

AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
Gavilan Joint Community College District
AND
Discovery Counseling Center
FOR
(SERVICES BEING PROVIDED)

This Professional Services Agreement (“Agreement”) is made and entered into this 4th day of May , 2018 by and between the **GAVILAN JOINT COMMUNITY COLLEGE DISTRICT** (District) and **DISCOVERY COUNSELING CENTER, (CORPORATION)**, a California corporation, hereinafter referred to as “Consultant.”

RECITALS

- A. The District requires the services of licensed or licensed-waivered professionals to render certain technical and professional services described below; and
- B. The Consultant has available, and offers to provide, personnel and facilities necessary to accomplish the work within the required time.

AGREEMENT

NOW, THEREFORE, District and Consultant agree as follows:

I. Term

This agreement is effective on **September 1, 2018** and terminates on **June 30, 2019** or upon completion of services, whichever occurs first. This agreement may automatically renew annually as agreed upon by both District and Consultant.

II. Scope of Professional Services

The Consultant agrees to perform the behavioral health service activities as outlined in Exhibit A titled the “Scope of Work to be provided by Discovery Counseling Center” (Exhibit A), in connection with the Project, which is incorporated herein by reference including specifically those services reflected in the Scope of Services. No term of the Consultant’s proposal submitted modify the terms of this Agreement unless specifically incorporated into an Exhibit to this Agreement. The scope of consulting services includes all required contract, evaluation, and required grant meetings with District staff.

III. Authorization

Specific authorization to proceed with the work is hereby granted. Upon receipt of a fully executed Agreement from the District, the Consultant will proceed with the work; provided that more specific requests for certain services therein listed may be made by the District.

IV. Compensation

In return for the Consultant’s satisfactory performance of the services described in the proposal, the “Scope of Services”, the District agrees to pay compensation up to an amount not-to-exceed **EIGHTEEN THOUSAND (\$18,000)**, payable in proportion to the work completed, as further described in the paragraph below. At least twice during the term of this agreement, the District and the Consultant will review total expenditures and reimbursements related to this Agreement in order to monitor funding. Total compensation for all Professional Services provided under this Agreement will not exceed such amount during the term of this Agreement without prior written authorization from the District. If upon review of total expenditures and reimbursements by District and Consultant, it is determined that service demand will eventually exhaust the original, total agreed-upon compensation before the termination date

of contract, both parties may negotiate an additional compensation rate to cover remaining costs for needed services in order to prevent premature cessation of services or closure of service access.

The Consultant will invoice the District on a monthly basis. All invoices for services shall be presented to the District's Business Services Department for approval. Invoices will be forwarded to the District Director, Business Services for issuance of payment. The District will have forty-five days from the date of receipt of invoices to make payment of all undisputed amounts.

V. Standard of Care

The Consultant is employed to render the services specified herein and the Scope of Services only, and any payment made to the Consultant is compensation solely for such services as are satisfactorily rendered. The Consultant's services will be furnished in good faith, in compliance with generally accepted industry best practices for its profession and with the standard of care generally employed by professionals licensed and qualified to perform such services within the State of California.

VI. Performance and Schedule

The Consultant agrees to coordinate the Scope of Services (as detailed in Exhibit A) to provide for its timely completion, and will promptly notify the District of any anticipated delays, which may affect the work schedule. In the event that the time for completing the Scope of Services is exceeded due to circumstances beyond the control of the Consultant, and not due to any fault or negligence on the part of Consultant, the Consultant may request that the time for completion be extended accordingly. The District must consent in writing to the additional amount of time to complete the work and agrees that its consent will not be unreasonably withheld. The District shall not be liable for damage to Consultant on account of such delays.

VII. Change in Scope of Services

Only additional services approved and requested specifically by District, in writing, will constitute the basis of a change, addition or modification to the Scope of Services. Consultant is responsible for confirming that no work or services outside the Scope of Services are performed or invoiced.

If District requests performance of any services not within the Scope of Services, Consultant will notify District immediately and will indicate that no such work will be performed until approved by the District in writing. Concurrently with such notice, the Consultant will provide District a written cost estimate for, and a written description of, each additional task to be performed.

The extent of additional work required, any additional compensation will be negotiated by the parties and, if an agreement is reached, the parties will execute an amendment to this agreement, to the extent required in order to reflect such additional work and compensation. If no agreement is reached, District may choose to terminate this Agreement and retain another Consultant or may choose to retain another Consultant to provide only the additional services.

Consultant will not be entitled to compensation for any services rendered that are not specifically authorized under this Agreement and any amendments thereto. Any and all work performed without proper authorization will be considered part of this Agreement for no additional compensation.

VIII. Termination or Abandonment

The District may terminate this Agreement or may terminate or abandon all or any portion of the Scope of Services on the date that is ten (10) calendar days from the date of written notice, or on any specified date thereafter. The Consultant may terminate this Agreement or may terminate or abandon all or any portion of the Scope of Services on the date that is thirty (30) calendar days from the date of written notice, or on any specified date thereafter. The District will pay the Consultant for services for any portion of the services rendered prior to termination under the Scope of Services. If said termination occurs prior to full completion of any task, the portion of the fee to be paid for the portion of work or Professional Services Agreement, Discovery Counseling Center

service performed for such task will be based on the percent of completion mutually agreed to by the District and the Consultant. The District will not be liable for any costs other than the fees or portions thereof, which are specified herein. If all work is abandoned as herein provided, this Agreement will automatically terminate on the 10th day from the date of notice.

IX. Independent Contractor

Consultant understands and agrees that all of its employees are not employees of the District and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions including Unemployment Insurance, Social Security and Income Taxes with respect to Consultant's employees.

Consultant shall furnish, at their own expense, all labor, materials, equipment and other items necessary to carry out the terms of this Agreement.

In the performance of the work herein contemplated, Consultant is an independent contractor per IRS Publication 15-A page 4, with the authority to control and direct the performance of the details of the work, District being interested only in the results obtained.

X. Indemnification

- A. Consultant agrees to defend, indemnify and hold harmless the District, its Board of Trustees, Trustees, employees and agents from any and all liability or loss arising in any way out of Consultant's negligence in the performance of this Agreement, including, but not limited to any claim due to injury and/or damage sustained by Consultant, and/or the Consultant's employees or agents. District agrees to defend, indemnify and hold harmless the Consultant, its employees and agents from any and all liability or loss arising in any way out of the negligence of the District, its employees or agents, including, but not limited to any claim due to injury and/or damage sustained by District, and/or District's employees or agents.
- B. It is expressly understood and agreed that the indemnification provisions of this Section IX will survive termination of this Agreement.

XI. Insurance Requirements

- A. At all times during performance of services specified in this agreement, Consultant shall maintain policies of insurance described below in the minimum coverage amounts set forth herein.
- B. **Workers Compensation and Employers Liability Insurance.** The policy of Workers' Compensation Insurance shall cover claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts. The Employer's Liability Insurance shall cover bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Consultant. The Employer's Liability Insurance may be obtained as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance policy. The foregoing notwithstanding, Consultant's obligation to obtain Workers Compensation and Employers Liability insurance policies is waived if the Consultant does not employ any employees.

C. **Commercial General Liability and Property Insurance.** The Commercial General Liability and Property Insurance shall cover the types of claims set forth below which may arise out of or result from services under this Agreement and for which Consultant may be legally responsible: (i) claims for damages because of bodily injury, occupational sickness or disease or death of the Consultant's employees; (ii) claims for damages because of bodily injury, sickness or disease or death of any person other than the Consultant's employees; (iii) claims for damages insured by usual personal injury liability coverage; (iv) claims for damages, other than to the Project itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (v) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; and (vi) contractual liability insurance applicable to the Consultant's obligations under this Agreement. The District shall be an additional named insured to Consultant's commercial general liability/property insurance policy.

Minimum Coverage Amounts. Insurance policies of CONTRACTOR shall be in at least the following minimum coverage amounts:

Workers Compensation	Statutory Limits
Professional Liability	\$1,000,000
Employers Liability	\$1,000,000
Commercial General Liability (including coverage for Bodily Injury or Death, Property Damage and Automobile Liability-Property Damage, Bodily Injury or Death)	
Per Occurrence	\$1,000,000
Aggregate	\$3,000,000

D. **Policy Endorsements; Evidence of Insurance.** Consultant shall deliver to the District Certificates of Insurance evidencing each of the policies of insurance in the coverage amounts required hereunder. All policies of insurance required hereunder shall be issued by insurer(s) admitted to issue insurance by the State of California and to the reasonable satisfaction of the District. Coverages under each policy of insurance required hereunder, whether by endorsement or otherwise, shall provide that such policy will not be materially modified, canceled or allowed to expire without at least thirty (30) days advance written notice to the District. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A: VII." Originals of the duly authenticated Certificates of Insurance and Endorsements will be included with this Agreement as Exhibit C.

XII. Successors and Assigns

This Agreement and all of the terms, conditions, and provisions hereof will inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns; provided, however, that no assignment of this Agreement will be made without written consent of the parties to this Agreement. Any attempt by the Consultant to assign or otherwise transfer any interest in this Agreement without the prior written consent of the District will be void. Since the primary consideration of the District in entering this agreement is the qualifications of the Consultant, as opposed to a low bid, the District may refuse to consent to assignments at its sole discretion.

XIII. Project Organization

The Consultant hereby assigns Randall Ramírez, LCSW, LMFT, Clinical Director, as the *Consultant Project Manager* under this Agreement. The Consultant Project Manager will not be removed from the project or reassigned without prior written approval of the District, which approval will not be unreasonably withheld. No subcontracting of significant portions of the contracted services will be made without prior approval of the District.

The District hereby assigns Wade Ellis, Business Services Director, as the District Contact under this Agreement. The District may change the person assigned as District Contact upon written notice to Consultant.

XIV. Miscellaneous

A. Notice. Any notice or instrument required by, or contemplated under, this Agreement may be given by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

District:

Gavilan Joint Community College District
5055 Santa Teresa Blvd.
Gilroy, CA 95020
Attn: Wade Ellis
Fax: 408-848-4789
Email: wellis@gavilan.edu

CONSULTANT:

Discovery Counseling Center
16275 Monterey Road, Ste. C
Morgan Hill, CA 95037
Attention: Randall Ramírez
Fax: 408-778-9917
Email: Randall@mydiscoverycc.com

Notices mailed to the address above will be effective upon date of mailing. Notices may also be given via facsimile or electronic communication, and will be effective on the day so given, provided that evidence of successful transmission or acceptance via return email is attached to the Notice as evidence of the time and date of transmittal.

B. Interpretation. The terms of this Agreement will be construed in accordance with the meaning of the language used and will not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The headings of sections are for convenience only and do not modify rights and obligations created by this Agreement.

C. Compliance with Laws. Consultant will comply with all applicable federal, state and local laws, regulations, statutes and ordinances, as well as District conflict of interest and other applicable policies and administrative regulations (collectively, the "Laws") in connection with this Agreement and the performance of the work. Consultant will indemnify and defend the Indemnified Persons from and against any liability incurred due to any failure on the part of Consultant to comply with any applicable Laws.

D. Legal Proceedings. Should litigation or arbitration occur between the parties, each party will be responsible for their own attorney's fees.

E. Fingerprints/Clearance Requirements. Consultant will comply with the requirements of Education Code sections 44237, 35021.1 and 35021.2 including, but not limited to: obtaining clearance from both the California Department of Justice (hereinafter referred to as "CDOJ"), clearance from the Federal Bureau of Investigation (hereinafter referred to as "FBI"), and TB clearance for Consultant's employees, and volunteers, and contractors prior to providing service to any District student unless Consultant determines that the employees, volunteers, and contractors will have no physical contact with District students. Such CDOJ and FBI clearance must include a determination that any such person has not been convicted of a violent or serious felony as those terms are defined in Education Code section 44237(h), unless despite the such person's conviction of a violent or serious felony, he or she has met the Professional Services Agreement, Discovery Counseling Center

criteria to be eligible for employment pursuant to Education Code section 44237 (i) or (j). In addition, Consultant will make a request for subsequent arrest service from the CDOJ as required by Penal Code section 11105.2 with respect to each such person. Clearance certification must be submitted to the District prior to program implementation and within 5 business days when personnel changes occur that effect the provision of services under this contract.

F. Confidentiality. All information and records obtained in the course of providing services under this Agreement shall be confidential pursuant to Section 5328 of the Welfare and Institutions Code in accordance with applicable State and Federal law.

The confidentiality provisions of this Agreement will survive and remain in full force and effect beyond the termination or expiration of this Agreement. Consultant agrees to hold confidential information obtained from the District, including any student or personnel information, whether obtained through observations, documentation or otherwise, in strict confidence and shall not without prior permission of the District disclose to anyone any such confidential information. Consultant will maintain all pupil records in a secure location to ensure confidentiality and will prevent unauthorized access.

Consultant agrees that Consultant will not at any time or in any manner, either directly or indirectly, use any confidential District information for Consultant's own benefit. Consultant will protect such information and treat it as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement.

If it appears that Consultant has disclosed (or has threatened to disclose) information in violation of this Agreement, the District shall be entitled to an injunction to restrain Consultant from disclosing, in whole or in part, such information, or from providing any services to any party to whom such information has been disclosed or may be disclosed. The District shall not be prohibited by this provision from pursuing other remedies, including a claim for loss and damages.

G. Client Rights: Consultant shall give the patients notice of their rights pursuant to and in compliance with: California Welfare and Institutions Code Section 5323; California Administrative Code, Title 9, Chapter 1, Subchapter 4, Article 6. In addition, in all facilities providing the services described herein the Consultant shall have prominently posted in the predominant languages of the community a list of the patient's rights.

H. Health Insurance Portability And Accountability Act (HIPAA): Consultant agrees to comply with the applicable regulations for the Health Insurance Portability and Accountability Act (HIPAA) and shall hold the District harmless from any sanctions received by the Consultant, to the extent permitted by law, for breach of these regulations. Consultant also agrees:

- a. To prohibit any unauthorized disclosure or use of protected information.
- b. To put in place appropriate safeguards ensuring only permitted uses and disclosures.
- c. To ensure that subcontractors of CONTRACTOR agree to the provisions of this section.
- d. To consent to patient access to their own health information.
- e. To make protected information available to the Federal Department of Health and Human Services as well as all internal compliance policies and procedures.
- f. To provide for the destruction of protected information upon contract termination unless it must be retained to comply with another provisions of law.
- g. To ensure appropriate correction or amendment of records.

XV. Integration/Waiver

This Agreement and the attached Exhibits represent the entire understanding by and between the District and the Consultant as to those matters contained herein. No prior oral or written understanding will be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by both parties hereto. Any waiver by either party of any provision of this Agreement must be in writing and be attached as an Addendum to this Agreement. Any written waiver will affect only the provision specified and only for the time and in the manner stated in the writing. No waiver by a party of any provision in this Agreement will be considered a waiver of any other provision in the Agreement.

XVI. Execution

This person(s) executing this Agreement and any Exhibits hereto on behalf of the Consultant warrant and represent that Consultant has vested authority on such person(s) to execute and deliver this Agreement and to perform the services contemplated hereunder and that this Agreement is valid and binding on Consultant.

XVII. Responsibility for Others

Consultant shall be responsible to District for Consultant Services and the services of Consultant subcontractors. Consultant shall not be responsible for the acts or omissions of other parties engaged by District nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

XVIII. Consequential Damages.

Neither Party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

Consultant

Gavilan Joint Community College District

Larry McElvain, LMFT
Executive Director

Frederick E. Harris, Vice-President
Administrative Services