



Town of West Seneca

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TOWN ATTORNEY
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MEMO

To: The Honorable Town Board

From: Tina M. Hawthorne, Town Attorney

Date: May 12, 2021

Subject: Agreement between Endeavor Health Services and
Town of West Seneca Police Department

Kindly adopt the attached resolution authorizing the Supervisor to executed the Behavioral Health Team Agreement with Endeavor Health Services with the terms set forth in the attached Agreement. The Police Reform Plan previously adopted by the Board recommended a social worker be embedded in the Police Department to implement a co-responder model to better serve the community, which is what this Agreement would do.

RESOLUTION
ENDEAVOR HEALTH SERVICES AND WSPD

WHEREAS, the Town of West Seneca Police Department is requesting that the West Seneca Town Board authorize the Supervisor to sign the Behavioral Health Team Agreement between Endeavor Health Services and the Town of West Seneca;

WHEREAS, entering into this Agreement would result in an embedded behavior health clinician at the Town of West Seneca Police Department, which would allow the Police Department to implement a co-responder model to better serve the community by providing immediate screening, assessment, follow-up and linkage to appropriate services for people in need of support due to mental illness, substance use, poverty, domestic violence, homelessness, abuse, and/or trauma;

NOW, THEREFORE, BE IT RESOLVED, the Town Board of the Town of West Seneca hereby authorizes the Supervisor to execute the Behavioral Health Team Agreement with Endeavor Health Services with the terms set forth in the attached Agreement.

Behavioral Health Team

Agreement between Endeavor Health Services and the Town of West Seneca

This Agreement, effective June 1, 2021, by and between the Town of West Seneca (hereinafter the "Town"), a New York municipal corporation with its principal office located at 1250 Union Road, West Seneca, New York 14224, and Endeavor Health Services (hereinafter "Endeavor"), located at 1526 Walden Avenue Cheektowaga, New York 14225.

RECITALS

WHEREAS, Endeavor is fully qualified, capable and willing to provide behavioral health and crisis intervention services, as more fully described below, to individuals referred to it by the Town during emergency calls; and

WHEREAS, the Town desires to have such services provided by Endeavor.

NOW, THEREFORE, in consideration of the mutual promises and covenants, the sufficiency of which the parties acknowledge, the parties agree to the terms and conditions of this Agreement as follows:

ARTICLE I. RESPONSIBILITIES OF ENDEAVOR

Section 1.1 REPRESENTATIONS AND WARRANTIES: Endeavor represents and warrants, for itself and each of its employees, agents and independent contractors that provide services, that at all times during the term of this Agreement they shall: (i) be currently and properly licensed and/or certified to provide services in the State of New York; (ii) be fully capable and qualified to provide the services described herein; (iii) be enrolled as a provider in good standing with such third party payers as the Town may reasonably require; (iv) not be excluded from participating in any federal or state health care program, and/or not employ or contact and person(s) so excluded; (v) notify the Town immediately in writing of any change in status of any of the representations and warranties contained in this Section.

Section 1.2 DESCRIPTION OF SERVICES:

Endeavor shall embed a behavioral health clinician in the Police Department of the Town to form a Behavioral Health Team ("BHT"), as part of a co-responder model. Utilizing evidence-based practices of WRAP[®] and CIT training, the BHT will provide immediate screening, assessment, follow-up, and linkage to appropriate services for people in need of support due to mental illness, substance abuse, poverty, domestic violence, homelessness, abuse, and/or trauma (hereinafter "Services").

Section 1.3 PERFORMANCE OF SERVICES: The manner in which the Services are to be performed and the specific hours to be worked by Endeavor shall be mutually agreed upon by both parties.

Section 1.4 REFERRALS: Endeavor shall accept referrals from the Town of individuals in need of behavior health and crisis intervention services, including, but not limited to, mental health and/or substance abuse treatment, community linkages or care coordination. The parties shall fully comply with the federal Anti-Kickback Statute (42 U.S.C. section 1320a-7b) and State Anti-Kickback Statute (NY Social Services Law section 366-d).

Section 1.5 CORPORATE COMPLIANCE: Endeavor shall be responsible for its own corporate compliance including, but not limited to, utilizing and maintaining compliant documentation and billing of its services.

Section 1.6 QUALITY OF SERVICES: Endeavor shall carry out quality and ethical services by following all applicable regulations and regulatory guidelines.

Section 1.7 INSURANCE: During the term of this Agreement, Endeavor, at its sole cost, shall maintain, the following limits of insurance:

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| a. | Workers' Compensation and Disability Employer's Liability | New York State Statutory Unlimited in New York |
| b. | Commercial General Liability, including Products Liability, Completed Operations Liability, Bodily Injury and Property Damage | \$1,000,000 per occurrence
\$3,000,000 aggregate |
| c. | Excess/Umbrella Liability | \$1,000,000 per occurrence |
| d. | Professional Liability | \$1,000,000 per claim made |

The coverage for insurance under paragraph 1.7 (b) and (c) shall name the Town as an additional insured. Such policy or policies shall provide for both the defense and indemnification of the Town and will act as the primary insurance for any costs, claims, losses, liabilities, penalties, fines, citations, expenses, forfeitures, or other damages resulting from Endeavor's failure to perform its obligations hereunder or to the extent attributable to its negligent and/or unlawful acts and omissions. Endeavor agrees to notify the Town in writing no less than thirty (30) days prior to the cancellation, modification or non-renewal of any insurance coverage. Endeavor is responsible for ensuring a current certificate of insurance in good standing on file at the Town's Legal Department at all times. Notwithstanding the foregoing, the Town shall remain liable for direct damages resulting from its negligence.

ARTICLE II. COMPENSATION

Section 2.1 PAYMENTS: The Town agrees to make payments to Endeavor to cover the budgeted amount of \$23,331.00, to be paid in seven (7) monthly installments of \$3,333.00 each, the first such installment to be paid on May 24, 2021 and monthly thereafter until paid in full. Endeavor will send an invoice for payment to the Town on the 15th of each month for the following month.

Section 2.2 EXPENSE REIMBURSEMENT: The Town agrees to reimburse Endeavor for any expenses that are mutually agreed upon by both parties.

ARTICLE III TERM AND TERMINATION

Section 3.1 TERM: The term of this Agreement shall be for seven (7) months commencing on June 1, 2021 (the "Term"). The parties shall have the option to renew this Agreement for a one (1) year term in a supplemental written agreement.

Section 3.2 TERMINATION WITHOUT CAUSE: This Agreement may be terminated by either party, without cause, upon ninety (90) days written notice to the other party.

Section 3.3 TERMINATION FOR CAUSE: In the event either party to this Agreement breaches a material term of this Agreement and such breach remains uncorrected for a period of ten (10) days after written notice of said breach is given by the other party, then this Agreement may be immediately terminated without further written notice. Such termination will be effective upon receipt of such notice. The Town can immediately terminate this Agreement by written notice if (1) Endeavor violates any of the representations and warranties contained in Section 1.1 of this Agreement, and/or (2) Endeavor in any way jeopardizes the health or welfare of any Town residents. Such termination will be effective upon receipt of such notice.

ARTICLE IV RELATIONSHIPS

Section 4.1 INDEPENDENT CONTRACTOR: In the performance the Services provided by this Agreement, it is understood and agreed by both parties that no relationship of employer and employee is created by this Agreement. Endeavor agrees that at all times it is performing its obligations under this Agreement as an independent contractor. Endeavor shall not have any claim under this Agreement or otherwise against the Town for vacation pay, sick leave, retirement benefits or employee benefits of any kind.

Section 4.2 Endeavor, including any of its officers, agents or employees will not, at any time, hold itself out as an agent, officer or employee of the Town.

Section 4.3 Endeavor's officers, agents and employees who perform Services for the Town under this Agreement shall also be bound by the provisions of this Agreement. Endeavor shall, at the request of the Town, provide adequate evidence that said officers, agents, and employees have successfully passed all required background checks required by federal, state and local laws and regulations.

ARTICLE V INDEMNIFICATION

Section 5.1 Endeavor shall hold the Town, its officers, agents, and employees, harmless and fully indemnify it for and against any costs, claims, losses, liabilities, penalties, fines, citations, expenses, forfeitures, or other damages resulting from its failure to perform its obligations under this Agreement or to the extent attributable to its negligent and/or unlawful acts or omissions.

Section 5.2 Both parties acknowledge that there is a COVID-19 public health emergency. Endeavor will ensure its officers, agents, and employees adhere to all guidelines and rules made by the Centers for Disease Control and Prevention (CDC), New York State Department of Health, Erie County Department of Health, and Town of West Seneca, if applicable, and any changes to those guidelines and rules. It will be the responsibility of Endeavor to be abreast of any changes to aforementioned guidelines and rules.

ARTICLE VI CONFIDENTIALITY AND OWNERSHIP OF RECORDS

Section 6.1 Each party shall comply with all federal and state confidentiality laws including, but not limited to, the Health Information Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009.

Section 6.2 Each party may from time to time during the course of this Agreement, receive confidential information about the other including, but not limited to, information about the other's records, practices, procedures, strategies, organization, finances and other related information. Neither party shall use or disclose any such confidential information for any purpose other than the limited purpose of performing its obligations under this Agreement, without the express written permission of the supplying party. If a party is served with a subpoena or other legal process concerning confidential information of the other party, the receiving party shall immediately (not more than forty-eight (48) hours after receipt) notify the other party and shall cooperate with the other party in any lawful effort to contest the legal validity of such process the receiving party may wish to pursue. Any legal action taken will be performed by and the cost associated therewith the responsibility of the receiving party.

Section 6.3 CONFIDENTIALITY AFTER TERMINATION: The confidentiality provisions of this Agreement shall remain in full force and effect after the termination of this Agreement.

Section 6.4 RETURN OF PROPERTY: Upon termination of this Agreement, Endeavor shall immediately deliver to the Town, any and all records, notes, data, memoranda, models, and equipment of any nature that are in Endeavor's possession or under Endeavor's control that are the property of the Town or relate to Town business. Conversely, the Town shall immediately deliver to Endeavor, any and all records, notes, data, memoranda, models, and equipment of any nature that are in the Town's possession or under the Town's control and that are Endeavor's property or relate to Endeavor's business. The content of these items will be detailed at the time of termination.

ARTICLE VII MISCELLANEOUS

Section 7.1 NON-DISCRIMINATION: The parties agree that all Services provided under this Agreement shall be in compliance with all applicable federal, state and local laws, rules and regulations, and with standard imposed upon her specialty. The parties shall provide services without regard to the race, creed, religion, national origin, gender, disability, marital status, blindness, age, or sexual preference.

Section 7.2 MARKETING, ADVERTISING AND PUBLICITY: The parties to this Agreement reserve the right to use and control the use of its name and all symbols, trademarks, and service marks presently existing or later established by it. Neither party shall use the other party's name, symbols, trademarks, or service marks in advertising or promotional materials or otherwise without the prior written consent of that party.

Section 7.3 HEADING AND EXHIBITS: The article and section headings in this Agreement are used solely for the convenience and shall not be deemed to limit the subject of such article or section and shall not be considered in their interpretation. Any reference in this Agreement to an article, section or exhibit is a reference to an article, section, or exhibit of this Agreement.

Section 7.4 GENDER AND NUMBER: Whenever the context of this Agreement requires, the gender of all words herein shall include the masculine, feminine, and neutral, and plural of all words shall include the singular and plural.

Section 7.5 SEVERABILITY: In the event any provision of this Agreement is held to be unenforceable or invalid for any reason, this remainder of Agreement shall remain in full force and effect and enforceable in accordance with its terms disregarding such unenforceable or invalid provision.

Section 7.6 ASSIGNMENT: The parties shall not assign or transfer any of its rights, duties, or obligations under this Agreement, in whole or in part, without the prior written permission from the other party.

Section 7.7 NO WAIVER: The failure of either party to insist at any time upon the strict observance or performance of any provision of this Agreement, or to exercise any right or remedy as provided in this Agreement, shall not impair any right or remedy of such party or be construed as a waiver or relinquishment thereof with respect to subsequent defaults or breaches. Every right and remedy given by this Agreement to the parties hereto may be exercised from time to time and as often as may be deemed expedient by the appropriate party.

Section 7.8 CHOICE OF LAW: The parties agree that New York Law shall govern all terms of this Agreement, including this Section. The parties expressly submit themselves to the personal jurisdiction of the State of New York. The parties agree that any legal action commenced relative to this Agreement will be commenced in New York State Supreme Court, and the County of Erie shall be the venue.

Section 7.9 ENTIRE AGREEMENT: This Agreement constitutes the entire Agreement and understanding between the parties with respect to the subject matter hereof and supersedes any previous agreement or understandings, whether oral or written. This Agreement and any amendment(s) hereto may be signed in separate identical counterparts, each of which shall be deemed an original and both of which together shall constitute a single agreement. This Agreement and any amendment(s) may be in the form of an electronic document and signed by an electronic signature pursuant to the State Technology Law and the federal Electronic Signatures in Global and National Commerce Act.

Section 7.10 AMENDMENTS: Any amendments to this Agreement shall be effective only if in writing and signed by the authorized representatives of both parties.

Section 7.11 NOTICES: A notice required to be given pursuant to any provisions of the Agreement shall be given in writing, and deposited with the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, or by a recognized overnight courier service, addressed to the signers of this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the day and year first above written.

TOWN OF WEST SENECA, NEW YORK

Gary A. Dickson, Supervisor

ENDEAVOR HEALTH SERVICES

Elizabeth L. Mauro, CEO

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of _____, in the year 2020, before me, the undersigned, personally appeared Gary A. Dickson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____ day of _____, in the year 2020, before me, the undersigned, personally appeared Elizabeth L. Mauro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public