



CITY OF BEND

PERSONAL SERVICES AGREEMENT BETWEEN THE CITY OF BEND AND R. ANDREW BARRAM, Psy.D.

This Personal Services Agreement is between the City of Bend, Oregon ("City") and R. Andrew Barram, Psy.D. ("Contractor") for professional personal services.

RECITALS

- A. The City desires to enter into the Agreement for consulting services.
- B. Contractor has the training, ability, knowledge, and experience to provide the services desired by the City.
- C. Contractor was selected through a request for proposal process.

TERMS OF AGREEMENT

1. **Effective Date; Duration.** This Agreement shall become effective when signed by both parties and approved by the City's legal counsel. Unless sooner terminated, this Agreement shall expire one year (365 days) from the date the contract is implemented. This agreement may be extended for up to four additional years upon mutual agreement of both parties. Termination or expiration shall not extinguish or prejudice the City's right to enforce this Agreement with respect to any default or defect in performance that has not been cured.
2. **Services.** Contractor shall provide on-going behavioral health support and education to assist employees to acquire appropriate services based upon individual needs of the Bend Police and Fire Departments. The services to be provided are described in more detail in Exhibit A, Scope of Work. Contractor shall perform all work in accordance with Exhibit A.
3. **Consideration.** City shall pay Contractor as set out in Compensation Exhibit B, based on time and materials as set for in the attached Exhibits, but the total payment under this Agreement, which includes allowable expenses or reimbursement, **shall not exceed \$45,500.00.**
 - 3.1. Contractor shall send City an invoice each month setting forth the fee due for that month and include a detailed summary of the work performed during the pay period. City shall review all submitted invoices promptly and shall pay all undisputed amounts within 30 days of City's receipt of the invoice.
 - 3.2. Invoices will be directed to the City of Bend, Attention: Accounts Payable, P.O. Box 1458, Bend, Oregon 97709. Invoices may be emailed to:

ap@bendoregon.gov. If an invoice is delivered on a non-business day, the invoice shall be considered received on the next day the City's Finance Department is open for business.

3.3. Contractor shall reference the Contract Number and the Project Number as appropriate.

4. **Standard of Care.** Contractor will provide services with the degree of skill and diligence normally employed by professionals performing the same or similar services at the time the services are performed. Contractor shall, at all times during the term of this Agreement, be duly licensed to perform the Work, and if there is no licensing requirement for the profession or Work, be duly qualified and competent.

5. **Termination.** The parties may terminate this Agreement as follows:

5.1. This Agreement may be terminated at any time by mutual consent of both parties.

5.2. City may, at its sole discretion, terminate this Agreement, in whole or in part, upon thirty (30) days' notice, in writing and delivered by certified mail or in person.

5.3. City may terminate this Agreement, effective upon delivery of written notice to the Consultant, or at a later date established by the City under any of the following conditions:

(a) City funding is not obtained and continued at levels sufficient to pay for Consultant's Work. The Agreement may be modified to accommodate a reduction in funds. In determining the availability of funds, City may use the biennial budget adopted or modified by the City Council.

(b) If federal, state or City regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.

(c) If any license or certificate required by law or regulation to be held by the Consultant to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

5.4. Any termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to the termination.

5.5. The City by written notice of default (including breach of contract) to the Consultant may terminate the whole or any part of this Agreement:

(a) If the Consultant fails to provide services called for by this Agreement within the time specified or any extension of the Agreement, or

- (b) If the Consultant fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from the City, fails to correct the failures within 10 days or such longer period as the City may authorize.

- 5.6. Consultant may terminate this Agreement upon 30 days' written notice to City if City fails to pay Consultant pursuant to the terms of this Agreement and City fails to cure within 30 business days after receipt of Consultant's notice, or such longer period of cure as Consultant may specify in the notice.

6. Access to Records – Files; Confidential Information. Contractor shall maintain all books, documents, papers and records relating to the administration and billing of the Agreement for at least seven years following completion of the project. Contractor shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Contractor's performance. City, state and federal government, and their duly authorized representatives shall have access to the administrative books, documents, papers and records of the Contractor which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts and transcript. Documents, papers and records related to the specific direct services provided shall be considered confidential records of the Contractor. Contractor understands the nature of the work means that Contractor may be privy to information that is confidential, proprietary or sensitive in nature, which information shall not be disclosed to any third person or entity without the consent of the City of Bend or at the City's direction, either during the term of this Agreement or after its termination. Likewise, information obtained during the course of work under this agreement by Contractor of a confidential or sensitive nature that Contractor has a legal or professional ethical obligation to maintain confidential shall not be released or disclosed to any person, including the City, except as required through a Court order or when otherwise required by law to be disclosed.

7. Independent Contractor; Responsibility for Taxes & Withholding.

7.1. The Work to be rendered under this Agreement is that of an Independent Contractor. Contractor is not an officer, employee, or agent of the State or Department as those terms are used in ORS 30.265 of the Oregon Tort Claims Act, and Contractor is not to be considered an officer, employee or agent of the City for any purpose. Contractor shall be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this Agreement. Contractor is an independent Contractor for purposes of the Oregon Workers' Compensation Law (ORS Chapter 656) and is solely liable for workers' compensation coverage under this Agreement. City does not have the right of direction or control of the manner in which Contractor delivers the Work under this Agreement or exercise any control over the activities of the Contractor.

7.2. No Agency, Partnership or Joint Venture/Independent Contractor - Neither the City or Contractor, by virtue of this Agreement, is a partner or joint venture with the other party in connection with the activities carried out under this Agreement.

7.3. This Agreement is not intended to entitle the Contractor nor any of its Agents to any benefits generally granted to City employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Agreement are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement. Contractor shall be responsible for all federal or state taxes applicable to compensation or payment paid to Contractor under this Agreement.

8. **Ownership of Work Product.** All work product of Contractor under this Agreement shall be the exclusive property of the City. Contractor waives and releases all rights relating to the use of the work under this Agreement, including any rights arising under 17 U.S.C. § 106A. Reuse of work product by City or others for purposes outside the Scope of Work shall be without liability to Contractor.

9. **Indemnification.** Contractor shall defend, indemnify, and hold the City, its officers, agents, volunteers and employees harmless against all liability, claims, losses, demands, suits, fees and judgments (collectively referenced as "claims") that may be based on, or arise out of damage or injury (including death) to persons or property caused by or resulting from any act or omission sustained in connection with the violation of any statute, ordinance or regulation. This indemnification required shall not apply to claims caused by the sole negligence or willful misconduct of the City, its officers, employees, agents and volunteers. The Contractor agrees that it is not an agent of the City and is not entitled to indemnification and defense under ORS 30.285 and ORS 30.287.

10. **Insurance – Liability.** Contractor shall purchase and maintain at their own expense the insurance noted below. All insurance shall apply on a primary, non-contributory basis and remain in effect for the duration of the contract terms. Any policy written on a 'claims made' basis may only be done so with the written approval and authorization of the City of Bend and coverage written in this manner shall extend for two years past completion and acceptance of Contractor's work or services.

10.1 **Commercial General Liability Insurance** with minimum coverage in effect of \$1,000,000 per incident, claim or occurrence and \$2,000,000 in aggregate. The policy shall include coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products completed operations, employer's practices liability and contractual damages. Contractor shall remain fully responsible and liable for any claims resulting from the negligence or intentional misconduct of contractor, its subcontractors, and their officials, agents and employees in performance of this contract, even if not covered by, or in excess of insurance limits.

10.2 **Commercial Automobile (Fleet) Liability Insurance** with minimum combined single limit of \$1,000,000 covering all owned, non-owned, and hired vehicles. This coverage shall be written in combination with the Commercial General Liability Insurance and Commercial General Liability.

- 10.3 Commercial General Liability coverage shall name, by certificate and endorsement the City, its officers, agents, employees and volunteers as additional insureds with respect to Contractor's work or services provided under this contract.
- 10.4 Workers' Compensation Insurance as required by ORS chapter 656 and meeting the minimum requirements therein. Contractor shall ensure that each subcontractor obtains and maintains workers' compensation insurance and that the carrier notifies the state of Oregon or files a guaranty contract with the state of Oregon Workers' Compensation Division before performing work.
- 10.5 Contractor shall provide proof of coverage required by acceptable Certificate of Insurance and signed Endorsement from the carrier(s). The Certificate and Endorsement shall provide that there will be no cancellation, termination, material change or reduction in limits of the insurance coverage without a minimum 30-day written notice to the City. The Certificate and Endorsement shall also state the deductible or self-insured retention level.

11. **Subrogation.** Contractor grants Waiver of Subrogation to the City, its officers, agents, employees and volunteers for any claims arising out of Contractor's work or service. Further, Contractor agrees that in the event of loss due to any of the risks for which it has agreed to provide insurance, recovery by the Contractor shall be solely with their insurance carrier. Contractor also grants to City on behalf of any insurer providing coverage to either Contractor or City with respect to the work or services of Contractor a waiver of any right to subrogation which any insurer or Contractor may acquire against City by virtue of the payment of any loss under such insurance coverage.

12. **Nondiscrimination - ADA Compliance** – Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Contractor also shall comply with the Americans with Disabilities Act (ADA) of 1990, as amended by the ADA Amendments Act (ADAAA) of 2008 and any subsequent amendments (42 U.S.C. § 12101, et seq.) (Pub No. 101-336), ORS 659A, and all regulations and administrative rules established pursuant to those laws. Contractor agrees to comply with ADA in its employment and nondiscrimination practices, and that it shall perform its contractual obligations consistent with ADA federal requirements/regulations, state disability and accessibility law and requirements, and applicable regulations and administrative rules established pursuant to those laws.

13. **Successors and Assigns.** City and Contractor each binds itself, its successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Contractor shall not assign or transfer its interests in this Agreement without written consent of City, which consent may be withheld in the City's sole, subjective discretion. The rights under this Agreement may not be transferred or assigned by operation of law, change of control or merger without the prior written consent of the City. The City may rescind this Agreement if transferred or assigned by operation of law, change of control or merger, or without the prior written consent of the City.

14. **Force Majeure.** Contractor shall not be held responsible for delay or default caused by fire, riot, acts of God and war which is beyond Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Agreement.

15. **No Third Party Beneficiaries.** City and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

16. **Waiver.** City's failure to enforce a provision of this Agreement shall not constitute a continuing waiver, shall not constitute a relinquishment of City's right to performance in the future and shall not operate as a waiver of City's right to enforce any other provision of this Agreement.

17. **Limitation on Authority.** City retains its authority to execute all applications, Agreements and other documents relating to the Project. Contractor has no right or authority, express or implied, to commit or otherwise obligate City or any of its partners, except as permitted by the express terms of this Agreement, or as authorized in writing.

18. **Attorney Fees & Governing Law.** In the event an action, suit or proceeding, including appeals, is brought for failure to observe any of the terms of this Agreement, each party shall be responsible for that party's own attorney fees, expenses, costs and disbursements for the action, suit, proceeding or appeal. The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any claim, action, suit, or proceeding between City and Contractor arising from or relating to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County, Oregon, or, if the claim must be brought in a federal forum, the United States District Court for the District of Oregon. Contractor hereby consents to *in personam* jurisdiction of said courts.

19. **ORS 279A.125 Preference for Recycled Materials.** Contractor will use where applicable, recycled materials if (a) The recycled product is available; (b) The recycled product meets applicable standards; (c) The recycled product can be substituted for a comparable non-recycled product; and (d) The recycled product's costs do not exceed the costs of non-recycled products by more than five percent (5%).

20. **Compliance with Law.** Contractor shall comply with applicable federal, state, and local laws and ordinances applicable to the work under this Agreement. This Agreement incorporates the provisions required to be in an agreement of this type by ORS 279B.200 through 279B.235 (see Exhibit D).

21. **Merger Clause.** This Agreement and attached exhibits constitute the entire Agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. The waiver, consent, modification or change, if made shall be effective only in the specific instance and

for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor by signature of its authorized representative hereby acknowledges that he/she has read this Agreement/Agreement, understands it, and agrees to be bound by its terms and conditions.

22. Notices. All notices and demands of a legal nature that either party may be required or may desire to serve upon the other party shall be in writing and shall be served upon the other party by personal service, by facsimile transmission, E-Mail followed by mail delivery of the original of the notice, by overnight courier with proof of receipt, or by certified mail, return receipt requested, postage prepaid, addressed as follows:

City of Bend, 710 NW Wall Street, Bend, Oregon 97701
Attn: Eric King, City Manager, Phone: 541-388-5505 & Fax: 541-385-6676
Email: eking@bendoregon.gov

R. Andrew Barram, Psy.D.
PO Box 1833, Bend, Oregon 97709
Phone: 541-388-3592
Email: drbarram@hotmail.com

Service by mail shall be deemed complete on the date of actual delivery or three business days after being sent via certified mail. Service by facsimile transmission or E-Mail shall be deemed served upon receipt of the facsimile or E-Mail, followed by mail delivery.

23. Severability. If any provision of this Agreement is held illegal or unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions will not be impaired unless the illegal or unenforceable provision affects a significant right or responsibility, in which case the adversely affected party may request renegotiation or the agreement, and if negotiations fail, may terminate the agreement.

24. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

25. Amendments. The parties may amend this agreement by a written amendment properly executed by both parties. Contract amendments shall be effective only if in compliance with Bend Code Sections 1.554 C and D.

26. Key Personnel. Contractor acknowledges and agrees that the City selected Contractor for award of this Contract because of the special qualifications of Contractor's key personnel. Contractor shall not reassign or transfer key personnel to other duties or positions such that they are no longer available to provide City with the expertise, experience, judgment, and personal attention at the level proposed without first obtaining the City's prior written consent to such reassignment or transfer. The City shall have the right to interview, review the qualifications of, and approve or disapprove any proposed change in key personnel.

Approved and authorized by City Council, acting as the Local Contract Review Board, on October 7, 2015.

CITY OF BEND, OREGON


Eric King, City Manager

10-20-15
Date

APPROVED AS TO FORM:


City Attorney's Office

10-12-15
Date

R. ANDREW BARRAM, PSY.D.


Title:

10/19/15
Date

City Contracting & Funding Authorizations:

By:  A.D.C. Chief
Lary Langston, Fire Chief
City of Bend, Oregon

10/19/15
Date

By: 
Jim Porter, Police Chief
City of Bend, Oregon

10/13/15
Date

By: 
Brian Beekman, Sergeant, Project Manager
City of Bend, Oregon

10-13-15
Date

By: 
Gwen Chapman, Purchasing Manager
City of Bend, Oregon

10/12/15
Date

EXHIBIT A
SCOPE OF WORK

Scope:

Consultant will focus on providing on-going behavioral health support and education to assist employees to acquire appropriate services based upon individual needs. The consultant will prioritize learning the public safety culture and building relationships with officers and firefighters. This may involve ride alongs, informal discussions and attending training. The practitioner will provide voluntary check in appointments with eligible employees on a bi-annual basis. Tasks may include assessing and delivering training to meet the needs specific to the profession.

Place of Performance:

Vendor will perform work via ride alongs, meetings, and teaching personnel at various city locations. Vendor may also perform work at their place of business.

Work Requirements:

The vendor is responsible for performing tasks through various stages of the program. Vendor will partner with an established Public Safety Behavioral Health Services Committee and designated program leader to design, build, implement and evaluate the behavioral health services program.

Schedule:

The below list consists of initial milestones identified for the program:

Initial Milestones

Program Design Review – Due at the end of month one of contract

Program Implementation Review – Due at the end of the first quarter of contract

Mid-year Evaluation – Due at the end of six months of contract

Year-end Evaluation – Due at the end of year 1 of contract

Acceptance Criteria:

The acceptance of all deliverables resides with Sergeant Brian Beekman. Sergeant Beekman maintains the Public safety Behavioral Health Services Committee to act as advisors for the program.

Vendor Roles & Responsibilities:

Departments Served: City of Bend Fire and Police Departments (Public safety)

Program: Public Safety Behavioral Health Services

Works Directly with: Sergeant Brian Beekman

Partners with: Public Safety Behavioral Health Services Committee

Contractor Shall:

- Establish a positive working relationship with members of the City of Bend Fire and Police personnel. Support employees with the on-going daily stressors of being a first responder.
- Provide structured curriculum for employees to bring awareness to the signs and symptoms of Post-Traumatic Stress Disorder (PTSD) and accumulated stress.

- Provide education and support to combat PTSD.
- Provide education for employee families and peers related to PTSD.
- Provide education and support related to strengthen and maintaining strong family relationships.
- Assist with the structure and deployment of an on-going holistic wellness program for Fire and Police employees.
- Assist with Critical Incident Stress Management (CISM).
- Assist employees in navigating the complex behavioral health network to acquire appropriate services.
- Provide yearly check-in meetings with employees participating in the program.'
- Build relationships and de-stigmatizing behavioral health counseling in Fire and Police services.
- Advise command staff on policy related decisions as requested.
- Utilize referrals as needed and appropriate to group therapy, support groups, as well as collateral agencies.
- Be available for urgent events within 1 hour of request 75% of the time. An identified backup shall be designated when unavailable. Frequency of urgent events is approximately one per calendar year. Urgent events shall be defined by the program manager.

Contractor shall have a thorough knowledge and application of ethical standards:

- Will comply with Ethical Standards as they apply to behavioral health practitioners and their respective fields.
- Will not self-refer for treatment into existing counseling practice.
- Consult with Sergeant Beekman or appropriate manager on any situation concerning ethical, legal or procedural conflicts.
- If practitioner believes the direction given by supervisors or committee members is unethical they are expected to share this concern with the supervisor and consult immediately with the Program Manager. Contractor shall set appropriate boundaries with employees and management.

Contractor shall:

- Document all contacts with or concerning public safety employees. Any documentation is in the service of referral. Documenting contacts anonymously.
- Ensure signatures required by state regulations are obtained.
- Send documentation and consults with Primary Care Providers as appropriate.
- Respond to employee questions about their therapy experience.
- Make appropriate referrals to safeguard employee's safety.
- Apply human relation skills, which encourages trust with public safety employee, without enabling.
- Identify limitations of professional expertise and does not attempt to misuse power as an authority figure.
- Address any significant difficulties that arise in the contractor/employee relationship through working with the Public Safety Behavioral Health Services Committee or other identified supervisor, with effort to maintain employee confidentiality.
- Maintain licensure during term of agreement.
- Ensure compliance with HIPAA and other applicable laws.

EXHIBIT B
COMPENSATION

Compensation for services provided in Exhibit A will be paid at \$43.27 per hour. Contractor will invoice for actual hours worked.

An estimated average number of hours to meet program objectives is 20 hours per week. Hours may be altered from week to week to accommodate contractor and program needs. Contractor may not exceed 80 hours in a 4 week period without prior written approval.

Estimated fee is \$45,000.00
Estimated expenses \$500.00

Contract total \$45,500.00

EXHIBIT C

ALLOWABLE EXPENSES

The City will reimburse reasonable expenses incurred in the performance of the services under this agreement. The City reserves the right to reject any invoice for costs which, in the City's sole judgment, are determined to be unreasonable.

Expenses that are agency development related will be picked up by the agency. Examples of acceptable expenses may include but are not limited to copies for supporting training documents, office supplies, refreshments for training events.

Following is an example of expenses that shall not be paid for by the City:

- liquor (including beer or wine)
- meals or lodging accommodations for family
- trip or rental car insurance
- any other personal expenditures, including those for entertainment
- traffic citations or parking tickets
- mileage

Contract Exhibit D
Relevant Provisions Of ORS Chapter 279B

279B.220 Conditions concerning payment, contributions, liens, withholding. Every public contract shall contain a condition that the contractor shall:

- (1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
- (2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
- (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

279B.230 Condition concerning payment for medical care and providing workers' compensation.

(1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §76c]

279B.235 Condition concerning hours of labor.

* * * * *

(2) An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(3) In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

* * * * *

(5) (a) Except as provided in subsection (4) of this section, contracts for services must contain a provision that requires that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.