct, are hereby incorporated into this Agreement as though fully set forth herein, and the Parties acknowledge and agree that they are bound by the same.

Section 5.14 Force Majeure.

Notwithstanding any other terms and conditions hereof, in the event that a Party is materially unable to perform any of its obligations hereunder because of severe weather, natural disasters, riots, wars, acts of terrorism, governmental action or other events of force majeure beyond the Party's control, then such Party shall, upon written notice to the other Party hereof, be relieved from its performance of such obligations to the extent, and for the duration, that such performance is prevented by such events; provided that such Party shall at all times use its best efforts to resume such performance.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the Effective Date of this Agreement.

DISTRICT:

DAVIS JOINT UNIFIED SCHOOL DISTRICT

By: _____
Name and Title: _____

CONSULTANT:

COMMUNICARE HEALTH CENTERS

By: _____
Sara Gavin, LMFT, LPCC Director of Behavioral Health

APPENDIX A
SCOPE OF SERVICES

1. The District currently employs school mental health professionals to conduct, for its students, risk assessment interviews, on an as needed basis.
2. A risk assessment interview is an approximately one hour meeting between a District school mental health professional and a District student, in which the District school mental health professional assesses the risk that the student will hurt himself/herself or others. Once the risk assessment interview is complete, The District school mental health professional follows a protocol for intervention designed to transfer the information and care of the District student to parent(s)/guardian(s).
3. In the event of an unexpected traumatic event or crisis within the Davis community or District school system that affects District students and may overwhelm the capacity of District school mental health professionals to conduct risk assessment interviews due to the large number of students needing such services, the District will enlist Consultant to assist the District's school mental health professionals in conducting risk assessment interviews.
4. Consultant has provided preventative and therapeutic mental health care to individuals and families in Yolo County since 1972. Consultant's core services include professional counseling in both English and Spanish for children, families, couples, and individuals coping with issues such as marital difficulties, parent/child conflict, depression, anxiety, the effects of trauma and abuse, custody and divorce, and grief and loss. Assisting the District's school mental health professionals in conducting risk assessment interviews is consistent with Consultant's mission statement and goals.
5. Consultant shall conduct risk assessment interviews only upon request of the District.
6. Consultant's services shall be limited to conducting risk assessment interviews only, unless otherwise agreed to by the Parties in a separate agreement.
7. Consultant's clinicians shall be trained in the District's risk assessment policies and procedures, including the risk assessment interview and intervention levels.
8. Risk assessment interviews will be conducted by Consultant's clinicians that possess one of the following licenses:
 - (a). Licensed Clinical Social Worker (LCSW)
 - (b). Marriage Family Therapist (MFT)
 - (c). Licensed Professional Clinical Counselor (LPCC)
 - (d). Board of Behavioral Sciences (BBS) Registered Intern supervised by a licensed clinician as outlined in (a) – (e) above.

9. Risk assessment interviews will be conducted on District school campuses or District affiliated sites.
10. Risk assessment interviews will be provided at no cost to District students.
11. Consultant's clinicians will work with District employees to (1) assess services needed by District students; (2) coordinate assignment of District students to Consultant's clinicians; (3) coordinate timely intervention and risk assessment interviews; (4) coordinate referrals for follow up care; and (5) communicate with the District students' parent(s)/guardian(s).
12. All documentation generated by Consultant during the process of conducting a risk assessment interview shall be the property of the District. The District shall be responsible for storing and maintaining such documents.
13. Consultant's clinicians shall not administer a risk assessment interview to a District student under the age of 12 unless the District has obtained and provided to Consultant an executed consent form from the District student's parent(s)/guardian(s) authorizing such services. (Cal. Fam. Code § 6924; Cal. Health & Safety. Code § 124260.)
14. Consultant may administer a risk assessment interview to a District student 12 years of age or older, without prior consent from the student's parent(s)/guardian(s), provided that (1) in the opinion of the Consultant's clinician, the District student, is mature enough to participate intelligently in the interview and (2) the District student presents a danger of serious physical or mental harm to himself/herself or to others. (Cal. Fam. Code § 6924 (b); Cal. Health & Safety Code § 124260 (b).)
15. Consultant's clinicians' shall make their best efforts to notify the District's student's parent(s)/guardian(s) of the administration of a risk assessment interview. (Cal. Fam. Code § 6924 (c); Cal. Health & Safety. Code § 124260).
16. Consultant's clinicians shall involve the District student's parent(s)/guarding(s) in the process of administering a risk assessment interview unless, in the opinion of the Consultant's clinician, such involvement would be inappropriate. Consultant's clinicians shall document his/her attempts/successes in involving the District student's parent(s)/guardian(s), or the reason why, in the Consultant's clinician's opinion, it would be inappropriate to involve the District's student's parent(s)/guardian(s). (Cal. Fam. Code § 6924 (d); Cal. Health & Safety. Code § 124260 (c).)