

ORDINANCE NUMBER 3174

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO TERMINATE AN AGREEMENT WITH UPRISE HEALTH AS THE CITY'S EAP PROVIDER AND AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER DOCUMENTS NECESSARY FOR THE ENGAGEMENT OF EMPLOYEE ASSISTANCE SERVICES (EAS) AS THE NEW CITY PROVIDER OF EAP SERVICES

WHEREAS, The City of Vestavia Hills has utilized an Employee Assistance Program (EAP) for the benefit of its employees for many years. A local firm, American Behavioral, has been under contract with the City since 2014; and

WHEREAS, American Behavioral has provided very good services since contract inception and funding has been appropriated for the services each and every fiscal year during the contract term; and

WHEREAS, recently, American Behavioral was purchased by an out-of-state EAP provider named Uprise Health. Since the change in ownership, services have been less than stellar due to the remote nature of counseling and management assistance; and

WHEREAS, upon a review of local alternatives by the City Manager, Employee Assistance Services (EAS) has been identified as a viable and local replacement for Uprise Health and he has recommended terminating the current agreement and contracting with Employee Assistance Services ("EAS"); and

WHEREAS, an agreement from EAS is marked as Exhibit A, a copy of which is attached to and incorporated into this Ordinance Number 3174 is if written fully therein; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to terminate the existing agreement with Uprise Health and execute the new agreement submitted by EAS.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

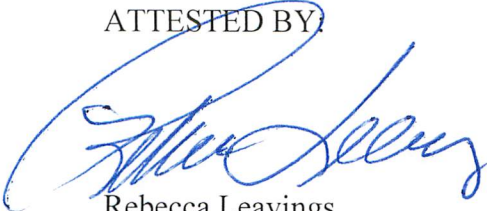
1. The Mayor and City Manager are hereby authorized to execute and deliver the following:
 - a. Termination of the existing agreement with Uprise Health; and
 - b. Agreement as detailed in the attached Exhibit A with Employee Assistance Services for employee assistance; and
2. This Ordinance Number 3174 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 24th day of April.



Ashley C. Curry
Mayor

ATTESTED BY:



Rebecca Leavings
City Clerk



**CITY OF VESTAVIA HILLS
OFFICE OF THE CITY MANAGER
INTER-DEPARTMENT MEMO**

April 24, 2023

To: Mayor and City Council

Cc: Melvin Turner, III, Finance Director
Rebecca Leavings

From: Jeff Downes, City Manager

RE: Public Hearing - Ordinance Number 3174 - An Ordinance Authorizing the City Manager to Terminate an Agreement with Uprise Health as the City's EAP Provider and Authorizing the Mayor and City Manager to Execute and Deliver Documents Necessary for the Engagement of Employee Assistance Services (EAS) as the New City Provider of EAP Services.

Background:

The City of Vestavia Hills has utilized an Employee Assistance Program (EAP) for the benefit of its employees for many years. A local firm, American Behavioral, has been under contract with the City since 2014. American Behavioral has provided very good services since contract inception and funding has been appropriated for the services each and every fiscal year during the contract term. Recently, American Behavioral was purchased by an out-of-state EAP provider named Uprise Health. Since the change in ownership, services have been less than stellar due to the remote nature of counseling and management assistance. Upon a review of local alternatives, Employee Assistance Services (EAS) has been identified as a viable and local replacement for Uprise Health.

Recommendation:

It is recommended that the Uprise Health contract be terminated and a new contract be entered into with EAS effective May 1, 2023.

Fiscal Impact:

There is no increased fiscal impact as existing and budgeted funds remain available for the new EAP service provider. The cost for the service is \$800 per month.

Attachments:

1. Ordinance 3174
2. City Manager Terminate Contract March 30 2023
3. PH Boone Legal Opinion to City Manager March 30 2023
4. Vestavia (City of) Contract Revised 4-4-2023

March 29, 2023

By Regular Mail and
Certified Mail-Return Receipt Requested

Uprise Health
2 Park Plaza, Suite 1200
Irvine, California 92614

American Behavioral Benefits
Managers, LLC d/b/a Uprise Health
2 Park Plaza, Suite 1200
Irvine, California 92614

In Re: Agreement By and Between American Behavioral EAP, LLC (“American Behavioral”) and the City of Vestavia Hills (“The City of Vestavia Hills”)

Dear Uprise Health and American Behavioral EAP, LLC:

On September 15, 2014, American Behavioral EAP, LLC (“American Behavioral”) and The City of Vestavia Hills (“the City of Vestavia Hills”) entered into an Agreement (“Agreement”). The Agreement provides, among other things, as follows:

“L. Termination

1. Voluntary Termination. After the first anniversary of this *Agreement*, THE CITY OF VESTAVIA HILLS may terminate this *Agreement* in its entirety, effective as of the last day of any month, by notifying American Behavioral in writing at least 60 days prior thereto. Any such termination shall be without further payment except that payment shall be made for EAP services performed satisfactorily prior to termination, to the extent unpaid at termination.

2. Termination for Breach. Either party may terminate this *Agreement* at any time if the other party breaches a material term or condition of this *Agreement* and fails to cure the breach within thirty (30) days after receipt of written notice of the breach from the non-breaching party.”

March 29, 2023

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Invoice number 276728 dated March 16, 2023 from American Behavioral Benefits Managers, LLC d/b/a Uprise Health reads in pertinent part as follows:

“***PLEASE NOTE-American Behavioral Benefits Managers,
LLC IS NOW UPRISE HEALTH***”

The purpose of this letter is to provide written notice to American Behavioral EAP, LLC, Uprise Health and American Behavioral Managers, LLC d/b/a Uprise Health that The City of Vestavia Hills hereby terminates the Agreement pursuant to Section L of the Agreement set forth above effective April 30, 2023.

Respectfully submitted,

THE CITY OF VESTAVIA HILLS

By _____
Jeffrey D. Downes
Its City Manager

cc: City Clerk Rebecca Leavings
City Attorney Patrick H. Boone
Director of Finance Melvin Turner
Payroll Supervisor James Randall

PATRICK H. BOONE
ATTORNEY AND COUNSELOR AT LAW
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH
BIRMINGHAM, ALABAMA 35203-3720

TELEPHONE (205) 324-2018
FACSIMILE (205) 324-2295

E-Mail: patrickboone@bellsouth.net

March 30, 2023

By Electronic Mail

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

In Re: Agreement between Employee Assistance Services (EAS) and
City of Vestavia Hills ("Client Company")

Dear Mr. Downes:

On March 28, 2023, you sent to me via electronic mail a copy of a proposed Agreement by and between Employee Assistance Services (EAS) and the City of Vestavia Hills, Alabama ("Client Company") with a request that I review the Agreement and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

FACTS

Employee Assistance Services (EAS) has prepared and submitted a proposed Agreement wherein EAS agrees to provide employee assistance services for a term of one (1) year with automatic annual renewals unless terminated by either party. EAS agrees to perform employee assistance services, including counseling, for and in consideration of \$800.00 per month, plus counseling and other services at the rate of \$250.00 per hour.

I. RECOMMENDATION ONE-DESIGNATION OF CITY

A. RECOMMENDATION ONE: I recommend that the City of Vestavia Hills be referred to in the Agreement as "City" rather than "Client Company."

B. BASIS FOR LEGAL OPINION: Title 11-40-1, *Code of Alabama, 1975*, provides that the City of Vestavia Hills is a body public and corporate.

The City of Vestavia Hills, Alabama is a municipal corporation incorporated under the *Constitution* and laws of the State of Alabama. The city was incorporated as a municipality on November 8, 1950 pursuant to the authority of Chapter 2, Article 1, Title 37 of the 1940 *Code of Alabama* by virtue of Order of Incorporation rendered on November 8, 1950 by Jefferson County Probate Judge Tom Garner in Jefferson County Probate Court case number 25507. The Order of Incorporation is filed for record in the office of the Judge of Probate of Jefferson County, Alabama in Probate Minute Book 49 on page 183.

II. RECOMMENDATION TWO-INDEMNITY BY CITY

A. RECOMMENDATION TWO: I recommend that any and all language in the Agreement, specifically including, but not limited to, Section I, that requires the City to indemnify and hold harmless EAS, be deleted.

B. BASIS FOR LEGAL OPINION: It is my opinion that municipalities cannot spend public funds to indemnify and hold harmless third parties. I base my legal opinion upon the following legal authorities:

1. Constitution of Alabama of 1901: Section 94, as amended by Amendments 112 and 558, of the Constitution of Alabama provides as follows:

“The Legislature shall not have power to authorize any county, city, town or other subdivision of this state to lend its credit or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever.”

In my opinion, it would be a violation of Article IV, Section 94(a) of the *Constitution of Alabama* for the City to indemnify a third party for actions, costs, expenses, damages and liabilities.

2. Limits of Liability of Municipalities: Section 11-93-2, *Code of Alabama, 1975*, establishes the maximum amount of damages recoverable against governmental entities. The recovery of damages under any judgment against a city shall be limited to \$100,000.00 for bodily injury or death for one person in any single occurrence and to \$300,000.00 in the aggregate where more than two persons have claims or judgments on account of bodily injury or death arising out of any single occurrence. This statute also provides in pertinent part that recovery of damages under any judgment against a city shall be limited to \$100,000.00 for damage or loss of property arising out of any single occurrence.

It is my opinion that if the City agreed to indemnify a third party, then in such event said indemnity agreement could waive the statutory maximum limits of liability set forth in Title 11-93-2, *Code of Alabama, 1975*. It is my further legal opinion that cities may not waive the caps of liability as set forth in the above statute.

3. **Public Officials Are Entitled to Discretionary Function Immunity:** Public officials and employees who act within the scope of their authority in performing functions involving discretion are entitled to discretionary function immunity. *Woods v. Wilson*, 539 So.2d 224 and *Hillard v. Huntsville*, 585 So.2d 889. They also have state agent immunity under Title 36-1-12, *Code of Alabama*, 1975.

It is my opinion that if the City agreed to indemnify a third party, then in such event such indemnity agreement could waive the discretionary function immunity and state agent immunity for its public employees.

4. **Joint Liability:** Title 11-47-191(b), *Code of Alabama*, 1975, provides as follows:

“(b) When a judgment shall be obtained against a municipality and the other party liable as provided in subsection (a) of this section, execution shall issue against the other defendant or defendants in the ordinary form and shall not be demandable of the city or town unless the other defendants are insolvent and the same cannot be made out of their property, and the city or town shall pay only so much of the said judgment as cannot be collected from the other defendants.”

If the City indemnified a third party, then in such event it would violate the above statute.

5. **Municipalities in Alabama May Spend Public Funds Only for Public Purposes:** Municipalities in Alabama may spend public funds only for public purposes. The Supreme Court of Alabama has interpreted the language of Sections 93 and 94 of the *Constitution of Alabama* to allow appropriations of public funds when the appropriation is used for public purposes. *Alabama Constitution* amend. 93; *Alabama Constitution* amend. 94; *Slawson v. Alabama Forestry Comm'n*, 631 So.2d 953 (Ala.1994). *Opinion of the Justices No. 269*, 384 So.2d 1051 (1980); *Stone v. State*, 251 Ala. 240 (1948).

It is my legal opinion that spending public funds to indemnify a private entity is “not for a public purpose.”

6. **The City has Liability Insurance Coverage for Employees:** At the present time, the City has general comprehensive liability insurance issued by States Self-Insurers Risk Retention Group written by Berkly Risk Administrators Company, LLC.

III. RECOMMENDATION THREE-INDEMNITY BY EAS

A. **RECOMMENDATION THREE:** I recommend that Section I of the proposed Agreement be amended so as amended, said Section I shall read in words and figures as follows:

“Employee Assistance Services (EAS) shall defend, indemnify and hold harmless the City of Vestavia Hills, Alabama, a municipal corporation, its City Manager, Mayor and other elected public officials and employees (hereinafter collectively referred to as ‘Indemnitees’) from and against all claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of, related to, or resulting from or based upon any violation of or performance of the work done by EAS or any of its owners, officers, employees, agents and subcontractors.”

B. **BASIS FOR LEGAL OPINION:**

1. Section F of the Agreement provides that EAS is an independent contractor and not an employee or agent of the City.

2. Alabama law provides at Title 11-47-190, *Code of Alabama, 1975*, as follows:

“No city or town shall be liable for damages for injury done to or wrong suffered by any person or corporation, unless such injury or wrong was done or suffered through the neglect, carelessness or unskillfulness of some agent, officer or employee of the municipality engaged in work therefor and while acting in the line of his or her duty,

3. If the City and its employees are not agents or employees of EAS, then the City cannot be liable for the negligent acts of EAS, its servants, agents and employees.

IV. RECOMMENDATION FOUR-INSURANCE

A. **RECOMMENDATION FOUR:** I recommend that the language of Section H of the Agreement be amended, so that as amended, said Section H shall read in words and figures as follows:

“Employee Assistance Services (EAS) shall purchase from and maintain, without interruption from the commencement of the services through the term, a Commercial General Liability policy, Employer’s Liability policy and Commercial Automobile Liability policy, through a company or companies rated A VIII or better by A.M. Best Company, with the following limits:

Commercial General Liability \$1,000,000.00 per occurrence
Automobile Liability \$1,000,000.00 CSL

Employee Assistance Services (EAS) will name the City of Vestavia Hills, Alabama, its Mayor, City Manager, elected officials, servants, agents and employees as additional insureds under EAS's insurance policy described above."

B. BASIS FOR LEGAL OPINION:

1. General comprehensive liability insurance coverage is the best way that I am aware of to guarantee an indemnity and hold harmless agreement.

2. The City enjoyed a very good relationship with American Behavioral EAP, LLC (American Behavioral) for many years. American Behavioral always agreed to the provisionS of:

- (a) Indemnification and hold harmless; and
- (b) Insurance requirements; and
- (c) Naming the City as an additional insured.

V. RECOMMENDATION FIVE-ASSIGNMENT OF AGREEMENT

A. RECOMMENDATION FIVE: I recommend that the following language be added to the Agreement as Section M,

"This Agreement shall not be assigned, delegated or transferred by EAS to any other party or entity without the prior written consent of the City."

B. BASIS FOR LEGAL OPINION:

1. As a general matter, under Alabama law, contract rights may be freely assigned unless an assignment would add to or materially alter the duties or risks undertaken by the parties, the assignment would violate a statute, or something in the contract restricts assignability. (*Spearman v. Wyndham Vacation Resorts, Inc.*, 69 F.Supp.3d 1273.)

2. The City chose to contract with EAS for highly professional, sensitive, confidential and expert services. Only the City Council can decide and approve the terms, conditions and provisions of contracts to which the City is a party. (*Van Antwerp, et al v. Board of Commissions of City of Mobile, et al*, 217 Ala. 201, 115 So. 239 (1928); and *Town of Boligee v. Greene County Water and Sewer Authority*, 77 So.3d 1166 (2011)).

3. Consulting services contracts are exempt from the Alabama Competitive Bid Law by virtue of Title 41-16-51(a)(3), *Code of Alabama, 1975*, because consultants possess a high degree of professional skill.

VI. RECOMMENDATION SIX-IMMIGRATION LANGUAGE

A. **RECOMMENDATION SIX:** The proposed Agreement is silent to immigration language. I recommend that the following language be added to the Agreement as Section N:

“N. **IMMIGRATION:** By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.”

B. **BASIS FOR LEGAL OPINION:** Alabama law at Title 31-13-9(k), *Code of Alabama, 1975*, provides as follows:

“(k) All contracts or agreements to which the state, a political subdivision, or state-funded entity are a party shall include the following clause: ‘By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom’.”

VII. RECOMMENDATION SEVEN BOYCOTT LIMITATION LANGUAGE

A. **RECOMMENDATION SEVEN:** The proposed Agreement is silent to boycott limitation language. I recommend that the following language be added to the Agreement as Section O:

“O. **COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS:** Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or

business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than \$15,000.00. EAS represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.”

B. BASIS FOR LEGAL OPINION: Alabama law at Title 41-16-5(b), *Code of Alabama, 1975*, provides as follows:

“(b) Subject to subsection (c), a governmental entity may not enter into a contract governed by Title 39 or Chapter 16, Title 41, Code of Alabama 1975, with a business entity unless the contract includes a representation that the business entity is not currently engaged in, and an agreement that the business entity will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.”

VIII. RECOMMENDATION EIGHT **EFFECTIVE DATE OF AGREEMENT**

A. RECOMMENDATION EIGHT: I recommend that the following language be added to the Agreement as Section P:

“**P. EFFECTIVE DATE.** This Agreement shall take effect on May 1, 2023.”

B. BASIS FOR LEGAL OPINION:

1. Title 11-45-2, *Code of Alabama, 1975*, sets for the required procedure for a City Council to enact a municipal ordinance. In accordance with that statute, I recommend as follows:

(a) That the City Clerk prepare an ordinance authorizing and directing the City Manager and Mayor to execute and deliver the Agreement; and

(b) That the ordinance be introduced at the City Council meeting on Monday, April 10, 2023, for a first read; and

(c) That the City Council consider the enactment of the ordinance at its meeting on Monday, April 24, 2023.

March 30, 2023

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2. The present contract with another company has been terminated effective April 30, 2023.

3. If the Agreement under consideration becomes effective on May 1, 2023, then in such event the employees will have no lapse in the opportunity to receive employee assistance services.

IX. CONCLUSION

From a legal standpoint, I approve the execution and delivery of the Agreement with EAS; provided, however, that it is amended consistent with this legal opinion. Please call me if you have any questions regarding this matter.

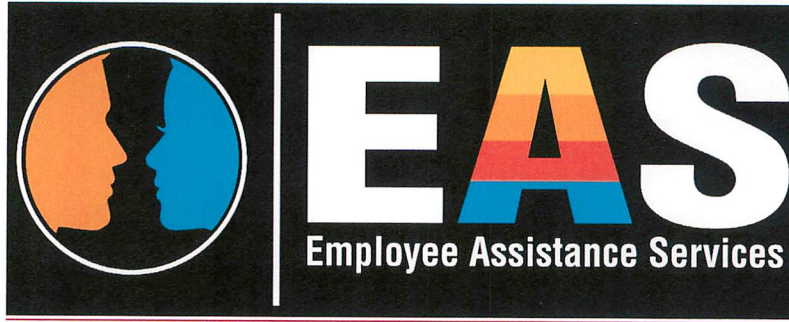
Sincerely,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Clerk Rebecca Leavings (by e-mail)



CITY OF VESTAVIA HILLS
Employee Assistance Program Service Agreement
Effective Date: May 1, 2023

This *Agreement* is made by and between EMPLOYEE ASSISTANCE SERVICES (EAS) and CITY OF VESTAVIA HILLS (City) to develop and provide an Employee Assistance Program for all employees and dependents, as defined below and subject to the following terms and conditions.

A. Description of Services

EAS will coordinate and operate the Behavioral Health Program (“Program”) established for the City, as described below, as an integral component of the City’s employee benefits program.

EAS will offer external, confidential assistance to enhance

- a. the health and safety of the City’s employees
- b. restoration of acceptable attendance, behavior and productivity of the City’s employees; and ultimately,
- c. reduction of losses to the Client resulting from such needs.

EAS will provide confidential counseling for the City’s employees and their covered family members for (but not limited to):

- | | |
|-------------------------------|--------------------------------|
| Anger Management | Co-Dependency |
| Depression / Anxiety | Grief |
| Marital (Relationship) Issues | Substance Abuse and Dependency |
| Adolescent Issues | Blended Family Issues |

EAS counselors will meet with employees and family members face-to-face, by phone or telehealth.

EAS provides short-term, solution-based counseling by highly qualified counselors. Employees or Covered Family Members receive up to 4 sessions per year.

EAS will work with the City to provide training to designated employees on a variety of topics at a rate of \$250.00 per hour.

EAS will conduct Critical Incident Stress Debriefing for affected employees at a rate of \$250 per hour.

EAS will conduct supervisory trainings on “How to Spot a Troubled Employee.” This training covers proper documentation and detailed instructions on how to include EAS in the corrective process when an employee’s performance is suffering. We will provide one of these supervisor trainings free of charge. If additional training sessions are required, we will provide them at \$250 per hour.

EAS will provide management and supervision with consultation on managing specific employer / employee problem areas.

EAS will assist in the counseling of employees with positive drug screens, as dictated by the City’s policy, through assessment, referral to the least restrictive appropriate treatment, and follow-up and supportive counseling for the employee and covered family members.

EAS will confidentially maintain records on Program operation, including case files, number of sessions and categories of problems encountered.

EAS will provide the City with utilization reports, but without disclosing the individuals’ identities.

EAS also provides: Wallet cards for all employees with EAS contact information
Posters as a reminder of the benefits (to go in break rooms or posting areas)
A quarterly on-line newsletter for each employee
An “on line” library

A one-time charge of \$200 will be applied to cover the printing cost of these supplies.

B. Term

The effective start date for this *Agreement* is set forth in Section P. The term of this *Agreement* shall be for one year subject to the provisions of this *Agreement* with an automatic renewal for one-year periods after the initial term, unless terminated in accordance with paragraph K.

C. Compensation

EAS will be paid at a rate of \$800 per month for counseling services, based on employee count of approximately 325. These payments will be made in advance on a monthly basis. If the employee population changes, adjustments will be made accordingly. In addition, the City will pay \$250 per hour for trainings provided.

D. Invoicing

EAS shall furnish the City, as directed, an invoice covering its fees on a monthly basis. Compensation shall be payable within thirty (30) days of receipt of invoice from the City.

E. Examination of Records

During the term of this *Agreement* and for a period of two years thereafter, the City shall have the right to audit EAS records related to this *Agreement* for purposes that include utilization review and performance evaluation. EAS shall not be required to make records available that would reveal the identity of persons receiving counseling services.

F. Independent Contractor Status

In the performance of services hereunder, the relationship of EAS to the City shall be that of an independent contractor, and not that of an employee or agent.

G. Confidentiality

All information furnished by the City shall be used only in performance of services hereunder. EAS shall not disclose to any person or organization, during the period of this *Agreement* or for five years thereafter, without prior written consent information not in the public domain relating to business, designs, plans, methods, or processes that EAS may acquire in performing services hereunder to otherwise. All information furnished to EAS or about employees receiving EAS services shall not be disclosed to any person or organization, except as permitted by applicable federal law and for carrying out the purposes of the EAP. Information about the activities performed under the *Agreement*, even though not identifying the employees, may be released only with permission of the City. Confidentiality is to be guaranteed by the City to all employees, with two exceptions: if the employee or family member has made threats to himself or herself, or to others; or if he/she places himself or herself in harm’s way. The City will not have access to records in connection with aspects of private treatment provided to an individual employee. An exception to this access will be made if the employee authorizes a release of information with respect to general progress (excluding all other aspects of treatment). The release will specify the individual authorized to receive the information and be signed by the employee.

H. Insurance

Employee Assistance Services (EAS) shall purchase from and maintain, without interruption from the commencement of the services through the term, a Commercial General Liability policy, Employer’s Liability policy and Commercial Automobile Liability policy, through a company or companies rated AVIII or better by A.M. Best Company, with the following limits:

Commercial General Liability	\$1,000,000.00 per occurrence
Automobile Liability	\$1,000,000.00 CSL

Employee Assistance Services (EAS) will name the City of Vestavia Hills, Alabama, its Mayor, City Manager, elected officials, servants, agents and employees as additional insureds under EAS’s insurance policy described above.

I. Indemnification

Employee Assistance Services (EAS) shall defend, indemnify and hold harmless the City of Vestavia Hills, Alabama, a municipal corporation, its City Manager, Mayor and other elected public officials and employees (hereinafter collectively referred to as “Indemnitees”) from and against all claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of, related to, or resulting from or based upon any violation of or performance of the work done by EAS or any of its owners, officers, employees, agents and subcontractors.

EAS disclaims any responsibility for the actions of City’s employees or covered family members who receive counseling services.

J. Eligibility

The City will provide EAS, by the first working day or each month, an electronic file of all eligible participants with necessary demographic information in a mutually agreed upon format. The City shall inform EAS if and when individuals are added or terminated as soon as possible.

K. Termination

1. **Voluntary Termination.** After the first anniversary of this *Agreement*, the City may terminate this *Agreement* in its entirety, effective as of the last day of any month, by notifying EAS in writing at least 60 days prior thereto. Any such termination shall be without further payment except that payment shall be made for EAS services performed satisfactorily prior to termination, to the extent unpaid at termination.

2. **Termination for Breach.** Either party may terminate this *Agreement* at any time if the other party breaches a material term or condition of this *Agreement* and fails to cure the breach within thirty (30) days after receipt of written notice of the breach from the non-breaching party.

L. Governing Law.

This *Agreement* shall be governed by, construed and enforced in accordance with the laws of the state of Alabama.

M. Assignment.

This Agreement shall not be assigned, delegated or transferred by EAS to any other party or entity without the prior written consent of the City.

N. Immigration.

By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

O. COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS.

Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than \$15,000.00. EAS represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

P. EFFECTIVE DATE.

This Agreement shall take effect on May 1, 2023.

If the above terms and conditions are acceptable, please indicate by signing below.

Employee Assistance Services

Laura Dunson, Executive Director

Date

City of Vestavia Hills

Signature of Authorized Administrator

Date