

**AGREEMENT WITH MINDFULNESS BASED HEALTH
FOR PROFESSIONAL CONSULTANT SERVICES
FOR SAN MATEO POLICE DEPARTMENT
MINDFULNESS TRAINING COURSE**

This Agreement, made and entered into this day of March, 2021, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and Pete Kirchmer, a Sole Proprietor doing business as Mindfulness Based Health, ("CONSULTANT"), whose address is 20744 Elfin Forest Road, Escondido, CA 92029.

RECITALS:

- A. CITY desires certain professional training services hereinafter described.
- B. CITY desires to engage CONSULTANT to provide these professional training services by reason of its qualifications and experience for performing such services and CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 - SCOPE OF SERVICES

The scope of services to be performed by CONSULTANT under this Agreement is as described in Exhibit A to this Agreement, attached and incorporated by reference.

SECTION 2 - DUTIES OF CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its work.

CONSULTANT represents that it is qualified to furnish the services described under this Agreement.

CONSULTANT shall be responsible for employing or engaging all persons necessary to perform the services of CONSULTANT.

CONSULTANT agrees to comply with the City's minimum wage ordinance as codified in Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator.

SECTION 3 - DUTIES OF CITY

CITY shall provide pertinent information regarding its requirements for the project.

CITY shall examine documents submitted by CONSULTANT and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of CONSULTANT's work.

SECTION 4 - TERM

The services to be performed under this Agreement shall commence on or about April 1, 2021 and be completed on or about December 31, 2021.

SECTION 5 - PAYMENT

Payment shall be made by CITY only for services rendered and upon submission of a payment request upon completion and CITY approval of the work performed. In consideration for the performance of the services set forth in Exhibit A, CITY agrees to pay CONSULTANT a fee in an amount of \$105,000, for delivery of the mPEAK 8 week course program (delivered online via Zoom) to six groups of up to 25 participants, pursuant to rates stated in Exhibit A to this Agreement, attached and incorporated by reference. Consultant may submit invoices for payment at the end of every course cycle.

SECTION 6 - TERMINATION

Without limitation to such rights or remedies as either party shall otherwise have by law, either party shall have the right to terminate this Agreement or suspend work on the Project for any reason, upon providing ten (10) days' written notice; however, services may not be terminated by either party during the middle of one of the 8 week course sessions. CONSULTANT agrees to cease all work under this Agreement upon receipt of said written notice.

In the event of termination, CONSULTANT shall be entitled to receive payment for work/services provided prior to termination of this agreement.

SECTION 7 - CONFIDENTIALITY

All reports and documents prepared by CONSULTANT in connection with the performance of this Agreement are confidential until released by CITY to the public. CONSULTANT shall not make any such documents or information available to any individual or organization not employed by CONSULTANT or CITY without the written consent of CITY before any such release.

SECTION 8 - INTEREST OF CONSULTANT

CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 9 - CONSULTANT'S STATUS

It is expressly agreed that in the performance of the professional services required under this Agreement, CONSULTANT shall at all times be considered an independent contractor as defined in Labor Code Section 3353, under control of the CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONSULTANT an agent or employee of CITY while providing services under this Agreement.

SECTION 10 - INDEMNITY

CONSULTANT agrees to hold harmless and indemnify CITY, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of CONSULTANT's performance of this Agreement, except those claims arising out of CITY's sole negligence or willful misconduct. CONSULTANT agrees to defend City, its elected and appointed officials, employees, and agents against any such claims.

SECTION 11 - INSURANCE

CONSULTANT shall procure and maintain for the duration of the contract and three years thereafter (five years for building or major improvements) the insurance specified in Exhibit B to this Agreement.

SECTION 12 - NON-ASSIGNABILITY

Both parties hereto recognize that this Agreement is for the personal services of CONSULTANT and cannot be transferred, assigned, or subcontracted by CONSULTANT without the prior written consent of CITY.

SECTION 13 - RELIANCE UPON PROFESSIONAL SKILL OF CONSULTANT

It is mutually understood and agreed by and between the parties hereto that CONSULTANT is skilled in the professional calling necessary to perform the work agreed to be done under this Agreement and that CITY relies upon the skill of CONSULTANT to do and perform the work in the most skillful manner, and CONSULTANT agrees to thus perform the work. The acceptance of CONSULTANT's work by CITY does not operate as a release of CONSULTANT from said obligation.

SECTION 14 - WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

SECTION 15 - SEVERABILITY

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

SECTION 16 - COSTS AND ATTORNEY FEES

Attorney fees in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this Agreement that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

SECTION 17 - NON-DISCRIMINATION

CONSULTANT warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CONSULTANT nor any of its subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

SECTION 18 - MEDIATION

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once

commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 19 - LITIGATION

CONSULTANT shall testify at CITY'S request if litigation is brought against CITY in connection with CONSULTANT's services under this Agreement. Unless the action is brought by CONSULTANT, or is based upon CONSULTANT's wrongdoing, CITY shall compensate CONSULTANT for preparation for testimony, testimony, and travel at CONSULTANT's standard hourly rates at the time of actual testimony.

SECTION 20 - NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY: Ed Barberini, Chief of Police
City of San Mateo
200 Franklin Parkway
San Mateo, CA 94403

To CONSULTANT: Mindfulness Based Health
Attn: Pete Kirchmer
20744 Elfin Forest Road,
Escondido, CA 92029

SECTION 21 - AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT

This document represents the entire and integrated agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and CONSULTANT.

SECTION 22 - AUTHORITY TO ENTER INTO AGREEMENT

CONSULTANT has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

SECTION 23 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

IN WITNESS WHEREOF, CITY OF SAN MATEO and Pete Kirchmer, a Sole Proprietor doing business as Mindfulness Based Health, have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

CONSULTANT

Ed Barberini
Chief of Police

Pete Kirchmer
Sole Proprietor

Attachments:

Exhibit A: Scope of Services
Exhibit B: Insurance Requirements

EXHIBIT A SCOPE OF SERVICES



**Proposal for Mindfulness Course and Research Project
San Mateo Police Department
September 28th, 2020
Pete Kirchmer, mPEAK Director, UCSD Center for Mindfulness**

mPEAK Overview

With over 4000 journal published articles on its many wellness and performance related benefits; mindfulness is quickly gaining traction in corporations, hospitals, schools, military, law enforcement and professional sports.

Mindfulness is an intentionally focused awareness—a way of paying attention on purpose in the present moment with equanimity. While this notion may seem simplistic, especially in a complex marketplace, attending to the constant activity of the mind for a few brief minutes can yield powerful and even surprising information. Operating “mindfully”—in the moment an event occurs—enhances the ability to both identify and minimize sources of stress while enhancing competencies that build resiliency.

The mPEAK (Mindful Performance Enhancement, Awareness and Knowledge) program is an intensive mindfulness training integrating cutting-edge scientific findings in the field of neuroscience and performance enhancement. mPEAK is intended to coach participants toward improved skills of awareness, focus, and flow to reach their full potential as human beings, leaders and athletes. Additionally, mPEAK trains a greater capacity for physical and emotional resilience so participants can meet challenges with an appropriate response.

mPEAK draws heavily on neuroscientific data that highlight how the brains of peak performers (Special Operations Forces, world-class athletes and others) are different than most people's brains. The data shows that regular mindfulness practice actually trains the brain to function like that of a peak performer. fMRI data gathered from the first trial of mPEAK (in the US Olympic BMX cyclists) provide additional support of this idea.

Each of the eight themes of mPEAK are based on four scientifically validated pillars of performance optimization and resilience.

mPEAK Core Pillars

1. Inhabiting Your Body

Interoception is the capacity to notice, accept and respond to subtle physical sensations. Research conducted by Paulus and colleagues suggests that efficient interoceptive processing may be the neural marker of optimal performance (Paulus et al., 2009; Paulus et al., 2012). Furthermore, mindfulness-based training has been shown to modulate interoceptive processing in relatively healthy non-treatment seeking marines, in such a way that their brain response is more similar to that of an optimal performer (Haase et al., 2014).

mPEAK trains participants to keenly monitor subtle body sensations, including the breath to enhance interoceptive awareness and their capacity to self-regulate during times of physical or emotional stress.

www.mpeakcoaching.com • 760-456-5743 • pete@mpeakcoaching.com

2. Getting Out of Your Own Way and Letting Go

The Default Mode Network (DMN) is thought to play a role in mind wandering (Fox et al., 2015) and in self-related and self-referential aspects of cognitive processing (Brewer & Garrison, 2014; Whitfield-Gabrieli & Ford, 2012). Research suggests that mindfulness training can result in reduced mind wandering and changes in brain function within the DMN.

mPEAK addresses obstacles that performers encounter with regard to the wandering mind and the identification of one's "performance story" and its influence on the ability to stay focused on the task at hand.

3. Working with Difficulty

High performance cultures encourage the avoidance of thoughts and feelings associated with stress, fear, failure and pain. However, attempts to suppress painful experiences can often result in greater distress (Cioffi & Holloway, 1993) and harsh inner criticism. Fortunately mindfulness training can modulate one's experience of painful physical sensations (Zeidan, Gordon, Merchant & Goolkasian, 2010) and emotions (Zeidan et al., 2013), and change how the brain responds to pain (Zeidan et al., 2011).

mPEAK trains participants to change their relationship to difficult moments by remaining non-judgmentally present and willing to learn from the challenge rather than suppressing or avoiding.

4. The Challenges of Perfectionism and the Glitches in Goal Setting

Perfectionism is a personality disposition or habitual approach to life that is characterized by striving for flawlessness while maintaining unrealistic and unsustainable performance standards. When high performers are perfectionistic, they are at risk for being excessively concerned over mistakes, experiencing intense self-doubt and overly concerned with the evaluation of others (Stoeber, 2012). In studies on athletes, it's been found that those that score high on self-compassion respond in healthier ways to emotional difficulty (Reis et al., 2015).

5. ***mPEAK trains self-compassion to help participants optimize performance by maintaining high standards of excellence while adaptively coping with the inevitable disappointments that come with a competitive sports environment.***

Mindfulness Course Formats

1. mPEAK 8-Week Course

For the purposes of research, it is advised to deliver the mPEAK course because it has been a previously validated.

mPEAK meets for 2 ½ hours, once per week for 8 consecutive weeks via Zoom. Each of the eight mPEAK themes will explore a new mental performance related topic as well as introduce a new meditation technique, an experiential exercise, group discussion, short presentations and home practice suggestions.

mPEAK Trainer Bio

Pete Kirchmer is the Program Director and co-creator of the UCSD Center For Mindfulness mPEAK program (Mindful, Performance Enhancement, Awareness & Knowledge) and mPEAK Certification process. Pete is also the developer and lead trainer for the Chopra Center Life Coaching program and a leading teacher and on the Board of Directors for the non-profit, Encinitas Mindfulness Community.

Pete holds a bachelors degree in Physiology from University of Arizona, is a trained mindfulness teacher through University of Massachusetts Oasis Inst., and is a Certified Professional Life Coach through the Coaches Training Institute.

For the last 15 years Pete has coached athletes, executives and leaders of all kinds in applying the practice of mindfulness to making healthy lifestyle changes, managing stress and improving performance in life, work and sport. Some of Pete's clients include the Canadian, Danish and Swedish Olympic Teams, Navy Special Warfare, Secret Service, Boarder Patrol Special Operations and Coast Guard as well as individuals from the Army Rangers and Air Force Para Jumpers. Pete is currently conducting a research project on mPEAK with Boarder Patrol and Immigration and Customs Enforcement at the Federal Law Enforcement Training Academies in Artesia, NM and Glynco, GA .

mPEAK Program Delivery & Cost

1. mPEAK 8-Week Course (Delivered online via Zoom)

- One groups of up to 25 participants receiving 8-week virtual mPEAK
- \$20,000
- b. Six groups of up to 25 participants
 - \$105,000 USD
 - Delivered in three 8-week rounds of two cohorts at a time over a 24 week period

EXHIBIT B

INSURANCE REQUIREMENTS

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the CONSULTANT's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate

If the CONSULTANT maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the CONSULTANT.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its elected and appointed officials, employees, and agents are to be covered as insureds on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **CONSULTANT's insurance coverage shall be primary** insurance as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be excess of the CONSULTANT's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to the City.

Waiver of Subrogation

CONSULTANT hereby grants to City a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the City by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the CONSULTANT to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

CONSULTANT shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.