



City Council Memorandum

To: Mayor Fasbender & City Council Members

From: John Townsend, Fire Chief

Date: February 6, 2023

Item: Approve Services Agreement with Blue Peak Consulting

Council Action Requested:

Approve services agreement with Blue Peak Consulting. This agreement provides mental health and resiliency services with PAR 360.

Background Information:

This agreement provides continuation of mental health resources, training, and services to the cities fire department staff. Fire and EMS personnel are subject to a significant amount of challenges that impact their mental health and wellness. The PAR 360 program provides: consultation for all levels of department leadership, resiliency training, specially trained mental health providers for staff in need of consultation, family support, department check-ins, and a consistent approach to the wellness of our staff. This program will replace the program we utilized in 2022, with a significant increase to the education, awareness, and resources throughout the year for staff.

Financial Impact:

Budgeted item-mental health budget and training budget. This is also eligible for some state reimbursement.

Advisory Commission Discussion: N/A

Council Committee Discussion: N/A

Council Workshop: N/A

Attachments: Agreement



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ORGANIZATIONAL SERVICES AGREEMENT

This Event Agreement is entered into and effective as of this 1st day of March 2023 (the “Effective Date”), by and between the City of Hastings (“Client”), having an address of 115 5th St W., Hastings, MN 55033 and Blue Peak Consulting (“Company”), having an address of 1640 Hampshire Ave North, Golden Valley, MN 55427.

In consideration of Client retaining Company to provide event services, it is agreed as follows:

1. SCOPE OF EVENT SERVICES

Client hereby retains the Company to provide event services in the area of mental health and resilience at PAR360 from **3/01/23** until **2/29/24** (the “Event” of “Events”).

(a) The services shall include the following:

1. **Chief** - Chief consultation with a direct line to mental health experts.
2. **Chief Calls** - Chief monthly training conference calls with Dr. Gavian to discuss current fire service issues.
3. **Command Staff Quarterly Meetings** – Support for department leaders.
4. **Family Support** – Training & resources for family members.
5. **Provider List** - List of vetted providers with expertise in first responders.
6. **Red Carpet Treatment** – For any firefighter in that department who reaches out, facilitate referral/connection to resources, assures no one falls through the cracks.
7. **Resilience Training** - 5 Training Sessions per year (initial roll out plus 4 special topics via Vector or Blue Peak’s LMS)
8. **Ride-Alongs** -for relationship building within department, these often include “open office hours” with Dr. Gavian.
9. **Stress Management Modules** - Online self-paced training modules for all department members.
10. **Warning Signs** - Resources for how to recognize the warning signs in themselves and others.
11. **Individual Resilience Pre Plan Meetings (add on)** – Mental Health Check-ins offered at a discounted rate.

(b) Additional services, beyond those described above, will require additional fees to be discussed and agreed upon by the parties.

2. CLIENT DUTIES

(a) Compensation: In consideration for the services provided by Company to Client as set forth in paragraph 1 above, Client agrees to pay Company a total Event Fee of **\$12,690.00** (the “Event Fee”). Company’s obligation to render services hereunder is conditioned upon Client’s payment of said fee on a timely basis. The Event Fee shall be paid according to the following schedule:

At least fifty percent (50%; or \$6,345.00) of the total Event Fee (**\$12,690.00**) (which includes the Start Up Fee of **\$500.00***) is due upon signing of this Agreement or a lump sum of **\$12,690.00**.

The remaining fifty percent (50%; or \$6,345.00) of the Event Fee will be due by the last day of valid subscription to the PAR360 program.

(b) *Start Up Fee: A one-time fee of \$500, per department or agency, is included in the Total Event Fee



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(c) Late Payments: All payments due under this Agreement will be considered late and in arrears if not paid within ten (10) days of the due dates specified in Paragraph 1(a) and will become subject to a late penalty fee of 2.5% of the balance owed plus interest calculated at the annualized rate of 18% per annum, or 1.5% compounded monthly, or the maximum allowed by law.

(d) Tools to be Provided by Client: Client agrees to provide all tools, information and documentation that may be required by the Company to effectively perform said responsibilities in connection with the performance of event services.

(e) Travel Expenses: Client agrees to reimburse Company for travel expenses incurred by Company on Client's behalf. These expenses include the following: airfare, transportation, all meals during the travel period and hotel (up to 2 nights). Both Client and Company will agree to the travel expenses prior to commencement. Company agrees to provide Client with a travel expense invoice, and Client agrees to make payment to Company within 60 days from the date of delivery of said travel expense invoice to Client.

(f) Additional Client Duties: Client shall provide laptop, or other mechanism in which to project PowerPoint presentation materials, as well as a microphone and water for any in-person educational training events, at Client's expense.

3. TERM

This engagement shall commence on the Effective Date and shall continue through completion of the event services or cancellation by either party in accordance with paragraph 4.

4. CANCELLATION

Client may cancel this Agreement for any reason by providing 30 days written notice to the Company. The Company will provide a 50% refund of the total Event Fee to Client, if cancellation is communicated to the Company within 30 days of the End of Subscription period. Client will not provide any refund to Client if cancellation is communicated to the Company in less than 30 days of the End of Subscription Period. Cancellation of this Agreement by Client will not extinguish Client's obligation to pay the travel expenses specified in Paragraph 2(d) and incurred by Company prior to the cancellation date. Company may cancel this Agreement at any time for any reason by providing written notice to Client. In the event that Company cancels this Agreement, Company will provide a full refund of the Event Fee paid.

5. NO GUARANTEES

Company cannot guarantee the outcome of event services and Company's comments about the outcome are expressions of opinion only. Company makes no guarantees other than that the services described in Paragraph 1(a) shall be provided to Client in accordance with the terms of this agreement. Client acknowledges that Company cannot guarantee any results for event services and such outcomes are based on subjective factors that cannot be controlled by Company.

**BLUE PEAK CONSULTING****6. CONFIDENTIALITY**

(a) Client Information: Any and all Client information and data of a confidential nature, including but not limited to any and all design, creative, marketing, sales, operating, performance, know how, business and process information (hereinafter referred to as “Confidential Information”), shall be treated by Company in the strictest confidence and not disclosed to third parties or used by Company for any purpose other than for providing Client with the services specified hereunder without Client’s express written consent. Confidential Information shall not include any information which (a) becomes available to the public through no breach of confidentiality by Company, (b) was in Company’s possession prior to receipt from the disclosure, (c) is received by Company independently from a third party free to disclose such information, or (d) is independently developed by Company without use of the Client’s Confidential Information. Upon request, Company hereto will promptly return or destroy all documents containing Confidential Information and delete all electronic records of or containing the same.

7. INDEPENDENT CONTRACTORS

(a) Independent Contractor Relationship: This Agreement shall not render Company an employee, partner, agent of or joint venturer with the Client for any purpose. Company is and will remain an independent contractor in its relationship to the Client. Company is or remains open to conducting similar tasks or activities for entities other than the Client and holds itself out to the public to be a separate business entity. Company shall retain sole and absolute discretion in the manner and means of carrying out the activities and responsibilities under this Agreement. Company shall be responsible to the ownership and management of the Client, but Company will not be required to follow or establish a regular or daily work schedule. Company will not rely solely on the equipment or offices of Client for completion of tasks and duties set forth pursuant to this Agreement. Any advice given to Company regarding services performed for the Client shall be considered a suggestion only, not an instruction. Client retains the right to inspect, stop or alter the work of Company to assure its conformity with this Agreement and Client needs. Company and Client agree to conform to any and all IRS tests necessary to establish and demonstrate the independent contractor relationship between Client and Company.

(b) Taxes & Benefits: Company will be responsible for filing its own tax returns and to pay taxes in accordance with all provisions of applicable Federal and State law. Client shall not be responsible for withholding taxes with respect to Company’s compensation. Company shall have no claim against Client for vacation pay, sick leave, retirement benefits, social security, worker’s compensation, health or disability benefits, unemployment insurance benefits or employee benefits of any kind.

8. LIMITED LICENSE

The Company hereby grants to Client a limited license to use Company’s name, photograph, and likeness in, and in connection with advertising and promotional materials to promote this singular event. The



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Company also grants the Client a limited license to record Client's Event and use the audio and/or video recording of the Event after the event for any purpose, provided that attribution of the content of the video is given to Company and no derivative works are created therefrom without prior written consent of the Company.

9. FORCE MAJEURE

Neither party is liable for failure or delay in performance of the party's obligations under said agreement if such failure or delay in performance is as a result of causes and/or circumstances beyond the parties reasonable control and without its fault or negligence, including but not limited to accident, illness, Acts of God (including fire, flood, earthquake, storm, hurricane, or other natural disaster) or of the Public Enemy, acts of war, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, unusually severe weather, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service.

Should any such occurrence impede or delay travel and execution of any obligation under said agreement, every reasonable effort will be made by both parties to mitigate, modify or alter said agreement as to meet their stated and agreed upon obligations. No party is entitled to terminate this Agreement under Paragraph 3 (Term) in such circumstances, except by mutual consent and agreement in writing pursuant to the Force Majeure provisions. If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described in in this Paragraph 10. Should Force Majeure render the need for Company's services null and void, each party to this contract agrees to terminate the contract amicably and bear their own expenses incurred to date unless otherwise indicated or specified.

10. WARRANTIES

(a) Company's Warranties: Company represents, warrants and covenants that Company has full authority to enter into this Agreement and that all of the services, will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable and qualified personnel.

(b) Client's Warranties: Client represents, warrants and covenants that Client has full authority to enter into this Agreement and has or will obtain, during all times relevant hereunder, all of the necessary consents, rights, licenses, clearances, releases or other permissions to lawfully consummate the transactions and lawfully discharge, in all material respects, each and every of Client's obligations or duties set forth hereunder, whether performance is due now or hereafter during the Term.

(c) EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED THROUGHOUT THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED.

**BLUE PEAK CONSULTING****11. LIMITATION OF LIABILITY**

With regard to the services to be performed by the Company pursuant to the terms of this Agreement, the Company shall not be liable to Client, or to anyone who may claim any right due to any relationship with Client, for any acts or omissions in the performance of services on the part of the Company or on the part of the agents or employees of the Company, except when said acts or omissions of the Company are due to willful misconduct or gross negligence. The services provided by Blue Peak Consulting LLC DO NOT create a doctor-patient or therapist-patient relationship. Information provided DOES NOT create a doctor-patient or healthcare practitioner-patient relationship between you and Blue Peak Consulting LLC or its personnel.

12. EFFECT OF HEADINGS

The subject headings of the paragraphs and subparagraphs of this Agreement are included for convenience only and shall not affect the construction or interpretation of any of its provisions.

13. ENTIRE AGREEMENT; MODIFICATION; WAIVER

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

14. NEUTRAL CONSTRUCTION

This Agreement was prepared by Company and/or Company's legal counsel. It is expressly understood and agreed that this Agreement shall not be construed against Company merely because it was prepared by its counsel; rather, each provision of this Agreement shall be construed in a manner which is fair to both parties.

15. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



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16. ASSIGNMENT

This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective heirs, legal representatives, successors, and assigns; provided, however, that Client may not assign any of its rights under this Agreement, except to a wholly owned subsidiary entity of Client. No such assignment by Client to its wholly owned subsidiary shall relieve Client of any of its obligations or duties under this Agreement.

17. NOTICES

All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as follows:

To Company at: Blue Peak Consulting: 1640 Hampshire Ave N., Golden Valley, MN 55427

To Client at: Hastings Fire Department, 115 5th St W., Hastings, MN 55033

Any party may change its address for purposes of this paragraph by giving the other parties written notice of the new address in the manner set forth above.

18. GOVERNING LAW; VENUE; MEDIATION; ARBITRATION

This Agreement shall be construed in accordance with, and governed by, the laws of the State of Minnesota as applied to contracts that are executed and performed entirely in Minnesota. The exclusive venue for any court proceeding based on or arising out of this Agreement shall be Ramsey County, Minnesota. The parties agree to attempt to resolve any dispute, claim or controversy arising out of or relating to this Agreement by mediation, which shall be conducted under the then current mediation procedures of The CPR Institute for Conflict Prevention & Resolution or any other procedure upon which the parties may agree. The parties further agree that their respective good faith participation in mediation is a condition precedent to pursuing any other available legal or equitable remedy, arbitration, or other dispute resolution procedures. If the parties are unable to resolve their dispute in mediation, the dispute shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in any court having jurisdiction thereof.

19. RECOVERY OF LITIGATION EXPENSES

If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresent in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.



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20. SEVERABILITY

If any term, provision, covenant, or condition of this Agreement is held by an arbitrator or court of competent jurisdiction to be invalid, void or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

21. SIGNATURES

IN WITNESS WHEREOF, the parties to this Agreement have duly executed it on the day and year first above written.

Blue Peak Consulting

City of Hastings Fire Department

Signed: _____

Signed: _____

Name: Margaret Gavian

Name: _____

Title: Owner

Title: _____

Date: _____

Date: _____