



3463

**AUTHORIZATION FOR
AGREEMENTS, MOUs, OR
OTHER DOCUMENTS OBLIGATING THE CITY**

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: Canopy Subscription Date: 3-21-23

Statement of Purpose: adding part-time staff to the agreement

Department Head Signature: Paul James

Remarks, if any: _____

Finance Department Signature (REQUIRED): _____ Date: _____

City Attorney Review and Signature (REQUIRED): _____ Date: _____

Other Signatures as Requested by the City Attorney: See attached email

Name/Position
Date: 3-21-23

Budget Confirmed: Signature Yes ☒ No ☐ N/A ☐

Certificate of Insurance Attached: Yes ☐ No ☐ N/A ☒

City Council Approval Needed: Yes ☐ No ☒ Date: _____

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 3-22-23

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: _____ Date: _____

Date posted on website: _____

Barbara James

From: David Allen
Sent: Tuesday, March 21, 2023 2:15 PM
To: Barbara James
Cc: Spencer Nebel
Subject: Re: EAP Agreement
Attachments: Direct Contract for City of Newport_3.2023.pdf

Section 18 with venue in Washington County would be okay for this type of agreement. --David

From: Barbara James
Sent: Monday, March 20, 2023 6:43 PM
To: David Allen
Cc: Barbara James
Subject: FW: EAP Agreement

David,

Please see the revised agreement for EAP Services, and the below email related to Section 18 of the agreement.



Barb James, SPHR, SHRM-SCP
Human Resources Director
City of Newport
169 SW Coast Hwy
Newport, OR. 97365
b.james@newportoregon.gov
Phone - 541-574-0604
Fax - 541-574-0609



From: Anna Meiners <ameiners@canopywell.com>
Sent: Friday, March 17, 2023 4:22 PM
To: Barbara James <B.James@NewportOregon.gov>
Cc: Kristi Workman <kworkman@canopywell.com>
Subject: RE: EAP Agreement

Canopy Subscription Agreement

This Subscription and License Agreement ("Agreement"), effective as of March 1, 2023 ("Effective Date"), is between Canopy Inc., dba Canopy Wellbeing an Oregon corporation, located at 7180 SW Fir Loop Suite 100, Portland, Oregon, 97223 ("Canopy") and City of Newport ("Customer" or "Employer") (each a "Party" and collectively, the "Parties").

This Agreement governs the provision of certain EAP services offered by Canopy (the "Service" or "Services") to Customer and sets forth the terms and conditions under which those Services will be delivered.

This Agreement applies to Member Employers employees' and eligible family members access to, and use of, all or part of any service of Canopy.

AGREEMENT

In consideration of the mutual covenants and promises contained herein, and of other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Services

Canopy shall provide the Services listed on Exhibit A to Customer. Customer may opt for Additional Services as described in Exhibit A by executing an additional Order Form.

2. Term of Subscription

Customer's subscription to the Service shall commence on the Effective Date and shall continue through March 31, 2024 (the "Term").

3. Fees

The subscription fees for the Term shall be calculated at the rates listed in Exhibit A, per employee per month (the "Subscription Fees").

4. Payments

Canopy shall bill Customer for the Subscription Fees on a monthly basis.

Unless otherwise agreed to in writing by the Parties, Customer will pay all invoiced fees within thirty (30) days of receipt of the applicable invoice.

Direct contracts with identified employers will be billed and paid by those employers separately.

5. Customer Commitment

Customer recognizes that the success and effectiveness of the Employee Assistance Program requires high program visibility and support throughout all organizational levels. Customer agrees to coordinate with Canopy to promote the EAP to Customer employees.

Customer agrees to assist Canopy in the performance of services as follows:

- (a) Designate employee who will act as liaison with Canopy
- (b) Provide Canopy with a current total number of employees eligible for EAP services on a monthly basis.
- (c) To give prompt notice to Canopy whenever Employer observes or otherwise becomes aware of any deficiency in the proposed delivery of services.
- (d) To distribute EAP promotional materials and schedule orientation sessions/supervisory training as appropriate.
- (e) To provide Canopy with current health plan benefit information annually or as changes occur.

6. Termination

This Agreement shall continue in effect until terminated as set forth herein. This Agreement may be terminated (a) by Canopy, if Customer fails to pay Subscription fees when due; or (b) by Customer, without cause, on sixty (60) days' written notice. Canopy shall have the right to recover all direct damages resulting from any breach by End User of this Agreement, including, without limitation, all unpaid fees under Section 3 (Fees) and Section 4 (Payments). Customer's payment obligations under this Agreement are non-cancellable and non-refundable.

7. User Eligibility

Eligible employees and family members are those persons eligible for EAP benefits under customer employment policy.

8. Limited License

Unless otherwise indicated, the Services and all content and other materials therein, including,

without limitation, the Canopy trademark, logo and all designs, text, graphics, pictures, information, data, software, sound files, other files and the selection and arrangement thereof (collectively, "Materials") are the proprietary property of Canopy and are protected by intellectual property laws.

Upon acceptance of the Terms of Use, Privacy Policy, and compliance with all of the terms and conditions stated herein, Canopy hereby grants Customer and Users a non-exclusive, non-transferable, and non-sub-licensable limited license for the term of this Agreement to use the Services and Materials. Customer will promptly discontinue the display or use of any Materials to change the manner in which a Material is displayed or used when requested by Canopy. Other than the express licenses granted by this Agreement, Canopy grants no right or license to Customer, by implication, estoppel or otherwise, to the Materials or any Intellectual Property Rights of Canopy.

Such license is subject to this Agreement and the Terms of Use and does not include: (a) any resale or commercial use of the Services; (b) modifying or otherwise making any derivative uses of the Services and Materials, or any portion thereof; (c) use of any data mining, robots or similar data gathering or extraction methods; (d) downloading (other than the page caching) of any portion of the Services, the Site Materials or any information contained therein, except as expressly permitted on the Services; or (e) any use of the Services or the Materials other than for its intended purpose. Any use of the Services or Materials other than as specifically authorized herein, without the prior written permission of Canopy, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws, including, without limitation, copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in this Agreement or the Terms of Use shall be construed as conferring in any manner, whether by implication, estoppel or otherwise, any title or ownership of, or exclusive use-rights to, any intellectual property or other right and any goodwill associated therewith.

9. Intellectual Property

Customer acknowledges that the Services and any copies that Customer and/or Users are authorized by Canopy to make are the intellectual property of Canopy. Canopy warrants that it owns, controls, or otherwise has full rights to use all software utilized in connection with providing the Services. With regard to Canopy proprietary elements of the structure, organization and code of the system

used to provide the Services, such elements are the valuable intellectual property and confidential information of Canopy and are protected by copyright laws, including without limitation United States Copyright Law, international treaty provisions and applicable laws in the country in which it is being used. With regard to the proprietary elements of Canopy system, Customer acknowledges that Canopy retains the ownership of all patent rights, copyrights, trade secrets, trademarks and other intellectual property rights to those elements as they are used in connection with the Services.

10. Trademark Information

Canopy and the Canopy logo are trademarks of Canopy. Other product or company names referred to on the Services may be trademarks of their respective owners. Customer may not use any trademark, service mark, domain name, logo, company name, trade name or indicia of origin of Canopy or any third party without permission from the owner of the applicable trademark, service mark, domain name, logo, company name, trade name or indicia of origin.

11. Confidentiality

Health Information and Protected Health Information.

Canopy agrees to protect the confidentiality of participants and their individually identifiable health information ("Protected Health Information" as defined in 45 CFR §164.501) in accordance with the requirements of state and federal laws, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA). All records of participants are and will remain the property of Canopy.

Both Canopy and Customer shall treat individually identifiable health information as confidential and will take reasonable precautions to safeguard the privacy, security, and confidentiality of all Protected Health Information and other such individually identifiable health information.

12. WARRANTY DISCLAIMER

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THE PARTIES UNDERSTAND AND AGREE THAT THE SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Notwithstanding the foregoing, Contractor represents and warrants the services to be provided under this contract shall be performed in a good and workmanlike manner and in accordance with professional standards of the industry.. CANOPY IS NOT RESPONSIBLE FOR THE ACTIONS, CONTENT, INFORMATION, OR DATA OF THIRD PARTIES.

13. Limitation of Liability

To the maximum extent permitted by applicable law, Canopy and its officers, directors, employees, shareholders or agents shall not be liable for any indirect, punitive or consequential damages, including but not limited to loss of income, profits, goodwill, use of money, or loss or damage arising from or connected in any way to business interruption. In no event shall the aggregate liability of Canopy, whether in contract, warranty, tort (including negligence, whether active, passive or imputed), product liability, strict liability or other theory, arising out of or relating to the use of or inability to use the Services exceed an amount equal to the twelve (12) month value of this contract. Some jurisdictions do not allow the limitation of liability in contracts with consumers, so some or all of these limitations of liability may not apply to Customer.

14. Indemnification

Canopy agrees to hold harmless, indemnify, and defend Customer, and its officers and employee from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from, arising out of, or related to the acts or omissions of Canopy or its officers, employees, subcontractors, or agents in performance of services pursuant to this Contract. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), Customer agrees to hold harmless, indemnify, and defend Canopy and its officers and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from, arising out of, or related to the acts or omissions of Customer or its officers, employees, subcontractors, or agents pursuant to this Contract.

15. Insurance.

During the term of this contract, Canopy shall maintain in force insurance coverage compliant with the requirements listed below:

- a. Workers' Compensation insurance in compliance with ORS Chapter 656, if Contractor employs "subject workers".
- b. Comprehensive General Liability insurance applicable to the services provided to Customer, with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for Bodily Injury, Personal Injury, and Property Damage, including contractual liability coverage applicable to the indemnity provided under this contract.
- c. Automobile Liability insurance applicable to the operation of Contractor's trucks or automobiles with a combined single limit of not less than \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, non-owned, and hired vehicles, as applicable.
- d. Notice of Cancellation or Change. There shall be no cancellation, material change, reduction of limits without 30-days prior written notice from the Canopy or its insurer(s) to Customer.
- e. Certificates of Insurance. As evidence of the insurance coverages required by this contract, the Canopy shall provide acceptable insurance certificates to Customer as soon as practicable upon written request by Customer. If requested, complete copies of insurance policies, shall be provided to Customer.

16. Publicity

Canopy may identify Customer as a client of Canopy in marketing materials after 6 months of satisfactory performance, with the written permission of Customer.

17. Compliance

Customer and Canopy shall comply with all applicable laws in the administration of this Agreement and the operation of the employee assistance program provided by Canopy for Customer, including but not limited to the Americans with Disabilities Act, the Health Insurance Portability and Accountability Act (HIPAA), the Genetic Information Nondiscrimination Act, the Health Information Technology for Economic and Clinical Health (HITECH) Act, and any and all applicable laws.

18. Governing Law; Venue

Access to and use of the Services and this Agreement are governed by U.S. federal law

and/or the laws of the State of Oregon, without resort to conflict of law provisions. Any legal action or proceeding relating to Customer's access to, or use of, the Services or this Agreement shall be instituted only in a state or federal court located in Washington County, Oregon. Customer agrees to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

19. Injunctive Relief

The parties acknowledge that the Services and each party's Confidential Information are unique property, and the unauthorized use thereof may cause the injured Party irreparable harm that may not be adequately compensated by monetary damages. Accordingly, the Parties agree that the injured Party will, in addition to other remedies available to it at law or in equity, be entitled to seek injunctive relief to enforce the terms of this Agreement, including to prevent any actual or threatened unauthorized use or sublicensing of each Party's Confidential Information, the Services, or any information or data contained therein.

20. Notices and Assignment

All notices hereunder must be in writing and sent by hand delivery; or by postal service, postage prepaid; or by expedited mail courier service; or by electronic mail (e-mail); or by facsimile transmission, to the addresses listed below. Notices are deemed received and effective as follows: If hand-delivered, upon delivery; if sent by e-mail or facsimile transmission, upon sending; if mailed, upon the earlier of (i) receipt or (ii) three days after being deposited in the mail. If the addressee provided for below rejects or otherwise refuses to accept the notice, or if the notice cannot be delivered because of a change in address for which no notice was appropriately given, then notice is effective upon the rejection, refusal or inability to deliver. Either Party may change its notice address by giving written notice to the other Party in a manner prescribed above.

The terms of this Agreement shall be binding on the Parties, and all successors to the foregoing who take their rights hereunder. Neither Party will assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without the other Party's prior written consent except pursuant to a transfer of all or substantially all of such party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment, transfer or delegation in violation of the foregoing shall be null and void.

21. Independent Contractors

Canopy shall perform the required services as an independent contractor and not as an "officer, employee, or agent" of Customer as those terms are used in ORS 30.260 through 30.300. Although Customer reserves the right to evaluate the quality of the service provided by Canopy, Customer will not control the means or manner of Canopy's performance.

22. All Amendments in Writing

No variation, waiver, modification or amendment of this Agreement shall be binding upon either Party unless in writing executed by the duly authorized representatives of both Parties. This Agreement may not be supplemented or modified by course of dealing or performance. The waiver or failure of either Party to exercise any right provided for herein shall not be deemed a waiver of any further right hereunder.

23. Severability

If any provision of this Agreement shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of any remaining provisions.

24. Taxes.

Customer shall be solely responsible for collecting and remitting any and all applicable sales and use taxes pursuant to this Agreement. In no event shall Canopy be liable for any taxes owed by Customer, including for Customer's use of the Services. Each Party shall bear sole responsibility for all taxes, assessments, and other ad valorem levies on its owned property.

25. Additional Terms.

Canopy and Customer agree that the Additional Terms listed on Exhibit A shall apply to this Agreement.

26. General

This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute the Agreement when a duly authorized representative of each Party has signed the counterpart. Facsimile or electronic signatures will be deemed original signatures for all purposes under this Agreement.

By signature below, Canopy and Customer have each caused this Agreement to be executed by their duly authorized representative as of the

Effective Date and such execution evidences each Party's acceptance of and agreement with the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized

**CASCADE CENTERS, INC DBA CANOPY
WELLBEING**

By 

Name Anthony Brown

Title CEO

7180 SW Fir Loop Suite 100
Portland OR 97223

Date: March 17, 2023

City of Newport

By 

Name Spencer Nebel

Title City Manager

Address: 169 SW Coast Hwy
Newport, OR 97365

Date 03-22-23

Exhibit A

Canopy EAP Services Included	Cost
<p>Diagnosis and Treatment Planning: Up to five paid sessions per unrelated incident for each employee/family unit. Sessions available face-to-face, telephonic or live online virtual sessions through secure video or chat.</p> <p>24/7/365 crisis telephone coverage: Staffed by professional counselors.</p> <p>Promotional Materials: Printed materials include brochures, wallet cards, and posters with tear offs. Electronic materials include newsletter and flyers.</p> <p>EAP services:</p> <ul style="list-style-type: none"> • Career Development Services • Wellbeing Text Support • Life Coaching • Gym Membership Discounts • Will Kit Questionnaire • Pet Parent Resources • Concierge and resource retrieval services (caregiver, childcare, eldercare and other activities of daily living) provided within 3-5 business days • Housing Support, relocation and home ownership program <p>Work/Family/Life Balance Services</p> <ul style="list-style-type: none"> • <i>Legal/Mediation:</i> Each covered member is eligible for one (1) initial 30-minute office or telephone consultation per separate legal/mediation matter (limit three per year). Discount of 25% from the attorney's/mediator's normal hourly rate thereafter. • <i>Financial:</i> Each covered member is eligible to receive telephonic financial coaching from certified financial consultants. • <i>Identity Theft Services:</i> 60-minute free consultation with a highly trained <i>Fraud Resolution Specialist™ (FRS)</i>. <p>Interactive EAP Website</p> <ul style="list-style-type: none"> • Self-Assessments • Videos • Webinars • Legal Resource Center <p>WholeLife Directions: Access to Canopy's Behavioral Health Risk Assessment which provides immediate feedback and recommendations for nine mental health domains. Includes individual report, access to evidence based self-use programs, employer aggregate report, participation/ incentive report, and <i>WholeLife Directions</i> total wellness campaign.</p> <p>Reporting: Online utilization reporting and annual summary.</p> <p>Unlimited telephone management consultation with an EAP representative.</p> <p>Unlimited management referrals with follow-up to employer as needed.</p>	<p>\$2.45 per employee per month</p>

On-site EAP Services*: Included hours can be used for <ul style="list-style-type: none"> Employee EAP Orientations Supervisor EAP Orientations One-Hour EAP Seminars Benefit Fairs <p>Hours are allocated as follows:</p> <table> <tr> <td>Less than 10 employees</td> <td>1 hour/year</td> </tr> <tr> <td>11-25 employees</td> <td>1 hour/year</td> </tr> <tr> <td>26-50 employees</td> <td>1 hour/year</td> </tr> <tr> <td>51-100 employees</td> <td>2 hours/year</td> </tr> <tr> <td>101-300 employees</td> <td>3 hours/year</td> </tr> <tr> <td>301-500 employees</td> <td>4 hours/year</td> </tr> <tr> <td>501+ employees</td> <td>5 hours/year</td> </tr> </table>	Less than 10 employees	1 hour/year	11-25 employees	1 hour/year	26-50 employees	1 hour/year	51-100 employees	2 hours/year	101-300 employees	3 hours/year	301-500 employees	4 hours/year	501+ employees	5 hours/year	
Less than 10 employees	1 hour/year														
11-25 employees	1 hour/year														
26-50 employees	1 hour/year														
51-100 employees	2 hours/year														
101-300 employees	3 hours/year														
301-500 employees	4 hours/year														
501+ employees	5 hours/year														
On-site Group Critical Incident Stress Debriefing*: Provided 48-72 hours following a traumatic event. Includes 24/7 consultation services to management pre, post and during.	Included														
Substance Abuse Professional (SAP) Evaluation – two evaluations per Member per contract year included. Additional evaluations:	\$550.00 per case														

Additional Services Available	Cost
Any additional on-site EAP services beyond the allotted annual hours	\$315.00 per hour, \$95.00 per hour travel
On-Site Legal Seminars: Specialized training facilitated by subject matter expert.	\$450.00 per seminar
On-Site Financial Seminars: Specialized training facilitated by subject matter expert.	\$450.00 per seminar
On-site Organizational Development: Teambuilding, conflict resolution, and other specialized training.	\$375.00 per hour \$95.00 per hour travel
Immediate Response: Canopy will provide on-site crisis counselors within 2 – 24 hours of notification of a traumatic event. Services include informal outreach, check-in, supportive listening, problem-solving for immediate needs, assessment of mental / emotional health, and make recommendations as needed. Canopy will also conduct phone calls as needed to ascertain mental / emotional needs for those employee(s) wishing additional EAP check-ins. Face-to-face counseling or other support services will be arranged as needed.	\$425.00 per hour \$200.00 per hour travel
On-Site Individual Counseling/Grief Support: Formal on-site counseling is available.	Mon – Fri 8:00 am to 5:00 pm \$375.00 per hour \$95.00 per hour travel All other hours \$400.00 per hour \$95.00 per hour travel
Executive Coaching: Individualized assessment, 5 one-hour sessions, access to Executive Coach between sessions via email and telephone. If travel is requested, there is an additional fee.	\$1,700.00 Additional sessions are \$315.00/hour. Travel \$95.00/hour.

***Notes:**

- A minimum attendance of ten employees for Orientations and EAP Seminars are required.
- A minimum attendance of five employees for CISD are required.
- On-site hours not utilized one year may not be carried over into the following year.
- A cancelation fee will apply for on-site services canceled within 24 hours of the scheduled event.