

Commission Letter No. 4194
Meeting Date: August 6, 2018

Mayor and Board of Commissioners
City of Ardmore, Oklahoma

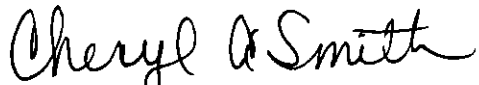
Re: Employee Assistance Program Provider Agreement between the City of Ardmore
and Arbuckle Life Solutions, Inc.

Dear Mayor and Commissioners:

The City has used Arbuckle Life Solutions, Inc. for several years to provide an Employee Assistance Program ("EAP"). In 2014, the Agreement between the parties was restructured to provide for a "per visit" fee associated with the EAP instead of a flat rate.

The City would like to, again, enter into another agreement with Arbuckle Life Solutions, Inc. for a new term from July 1, 2018, through June 30, 2019, so that the employees of the City of Ardmore and their immediate families can continue to benefit from the services provided by Arbuckle Life Solutions, Inc. Staff recommends approval.

Respectfully Submitted,


Cheryl Smith
Director of Human Resources

Reviewed by: 
City Manager

**EMPLOYEE ASSISTANCE PROGRAM PROVIDER AGREEMENT BETWEEN
THE CITY OF ARDMORE AND ARBUCKLE LIFE SOLUTIONS, INC.**

THIS CONTRACT is made this 30th day of June, 2018, by and between the City of Ardmore, Oklahoma, an Oklahoma Municipal Corporation, hereinafter called "City," and Arbuckle Life Solutions, Inc., an Oklahoma Not for Profit Corporation, hereinafter called "Provider."

WITNESSETH:

WHEREAS, Provider intends and desires to contract with the City to provide an Employee Assistance Program for the City's employees and employees' family members; and,

WHEREAS, the City desires to engage Provider to provide the services described herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein stated and in consideration of the mutual benefits, which will accrue to the parties, the receipt and sufficiency of which is acknowledged by the parties, the parties agree as follows:

1. Engagement of Provider. The City hereby engages Provider for Provider to perform certain professional services for the benefit of City. Provider accepts such engagement pursuant to the terms and conditions set forth herein. The purpose of this contract is for Provider to provide Employee Assistance Program Services to City's employees and the employees' immediate family members.
2. Term. This contract shall be effective from the 1st day of July, 2018, through the 30th day of June, 2019.
3. Compensation. The City and Provider agree that Provider will be compensated in the amount of Seventy Five Dollars (\$75.00) per visit, to provide the services for employees and family members as described herein. Under no circumstance shall the City pay more than Eight Thousand Dollars (\$8,000.00) in total compensation for services performed under this Contract. This Contract is subject to budget appropriation by City and approval by the City of Ardmore's Board of Commissioners.
4. Continuation of Services and Additional Services. In the event City decides to continue its engagement of Provider to perform certain professional services beyond the term and/or scope outlined herein, a new contract shall be negotiated and executed. Additional services that may be available on an as needed basis include, but are not limited to: Management and Supervisor Alcohol/Drug Training (DOT) and Drug Free Workplace Training (DOT) and Management and Supervisor EAP training and Employee EAP Orientation.
5. Scope of Services. Provider shall use its good faith and best efforts to fulfill the work, goals, and priorities described herein. Provider shall perform and/or provide the following:
 - a. Direct client services, including an initial visit and two (2) follow up visits per

employee and/or family member, per episode. If additional services are needed, Provider may provide referrals.

- b. Confidential services, with the exception of providing information to the City related to a referral due to workplace conduct.
- c. Utilization reporting will be provided monthly to inform City how many times Provider's services have been used. Provider shall not provide the names of visitors, but will provide a number of total visits and total visitors during the month and shall attach it to each invoice.
- d. Assessment and referrals
- e. Service provider screening
- f. Program promotion and educational materials
- g. Crisis intervention services to be available at all times, every day of the year
- h. Individual and family counseling and follow up services
- i. Critical incident stress management
- j. Other reporting, as needed, including notifying City of unusual occurrences
- k. An In Service may be scheduled when a large number of employees are dealing with the same problems.

6. Business Associate Agreement. This Contract is subject to federal privacy requirements and a separate *Business Associate Agreement* shall be executed to address those requirements.

7. Independent Contractor Status of Provider. Provider is a separate, legal entity from the City and the parties make this Contract accordingly. All persons working for Provider under this Contract shall be employees of Provider and shall not be considered employees of the City. The hiring, discharge, supervision, and management of the employees of Provider who provide services under this Contract, including, but not limited to, the determination from time to time of the qualifications of such Provider employees who are required to perform the duties of Provider, and the establishment, revision, and administration of wage scales, rates of compensation, conditions of employment, and job and position descriptions with respect to all such employees of Provider hereunder shall be within the sole direction of Provider.

8. Authority. By entering into this Contract with Provider, the City does not delegate any decision-making authority to Provider. Provider's powers and purpose by virtue hereof are fact finding, informational, recommendatory, or advisory with no decision-making authority, whatsoever, in relation to City and its activities. The City maintains its autonomy to operate and accomplish its purpose and objectives as prescribed in its founding documents. Provider has no

authority to obligate City or any of its funds and shall only have use of the funds provided to Provider pursuant to this Contract.

9. Non-Discrimination. The parties covenant (1) that no person shall be excluded from participation in, denied the benefit of, or otherwise subjected to discrimination under the terms of this Contract on the ground of race, color, age, sex, handicap, or national origin; and (2) that, in carrying out the terms and conditions of this Contract, no person shall be subjected to discrimination on the grounds of race, color, age, sex, handicap, or national origin.

10. Compliance with Laws. Provider shall conduct its business under the terms of this contract in such a manner that it does not violate federal, state, or local laws or regulations applicable to the conduct of its operations under the terms of this contract.

11. Default. Under this Contract, default occurs when either party fails to keep, observe, or perform any material agreement, term, or provision of this Contract to be kept, observed, or performed by it and such conduct continues for a period of thirty (30) days after written notice thereof by the other party.

12. Termination and Remedies upon Default.

- a. Termination without Cause. Upon sixty (60) days written notice to the other party, either party may terminate this Contract at any time, without cause, and for any reason or no reason at all.
- b. Termination upon Default. Upon default and in addition to any other remedies available to it on account of such event of default, either party may terminate this contract without further notice. The party terminating the contract must provide a written notice to the other party immediately.
- c. Remedies Non Exclusive. No right or remedy herein conferred upon or reserved to either of the parties is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative to any other right or remedy given hereunder or now or hereafter legally existing upon default.
- d. No Waiver. The failure of either party to insist upon the strict observance or performance of any of the provisions of this contract or to exercise any right or remedy provided in this Contract shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Contract to the parties may be exercised from time to time and as often as may be deemed expedient by the parties.

13. Notices. Whenever notice is required to be given in writing, such notice shall be hand-delivered or mailed by certified mail, return receipt requested, and directed to the respective parties at the following addresses:

CITY:

City Manager
City of Ardmore
P.O. Box 249
Ardmore, OK 73402

PROVIDER:

Arbuckle Life Solutions, Inc.
Attn: Kevin Bone
9 10th Ave NW
Ardmore, OK 73401

or at such other address as a party shall specify by like notice to the other party hereto. Notices shall be effective on the date of delivery.

14. City's Representations and Warranties. To induce Provider to enter into this Contract, City makes the following representations and warranties to Provider:

- a. Each of the recitals set forth in this Contract is true and correct.
- b. City has power and authority and all legal rights to enter into and perform this Contract. The Mayor of the City executing this Contract is duly and properly in office and fully authorized to execute this Contract. This Contract, when duly authorized, executed and delivered by the parties hereto, shall create a valid and binding obligation on the part of City.

15. Provider's Representations and Warranties. To induce City to enter into this Contract, Provider makes the following representation and warranties to City:

- a. Each of the recitals set forth in this Contract is true and correct.
- b. Provider has the full power and authority and all legal rights to enter into and perform this Contract and any other agreement referred to herein or contemplated by this Contract. This Contract, when duly authorized, executed and delivered by the parties hereto, shall create a valid and binding obligation on the part of Provider, enforceable against Provider in accordance with its terms.

16. Interpretation of Law, Choice of Law, and Venue. This contract shall be deemed to have been made in the State of Oklahoma and shall be construed and interpreted in accordance with the laws of the State of Oklahoma. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this contract may be brought against any of the parties in the courts of the State of Oklahoma, County of Carter, or, if it has or can acquire jurisdiction, in the United States District Court for the Eastern District of Oklahoma, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

18. Indemnification and Hold Harmless. Provider shall defend, indemnify and hold harmless the City and any and all officers, agents and employees of the City, against all damages,

including but not limited to, any loss, liability, expense, suit, or claim for injury to persons or damages to property arising out of the activities of Provider, its employees and agents under or in connection with this Contract, whether or not any act or omission complained of is authorized, allowed or prohibited by Provider and all reasonable expenses together with all damages and penalties thereto. Expenses shall include, without limitation, all out-of-pocket expenses, attorney's fees, witness fees, and discovery costs.

19. Assignment. Neither party shall assign this contract or any interest herein without the express, written consent of the other party.

20. Construction. Captions and other headings contained in this contract are for reference and identification purposes only and do not alter, modify, amend, limit, or restrict the contractual obligations of the parties.

21. Integration, Amendments and Waivers. This Contract constitutes the entire agreement between the parties and may not be amended, altered, modified or changed in any way except in writing signed by all parties to this contract and which specifically references this Contract. There are no other agreements, representations or warranties, whether oral or written, regarding the subject matter of this Contract. No course of dealings involving the parties hereto and no usage of trade shall be relevant or admissible to interpret, supplement, explain or in any way vary any of the terms expressly set forth in this Contract. Any amendment to this Contract shall be attached to this Contract and all of the terms in this Contract not addressed in the amendment shall remain in full force and effect. Any waiver of any provision of this Contract shall be made in writing executed by the party who could demand fulfillment of such waived provision.

22. Binding Effect. This contract binds the parties and any successors and assigns of the parties.

23. Severability. If any one or more of the sections, sentences, clauses, or parts be held invalid for any reason, the invalidity of such section, sentence, clause, or part shall not affect nor prejudice the applicability and validity of any other provision of this Contract.

24. Bargaining. The City and the Provider have had the opportunity to seek independent legal counsel before entering into this Contract. Both the City and the Provider have participated fully in the preparation of this Contract and the language of this Contract shall be construed simply, according to its fair meaning, and not strictly for or against either party.

25. Counterparts. This Contract may be executed in any number of counterparts, and when each party has signed and delivered to the other at least one (1) such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one (1) agreement; provided, however, this Contract shall not be binding upon the parties hereto until signed by all of the parties.

26. Third Party Beneficiaries. Nothing in this contract, expressed or implied, is intended to confer upon any person other than the parties hereto and their respective assigns, any rights or remedies under or by reason of this Contract, except as provided expressly herein.

27. Good Faith and Best Efforts. City and Provider agree to perform obligations under this Contract in good faith and to use their respective best efforts to ensure that each perform in a timely manner.

28. Identity Theft Prevention. Provider, for itself, successors, assigns, and subcontractors agree to familiarize themselves with 16 CFR § 681, Identity Theft Rules and 24 Okla. Stat. § 161 *et seq.*, the Security Breach Notification Act. Provider agrees to meet or exceed the guidelines set out in those laws, including, but not limited to, its policies and procedures regarding training of personnel, use of any personal information obtained, and reporting of “Red Flag” events.

29. Governmental Tort Claims Act. By entering into this Contract, City and its “employees,” as defined by the Governmental Tort Claims Act, 51 Okla. Stat. § 151 *et seq.*, do not waive sovereign immunity, any defenses, or any limitations of liability as may be provided for by law. No provision of this Contract modifies and/or waives any provision of the Governmental Tort Claims Act.

30. E-Verify. Executive Order 13465 requires that all contractors whose contracts are funded in whole or in part by federal dollars use E-Verify, the electronic employment eligibility verification system designated by the Secretary of Homeland Security, to verify that employees working pursuant to federally funded contracts are legally authorized to work in the United States. Provider agrees to use E-Verify to verify the employment eligibility of all employees who may perform services pursuant to this Contract. Provider also agrees to require all subcontractors who perform services under this Contract to use E-Verify to verify the employment eligibility of all employees who may perform services pursuant to this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

Date: _____

"CITY"
THE CITY OF ARDMORE, OKLAHOMA,
An Oklahoma Municipal Corporation

(SEAL)
ATTEST: _____
Kenneth Campbell, City Clerk

By: _____
Sheryl Ellis, Mayor

Date: 7/24/18

"PROVIDER"
Arbuckle Life Solutions, Inc.
An Oklahoma Not for Profit Corporation

By: Kevin Bone
Kevin Bone, Executive Director

(CORPORATE SEAL)

ATTEST: Jordan Leffler
Secretary

PROVIDER'S ACKNOWLEDGEMENT

STATE OF OKLAHOMA }
COUNTY OF CARTER } ss:

On this 24 day of July, 2018, before me, a

Notary Public, in and for the above state and county, personally appeared

Kevin Bone, known to me to be or who proved on the basis of

satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed the same for the purposes contained therein.

Kelli Gunter
Notary Public

Commission Number: 09004332

My Commission Expires: 5-20-21

