

RESOLUTION NO. 2019- 105

A RESOLUTION ACCEPTING AND APPROVING AN EMPLOYEE ASSISTANCE PROGRAM AGREEMENT BETWEEN THE CITY OF ROCK SPRINGS AND DOCTOR JERRY POST, PSY.D., P.C., IN THE AMOUNT OF THREE THOUSAND FIVE HUNDRED SEVENTY DOLLARS (\$3,570.00) AND AUTHORIZING TIMOTHY A. KAUMO, AS MAYOR OF THE CITY OF ROCK SPRINGS, WYOMING, AND MATTHEW L. MCBURNETT, AS CITY CLERK OF THE CITY OF ROCK SPRINGS TO EXECUTE SAID AGREEMENT ON BEHALF OF SAID CITY.

WHEREAS, the Governing Body of the City of Rock Springs recognizes that the mental health of all of its employees is a primary concern for the City; and,

WHEREAS, Doctor Jerry Post, Psy.D, P.C., has submitted a proposed Employee Assistance Program Agreement in the amount of Three thousand Five Hundred Seventy Dollars (\$3,570.00) to the City of Rock Springs for the provision of employee services in the form of referrals to mental health professionals for employees requiring mental health services; and,

WHEREAS, the City of Rock Springs has previously entered into an agreement with Dr. Jerry Post, Psy.D., P.C., to provide the above-described services to members of the Rock Springs Police Department and Rock Springs Fire Department; and,

WHEREAS, said Employee Assistance Program Agreement includes up to three (3) one hour sessions with a licensed mental health worker at the expense of Dr. Post; and,

WHEREAS, the Governing Body of the City of Rock Springs has said Employee Assistance Program Agreement before it, and has given it careful review and consideration.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ROCK SPRINGS, STATE OF WYOMING:

Section 1. That the terms and conditions of the Employee Assistance Program Agreement with Doctor Jerry Post, Psy.D, P.C., attached hereto and by this reference specifically made a part hereof is hereby accepted and approved by the City of Rock Springs.

Section 2. That the Mayor of the City of Rock Springs be, and he is hereby authorized, empowered and directed to execute said agreement on behalf of said City; and that the City Clerk of said City, be and he is hereby authorized and directed to attest to said agreement and to attach to said agreement a certified copy of this resolution.

PASSED AND APPROVED THIS ____ day of _____, 2019.

President of the Council

Attest:

Mayor

City Clerk

EMPLOYEE ASSISTANCE PROGRAM AGREEMENT

1. PARTIES. The parties to this Agreement are Jerry Post, Psy.D., P.C. ("Contractor"), whose address is 1401 Airport Parkway, Suite 240, Cheyenne, Laramie County, Wyoming, and the City of Rock Springs, a Wyoming Municipal Corporation ("Agency"), whose address is 212 D Street, Rock Springs, WY 82901.
2. PURPOSE OF CONTRACT. The purpose of this Agreement is to describe the responsibilities of the Contractor and Agency in the establishment of the Agency Employee Assistance Program, as more fully described in paragraph 5.
3. TERM OF AGREEMENT. This Agreement shall be effective as of the date all parties have executed it and all required approvals have been granted. The term of the Agreement is July 1, 2019, through June 30, 2020. All services shall be completed during this term. This Agreement may be renewed annually by agreement of both parties in writing and subject to the required approvals. There is no right or expectation of renewal and any renewal will be determined at the discretion of the Agency.
4. PAYMENT.
 - a. The Agency agrees to pay the Contractor for the services described in Paragraph 5. Payment shall be made when the services described in Paragraph 5 are provided to the Agency and upon submission of invoice pursuant to Wyoming Statute § 16-6-602.
 - b. The sum of Three Thousand Five Hundred Seventy Dollars (\$3,570.00) shall be paid to Contractor by Agency upon execution of this Agreement, which shall be the cost for services for the period from July 1, 2019 through June 30, 2019.
 - c. The sum of One Hundred Twenty-five Dollars (\$125.00) per session for services provided to Household members of Covered Persons shall be paid to Contractor by Agency per paragraph 5.d.
 - d. Total payments for services under this agreement shall not exceed Four Thousand Dollars (\$5,000.00), unless modified by mutual agreement.
5. RESPONSIBILITIES OF CONTRACTOR. Contractor agrees to provide EAP services as follows:
 - a. Contractor provides referrals for the Employer to Covered Persons for short term counseling from Participating Providers. "Covered Persons" are all full time and permanent part time employees of the City of Rock Springs except employees of the Rock Springs Police Department and Rock Springs Fire Department (who are covered under a separate agreement).

- b. Contractor does not enter into a Doctor-Patient relationship with Covered Persons.
 - c. Contractor enters into an agreement with a Participating Provider to provide short term counseling for the Covered Person; and reimburses the Participating Provider for each Session.
 - d. Covered Persons are entitled to up to three (3) sessions per year at the expense of the Referral Service. Household members of Covered Persons are entitled to three (3) sessions per year, at the expense of the Agency. The Agency shall reimburse Contractor for sessions provided to Household members of Covered Persons at the rate of One Hundred Twenty-five dollars (\$125.00) per session.
 - e. If an employee or household member requires more than the three (3) allotted sessions with the Participating Provider, the Covered Person may continue to use the Participating Provider at his or her own expense with or without the use of any health insurance.
 - f. It is the policy of the Contractor that information regarding Employer and Covered Person is kept strictly confidential. Contractor will not disclose any information unless disclosure is authorized by the Covered Person or is required by law, subpoena or court order.
6. RESPONSIBILITIES OF AGENCY. The Agency agrees to pay the Contractor for the services described per paragraph 4.
7. GENERAL PROVISIONS.
- a. AMENDMENTS. Any changes, modifications, revisions, or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties to this Agreement.
 - b. APPLICABLE LAW/VENUE. The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming. The parties intend and agree that the Agency does not waive sovereign immunity by entering into this Agreement and specifically retains immunity and all defenses available to them as sovereigns pursuant to Wyoming Statute § 1-39-104(a) and all other applicable law.
 - c. ASSIGNMENT/AGREEMENT NOT USED AS COLLATERAL. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Agreement without the prior written consent of the other party. The Contractor shall not use this Agreement, or any portion

thereof for collateral for any financial obligation without the prior written permission of the Agency.

- d. AUDIT/ACCESS TO RECORDS. The Agency and any of its representatives shall have access to any books, documents, papers, and records of the Contractor which are pertinent to this Agreement and not protected by a recognized legal privilege.
- e. AVAILABILITY OF FUNDS. Each payment obligation of the Agency is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services performed by the Contractor, the Agreement may be terminated by the Agency at the end of the period for which the funds are available. The Agency shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Agency to terminate this Agreement to acquire similar services from another party.
- f. AWARD OF RELATED CONTRACTS. The Agency may undertake or award supplemental or successor contracts for work related to this Agreement. The Contractor shall cooperate fully with other contractors and the Agency in all such cases.
- g. COMPLIANCE WITH LAWS. The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.
- h. CONFIDENTIALITY OF INFORMATION. Unless otherwise required by law, all records and other information pertinent to this Agreement shall be confidential and the custodian of such records shall deny access to those records in accordance with Wyoming Statute § 16-4-203(d).
- i. ENTIRETY OF AGREEMENT. This Agreement, consisting of six (6) pages, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
- j. EXTENSIONS/RENEWALS. Any extension of this Agreement shall be initiated by the Agency and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Agreement or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Agreement.

- k. FORCE MAJEURE. Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party. The parties intend and agree that the Agency does not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyoming Statute §1-39-101, *et seq.*, and all other applicable law.
- l. INDEMNIFICATION. Each party to this Agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.
- m. INDEPENDENT CONTRACTOR. The Contractor shall function as an independent contractor for the purposes of this Agreement and shall not be considered an employee of the Agency for any purpose. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing the Contractor or its agents and/or employees to act as an agent or representative for or on behalf of the Agency or to incur any obligation of any kind on the behalf of the Agency. The Contractor agrees that no health/hospitalization benefits, workers' compensation, and/or similar benefits available to Agency employees will inure to the benefit of the Contractor or the Contractor's agents and/or employees as a result of this Agreement.
- n. NOTICES. All notices arising out of, or from, the provisions of this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, facsimile, e-mail, or delivery in person.
- o. PATENT OR COPYRIGHT PROTECTION. The Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Contractor or its subcontractors will violate any such restriction. The Contractor shall defend and indemnify the Agency for any violation or alleged violation of such patent, trademark, copyright, license, or other restrictions.

- p. PUBLICITY. Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, shall identify the Agency as the sponsoring agency and shall not be released without prior written approval from the Agency.
- q. SEVERABILITY. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- r. SOVEREIGN IMMUNITY. The Agency does not waive sovereign immunity by entering into this Agreement and specifically retain all immunities and defenses available to them as sovereigns pursuant to Wyoming Statute §1-39-101, *et seq.*, and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.
- s. TAXES. The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- t. TERMINATION OF AGREEMENT. This Agreement may be terminated, without cause, by the Agency upon thirty (30) days written notice. This Agreement may be terminated immediately for cause if the Contractor fails to perform in accordance with the terms of this Agreement.
- u. THIRD PARTY BENEFICIARY RIGHTS. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this Agreement shall operate only between the parties to this Agreement and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement.
- v. TITLES NOT CONTROLLING. Titles of paragraphs are for reference only and shall not be used to construe the language in this Agreement.
- w. WAIVER. The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

The parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

Dated this ____ day of _____, 2019.

JERRY POST, PSY.D., P.C.,
CONTRACTOR,
By:



Jerry Post, Psy.D., President

ATTEST:

CITY OF ROCK SPRINGS, WYOMING,
AGENCY

CITY CLERK

MAYOR

(SEAL)