

**Request for Proposals (RFP)  
for**

**OCCUPATIONAL PHYSICAL THERAPY SERVICES  
RFP HR 20-127**

**Schedule of Events**

<b>ACTIVITY (All times are local Phoenix time)</b>	<b>DATE</b>
Issue RFP	February 19, 2021
Pre-Proposal Meeting at 12:30 p.m. via Cisco WebEx	February 25, 2021
Submittal of Written Questions by 2:00 p.m.	March 2, 2021
Responses to Written Questions	March 8, 2021
Email Request to Submit Offer by 2:00 p.m.	March 11, 2021
Proposal Submittal by 2:00 p.m.	March 15, 2021
Short Listing and Offeror Interviews, if applicable	April 7, 2021
Award Recommendation to Phoenix City Council	June 16, 2021

**Procurement Officer:**

Mary Lynne Mekenney  
City of Phoenix Human Resources Department  
251 W. Washington Street, 7<sup>th</sup> Floor  
Phoenix, Arizona 85003  
Telephone: (602) 495-5325 (7-1-1 Friendly)  
Mary.lynne.mekenney@phoenix.gov  
Date posted on website (issue Date): February 19, 2021

This RFP does not commit the City to award any agreement.  
All dates subject to change.



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### RFP PROCESS - INSTRUCTIONS

#### 1. DESCRIPTION – STATEMENT OF NEED:

- 1.1. The City of Phoenix invites sealed offers for Occupational Physical Therapy Services for a five-year period commencing on or about July 14, 2021 or the “Effective Date,” which is upon award by City Council and conditioned upon signature and recording by the City Clerk as required by the Phoenix City Code, whichever is later.
- 1.2. This Solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.

#### 2. MINIMUM QUALIFICATIONS:

- 2.1. Each Offeror must demonstrate in its proposal that it meets the minimum qualifications, or its proposal will be disqualified as non-responsive.
- 2.2. The Offeror must have a minimum of five (5) years’ experience in administering Occupational Physical Therapy Services with a minimum of thirty-five (35) locations throughout the Phoenix metropolitan area and all within Maricopa County.
- 2.3. Offerors must submit a letter from a bonding or insurance company stating that the Offeror can qualify for and procure the performance and/or payment surety required in this Solicitation in Paragraph 31, Statement of Bonding Ability.
- 2.4. The Offeror must be lawfully authorized to conduct business in Arizona and must have no impediments to conducting business in Arizona.
- 2.5. The terms outlined throughout this RFP process (within your response and any enhancements thereafter) must remain in place through negotiations and be part of the final contract unless specifically waived by the City in writing.
- 2.6. Proposals will be considered non-responsive, at the sole discretion of the City, if these requirements are not met.

#### 3. AGREEMENT TERM AND CONTRACTUAL RELATIONSHIP:

- 3.1. Offerors are responsible for reading the agreement and submitting any questions about it in accordance with the process listed in this agreement. By submitting a proposal, each Offeror agrees it will be bound by the terms of the Agreement attached hereto. The City anticipates a five-year term. Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence of any of the following:
  - reaching the end of the term and any extensions;
  - completing the services set forth in the Scope of Work (the “Services”);
  - payment of the maximum authorized compensation; or
  - termination pursuant to the provisions of the Agreement.



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#### 4. PRE-PROPOSAL MEETING:

Offerors may attend the pre-proposal meeting via Cisco Webex at the date and time listed on page one. Please register for this meeting by emailing the procurement officer listed on the front page.

Meeting number/access code/meeting information: 133 845 1420

Meeting password: Wr5e5YAj5Ay

Attend the meeting using one of the formats below:

- Join online using your Cisco Webex account
- Join online without a Cisco Webex account: [globalpage-prod.webex.com/join](https://globalpage-prod.webex.com/join)
- Join by phone 1-415-655-0001 US Toll. When asked for Attendee Number, press #.
- Join from a video system or application  
Dial 133 845 1420 [@cityofphoenix.webex.com](https://cityofphoenix.webex.com)  
You can also dial 173.243.2.68 and enter your meeting number.
- Join using Microsoft Lync or Microsoft Skype for Business  
Dial 133 845 1420.cityofphoenix@lync.webex.com

#### 5. SCOPE OF WORK AND SUPPLEMENTAL TERMS AND CONDITIONS:

Contractor will provide Services that will be in accordance with the Scope of Work as set forth in Section II, *Exhibit A*, which may be supplemented with additional detail from time to time during the term of the Agreement, and that are satisfactory to the City. In performing these Services, Contractor will also specifically comply with the applicable Supplemental Terms and Conditions that are set forth in Section II, *Exhibit E*.

#### 6. CITY'S VENDOR SELF-REGISTRATION AND NOTIFICATION:

Vendors must be registered in the City's eProcurement Self-Registration System at <https://www.phoenix.gov/financesite/Pages/EProc-help.aspx> in order to respond to Solicitations and access procurement information. The City may, at its sole discretion, reject any offer from an Offeror who has not registered in the City's eProcurement system.

#### 7. PREPARATION OF OFFER:

7.1. All forms provided must be completed and submitted with your offer. The signed and completed Solicitation Disclosure form must be included or your offer may be deemed non-responsive.

7.2. It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of your offer must be initialed in original ink by the authorized person signing the offer. No offer will be altered, amended or withdrawn after the specified offer due date and time. The City is not



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- responsible for Offeror's errors or omissions.
- 7.3.** All time periods stated as a number of days will be calendar days.
- 7.4.** It is the responsibility of all Offerors to examine the entire Solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:
- Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
  - Study and carefully correlate Offeror's knowledge and observations with the Solicitation and other related data.
  - Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies which Offeror has discovered in or between the Solicitation and such other related documents.
- 7.5.** The City does not reimburse the cost of developing, presenting or providing any response to this Solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this Solicitation. All materials and documents submitted in response to this Solicitation become the property of the City and will not be returned.
- 8. EXCEPTIONS:**
- 8.1.** If an Offeror has any exceptions to any terms, conditions or material requirements of this Solicitation, including without limitation to the Professional Services Agreement and the Scope of Work, the Offeror must include a list of all exceptions to the requirements of the Solicitation and attachment documents, if any, on a separate page labeled "Exceptions Statement." Offeror must identify the reason for the requested change, provide alternate language and provide an explanation. If Offeror's Submittal does not include a separate Exceptions Statement identifying all specific exceptions, the exceptions will be deemed waived by the Offeror.
- 8.2.** It is the intent of the City to award a contract on a fair, competitive basis. For this reason, the City may view any "Exception" in response to any material conditions or requirement of the Solicitation as an attempt by the Offeror to vary the terms of the Solicitation which, in fact, may result in giving the Offeror an unfair advantage. For this reason, the City will, at its option, not allow exceptions to any material requirement if, in the opinion of the City, the exceptions alter the overall intent of the Solicitation, unless the exception would be of material benefit to the City. Additionally, the City may, at its option, deem any submittal non-responsive based on exceptions by the Offeror.





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### 9. INQUIRIES:

- 9.1. All questions that arise relating to this Solicitation should be directed to the procurement officer on the Solicitation cover page.
- 9.2. To be considered, written inquiries must be received at the address on the cover page by the submittal time. Written inquiries may be emailed to the address on the cover page. Inquiries received will then be answered in an addendum.
- 9.3. No informal contact initiated by Offerors on the proposed service will be allowed with members of City's staff from date of distribution of this Solicitation until after the closing date and time for the submission of offers. All questions concerning or issues related to this Solicitation must be presented in writing.

### 10. ADDENDA:

The City of Phoenix will not be responsible for any oral instructions made by any employees or officers of the City of Phoenix in regard to the offering instructions, plans, drawings, specifications, or contract documents. Any changes to the plans, drawings and specifications will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addendum by signing and returning the addenda document with the offer submittal.

### 11. LICENSES:

If required by law for the operation of the business or work related to this Offer, Offeror must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

### 12. CERTIFICATION:

By signature in the offer section of the Affidavit page, Offeror certifies:

- The submission of the Offer did not involve collusion or other anti-competitive practices.
- The Offeror must not discriminate against any employee, or applicant for employment in violation of Federal or State Law. The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.

### 13. SUBMISSION OF OFFER:

13.1. The City of Phoenix will accept submittals electronically ONLY for this RFP process. No hardcopies will be accepted. To submit proposals electronically, Offerors must send an email to the Procurement Officer by the date stated on the Schedule of Events indicating the Offeror's intent to submit a proposal. The Procurement Officer will send an invitation to the Offeror which will include submittal instructions. Offers must be able to be downloaded by the



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Department on or prior to the exact time and date indicated in the Schedule of Events on the cover page. Late offers will not be considered. The prevailing clock will be the Department clock.

**13.2. Please submit only a cover letter/executive summary, responses to Section III – Evaluation Requirements, Section IV – Submittals, the required supporting documentation, and Addenda. Do not submit a copy of the entire Solicitation document.** This Offer will remain in effect for a period of 180 calendar days from the bid opening date and is irrevocable unless it is in the City’s best interest to do so.

### **14. WITHDRAWAL OF OFFER:**

At any time prior to the Solicitation due date and time, an Offeror (or designated representative) may withdraw the Offer by submitting a request in writing and signed by a duly authorized representative. Facsimiles, telegraphic or mailgram withdrawals will not be considered. Withdrawals may not be made after the proposal due date.

### **15. OFFER RESULTS:**

Offers will be opened on the offer due date and time at which time the name of each Offeror and the prices may be read. Offers and other information received in response to the Solicitation will be shown only to authorized City personnel having a legitimate interest in them or persons assisting the City in the evaluation. Offers are not available for public inspection until after the City has posted the award recommendation on the City’s website.

### **16. PRE-AWARD QUALIFICATIONS:**

**16.1.** Offeror must have been in operation a minimum of five (5) years. The Offeror’s normal business activity during the past five years must have been providing complete Occupational Physical Therapy Services listed in this Solicitation with a minimum of thirty-five (35) locations throughout the Phoenix metropolitan area and all within Maricopa County. (This information must be provided in the Section IV, Submittal, Years in Business and Customer Reference Listing of this Solicitation.) In addition, the Offeror must possess the ability to perform the Scope of Work set forth in Exhibit A of Section II.

**16.2.** Upon notification of an award, the Offeror will have seven (7) business days to submit a complete certificate of insurance in the minimum amounts and the coverages required in the Insurance Requirements of this Solicitation. Insurance requirements are non-negotiable.

### **17. AWARD OF CONTRACT:**

Unless otherwise indicated, award(s) will be made to the most responsive, responsible Offeror(s) who are regularly established in the Services contained in this Solicitation and who have demonstrated the ability to perform the required Services in an acceptable manner. Factors that will be considered by the City include:



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- Technical capability of the Offeror to accomplish the Scope of Work required in the Solicitation. This includes performance history on past and current government or industrial contracts; and,
- Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,
- Safety record; and,
- Vendor history of performance and termination for convenience or cause.

Notwithstanding any other provision of this Solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a Solicitation.

### **18. CITY’S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST:**

The City reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the Offer submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any Offeror submitting an offer herein waives any right to object now or at any future time, before anybody or agency, including but not limited to, the City Council of the City of Phoenix or any court.

### **19. SOLICITATION TRANSPARENCY POLICY:**

**19.1.** Commencing on the date and time a Solicitation is published, potential or actual offerors or respondents (including their representatives) shall only discuss matters associated with the Solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the Solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under Arizona Statutes, until Agreement(s) are awarded to all offers or responses are rejected and the Solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or similar Solicitation. As long as the Solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the Solicitation with the City staff who is not involved in the selection process.

**19.2.** Offerors may discuss their proposal or the Solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

**19.3.** With respect to the selection of the successful Offerors, the City Manager



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and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all Solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.

- 19.4.** This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. **OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.** After official Notice is received by the City for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.
- 19.5.** “To discuss” means any contact by the Offeror, regardless of whether the City responds to the contact. Offerors that violate this policy shall be disqualified until Agreement(s) are awarded, or all offers or responses are rejected and the Solicitation is cancelled without any announcement by the Procurement Officer of the City’s intent to reissue the same or a similar Solicitation. The City interprets the policy as continuing through a cancellation of a Solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the Solicitation.

### **20. PROTEST PROCESS:**

- 20.1.** Offeror may protest the contents of a Solicitation no later than seven days before the Solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the Solicitation. Protests filed regarding the Solicitation may be addressed by an amendment to the Solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City’s best interests to set new deadlines, amend the Solicitation, cancel or re-bid.
- 20.2.** Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all Solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.
- 20.3.** Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness within seven days of the date the Offeror was notified of the adverse determination.
- 20.4.** Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations to award the contract(s) to an Offeror on the City’s website. Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City’s full and final discretion.
- 20.5.** All protests will be in writing, filed with the Procurement Officer identified in the Solicitation, and include the following:



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- Identification of the Solicitation number;
- The name, address and telephone number of the protester
- A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
- The form of relief requested; and
- The signature of the protester or its authorized representative.

**20.6.** The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City's Procurement Code (Phoenix City Code, Ch. 43) and administrative regulations, and any protests or appeals not submitted within the time requirements will not be considered.

### **21. PUBLIC RECORD:**

All Offers submitted in response to this invitation will become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If an Offeror believes that a specific section of its Offer response is confidential, the Offeror will isolate the pages marked confidential in a specific and clearly labeled section of its Offer response. An Offeror may request specific information contained within its Offer be treated by the Procurement Officer as confidential provided the Offeror clearly labels the information "confidential." To the extent necessary for the evaluation process, information marked as "confidential" will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Offerors as "confidential" available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify an Offeror in writing of any request to view any portion of its Offer marked "confidential." The Offeror will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Offeror does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

### **22. LATE OFFERS:**

Late Offers must be rejected, except for good cause. If a late Offer is submitted, the Department will document the date and time of the submittal of the late Offer, keep the Offer and notify the Offeror that its Offer was disqualified for being a late Offer.



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### **23. RIGHT TO DISQUALIFY:**

The City reserves the right to disqualify any Offeror who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the Offer submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a Solicitation response, the Offeror waives any right to object now or at any future time, before any agency or body, including but not limited to the City Council of the City or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Offeror.

### **24. CONTRACT AWARD:**

The City reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the City.

### **25. EVALUATION OF COMPETITIVE SEALED OFFERS:**

The City will use its discretion in applying the following processes to this Solicitation. Any ties in scoring will be resolved with a best and final price request and the lowest price will prevail.

### **26. DETERMINING RESPONSIVENESS AND RESPONSIBILITY:**

**26.1.** Offers will be reviewed for documentation of minimum qualifications, completeness, and compliance with the Solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

**26.2.** Responsiveness: Nonresponsive Offers will not be considered in the evaluation process. The Solicitation states criteria that determine responsiveness, and the Solicitation includes terms and conditions that if included or excluded from Offers (as the case may be) will render an Offer nonresponsive.

**26.3.** Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and an Offer that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as nonresponsive. Alternatively, the City in its sole discretion may instruct in writing that any Offeror remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so in writing, the City may determine the Offer to be nonresponsive.

**26.4.** Responsibility: To obtain true economy, the City must conduct Solicitations to minimize the possibility of a subsequent default by the contractor, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible contractor. Responsibility includes the Offeror's integrity, skill, capacity,



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experience, and facilities for conducting the work to be performed.

- 26.5.** The Procurement Officer, in consultation with legal counsel, will review each Offer to determine if the Offeror is responsible. The City's determination as to whether an Offeror is responsible will be based on the information furnished by the Offeror, interviews (if any), any information at the City's request, information in any best and final offer, and information received from Offeror's references, including information about Offeror's past history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the Contract resulting from the Solicitation will not be made until any necessary investigation, which each Offeror agrees to permit by submitting its Offer, is made by the City as it deems necessary. A review of responsibility may occur up to contract award.
- 26.6.** The Offeror's unreasonable failure to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror.

### **27. DETAILED EVALUATION OF OFFERS AND DETERMINATION OF COMPETITIVE RANGE:**

During deliberations, the Evaluation Panel will reach a consensus score for each evaluation criterion except price. The Procurement Officer will score the price, which will be added to the overall consensus score. The overall consensus scores will determine the Offerors' rankings and which Offers are within the Competitive Range, when appropriate.

### **28. OFFERS NOT WITHIN THE COMPETITIVE RANGE:**

The City may notify Offerors of Offers that the City determined are not in the Competitive Range.

### **29. DISCUSSIONS WITH OFFERORS IN THE COMPETITIVE RANGE:**

The City will notify each Offeror whose Offer is in the Competitive Range or made the 'short list' and provide in writing any questions or requests for clarification to the Offeror. Each Offeror so notified may be interviewed by the City and asked to discuss answers to written or oral questions or provide clarifications to any facet of its Offer. The Offerors in the competitive range may be required to provide a demonstration of their product.

- 29.1.** Demonstrations - Offerors in the competitive range may be invited to construct a hands-on sample or presentation of their solution at the City of Phoenix. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. The City may also require a hands-on lab demonstration designed specifically for the evaluation panel. The results of the surveys will be tabulated and delivered to the evaluation team for the final review and solution selection session(s).



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**29.2.** If an Offer in the Competitive Range contains conditions, exceptions, reservations or understandings to or about any Contract or Solicitation requirement, the City may discuss or negotiate the conditions, exceptions, reservations or understandings during these meetings. But the City in its sole discretion may reject any and all conditions, exceptions, reservations and understandings, and the City may instruct any Offeror to remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so, the City may determine the Offer is nonresponsive, and the City may revoke its determination that the Offer is in the Competitive Range.

**29.3.** To the fullest extent permitted by law, the City will not provide any information, financial or otherwise, to any Offeror about other Offers received in response to this Solicitation. During discussions with Offerors in the Competitive Range, the City will not give Offerors specific prices or specific financial requirements that Offerors must meet to qualify for further consideration. The City may state that proposed prices are too high with respect to the marketplace or otherwise unacceptable. Offerors will not be told of their relative rankings before Contract award.

### **30. BEST AND FINAL OFFERS (BAFO):**

**30.1.** A BAFO is an option available for negotiations. Each Offeror in the Competitive Range, which is determined in the City's sole discretion, may be afforded the opportunity to amend its Offer and make one BAFO.

**30.2.** If an Offeror's BAFO modifies its initial Offer, the modifications must be identified in the BAFO. The City will evaluate BAFOs based on the same requirements and criteria applicable to initial Offers. The City will adjust appropriately the initial scores for criteria that have been affected by Offer modifications made by a BAFO. Based on the criteria defined in the Solicitation as weighted, the City will then perform final scoring and prepare final rankings.


**30.3.** The Evaluation Panel will recommend the Offer that is the best value and most advantageous to the City based on the evaluation criteria.

**30.4.** The City reserves the right to make an award to an Offeror whose Offer is the highest rated, best value, and most advantageous to the City based on the evaluation criteria, without conducting written or oral discussions with any Offeror, without negotiations, and without soliciting BAFOs.

### **31. STATEMENT OF BONDING ABILITY:**

Offerors must submit a letter from a bonding or insurance company stating that the Offeror can qualify for and procure the performance and/or payment surety required in this Solicitation. Submittals received without the required statement of ability to secure a performance or payment surety may be considered as non-responsive. Offerors anticipating the submittal of a cash surety in lieu of a bond should submit a statement notifying the City.



	<b>SECTION I – INSTRUCTIONS</b>	<b>CITY OF PHOENIX</b>
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**32. PERFORMANCE BOND:**

A performance surety in the amount of 10% of the total contract amount shall be provided by the Contractor immediately after notice of award. The City of Phoenix will not issue a written purchase order or give notice to proceed in any form until the surety is received by the Procurement Officer. The performance surety must be in the form of a bond, cashier's check, certified check or money order. Personal or company checks are not acceptable unless certified. If surety is in the form of a bond, the company issuing the surety must be authorized by the Insurance Department of Arizona to transact business in the State of Arizona or be named on the approved listing of non-admitted companies. A Certificate of Deposit (CD) issued by a local Phoenix bank may also be used as a form of surety provided that the CD is issued jointly in the name of the City of Phoenix and the Contractor, and that the Contractor endorses the CD over to the City at the beginning of the contract period. Interest earnings from the CD can be retained by the Contractor.



**SECTION II – PROFESSIONAL SERVICES  
CONSULTING AGREEMENT**

**CITY OF PHOENIX**

**SECTION II – PROFESSIONAL SERVICES CONSULTING AGREEMENT**

**OCCUPATIONAL PHYSICAL THERAPY SERVICES  
PROFESSIONAL SERVICES CONSULTING AGREEMENT**

**AGREEMENT NO. \_\_\_\_\_**

Mary Lynne Mekenney, Procurement Officer  
City of Phoenix Human Resources Department  
251 W Washington Street, 7<sup>th</sup> Floor  
Phoenix, Arizona 85003  
Telephone: (602) 495-5325  
Mary.lynne.mekenney@phoenix.gov



**SECTION II – PROFESSIONAL SERVICES  
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**PROFESSIONAL SERVICES CONSULTING AGREEMENT**

**BETWEEN**

**THE CITY OF PHOENIX AND**

**LEGAL NAME OF CONTRACTOR**

This **AGREEMENT** is made and entered into this Day of Month, 2020 (“the Effective Date”) or as of the City Clerk date, whichever is later, by and between the City of Phoenix, Arizona, a municipal corporation of the State of Arizona (hereinafter referred to as “City”) and Legal name of contractor (hereinafter referred to as “Contractor”).

**RECITALS**

1. The City Manager of the City of Phoenix, Arizona, is authorized by the provisions of the City Charter to execute agreements for professional services.
2. The City desires to obtain the Services that are specifically set forth in this Agreement.
3. The City procured these professional Services in accordance with the Phoenix City Code and Administrative Regulation 3.10.
4. Contractor possesses the skills and expertise necessary to provide such services as desired by the City.
5. This Agreement is authorized by the City Council (Ordinance Number and Agenda Number if applicable) Date.

**NOW, THEREFORE**, it is agreed by and between the parties as follows:

**1. TERM OF AGREEMENT:**

- 1.1. This Agreement begins on the Effective Date in the above introductory paragraph, and upon approval by the City, for a period of five (5) years.
- 1.2. This Agreement will terminate upon the earliest occurrence of any of the following:
  - 1.2.1 reaching the end of the term exercised as set forth in 1.1;
  - 1.2.2 completing the services set forth in the Scope of Work attached as *EXHIBIT A – SCOPE OF WORK* (the “Services”);
  - 1.2.3 payment of the maximum compensation under Paragraph 2 of this Agreement; or



## SECTION II – PROFESSIONAL SERVICES CONSULTING AGREEMENT

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1.2.4 termination pursuant to the provisions of this Agreement.

### 2. PAYMENT

- 2.1. The total amount to be remitted by the City to Contractor for all Services satisfactorily performed under this Agreement will not exceed \$Enter amount per year including reasonable and necessary travel expenses, if approved in advance by the City and included in the Fee Schedule EXHIBIT B. Under this Agreement, the City will pay for Services at the rate(s) specified in the Fee Schedule with no additional charges for overhead, benefits, local travel or administrative support. Payments will be made in proportion to the Services performed and no more than 90% of the total contract price will be paid before the work is totally completed and accepted by the City.
- 2.2. Contractor will submit monthly invoices on or before the Enter calendar day of every month. Each invoice will be accompanied with itemized receipts. The invoice will be submitted free of mathematical errors and/or missing supporting documentation. All appropriate documentation will be provided that supports the charges reflected in the monthly invoice. Upon finding of an error and/or missing documentation, the City will return the invoice to the Contractor. Contractor will promptly resubmit the revised invoice to the City. Each revised invoice will document the date that the revised invoice is submitted to the City. Requests for payment must be submitted with documentation of dates and hours worked, hourly rate charged, and a detailed description of the Services performed. Failure of City to identify an error does not waive any of the City's rights.
- 2.3. Invoices will be submitted to: City of Phoenix Human Resources Department, Deputy HR Director-Safety, 251 W Washington St 7th Floor, Phoenix, AZ 85003.

### 3. SCOPE OF WORK AND SUPPLEMENTAL TERMS AND CONDITIONS:

Contractor will provide Services that will be in accordance with the Scope of Work as set forth in *EXHIBIT A – SCOPE OF WORK*, which may be supplemented with additional detail from time to time during the term of the Agreement, and that are satisfactory to the City. In performing these Services, Contractor will also specifically comply with the applicable Supplemental Terms and Conditions that are set forth in *EXHIBIT E*. Contractor will provide monthly and quarterly reports to the respective Trustees according to a mutually agreed-upon schedule.

### 4. INDEMNIFICATION & INSURANCE REQUIREMENTS- see EXHIBIT C

### 5. LAWFUL PRESENCE REQUIREMENT:

Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the



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identification provided is genuine. This requirement will be imposed at the time of contract award. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies.

### **6. INDEPENDENT CONTRACTOR STATUS; EMPLOYMENT DISCLAIMER.**

**6.1** The parties agree that Contractor is providing the Services under this Agreement on a part-time and/or temporary basis and that the relationship created by this Agreement is that of independent contractors. Neither Contractor nor any of Contractor's agents, employees or helpers will be deemed to be the employee, agent, or servant of the City. The City is only interested in the results obtained under this Agreement; the manner, means and mode of completing the same are under the sole control of Contractor.

**6.2** This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in this Agreement. The parties agree that no individual performing under this Agreement on behalf of Contractor will be considered a City employee, and that no rights of City Civil Service, City retirement or City personnel rules will accrue to such individual. Contractor will have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals and will save and hold harmless the City with respect thereto.

### **7. LEGAL WORKER REQUIREMENTS:**

The City is prohibited by Arizona Revised Statutes § 41-4401 from awarding an agreement to any Contractor who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes § 23-214(A). Therefore, Contractor agrees that:

- Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with Arizona Revised Statutes § 23-214, subsection A.
- A breach of warranty herein will be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.
- The City retains the legal right to inspect the papers of the Contractor or subcontractor employee(s) who work(s) on this Agreement to ensure that Contractor or subcontractor is complying with the warranty herein.

### **8. CONFIDENTIALITY AND DATA SECURITY (Involving PII or PCI or financial information)**

**8.1.** All data, regardless of form, including originals, images and reproductions,



## SECTION II – PROFESSIONAL SERVICES CONSULTING AGREEMENT

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- prepared by, obtained by, or transmitted to Contractor in connection with this Agreement is confidential, proprietary information owned by the City. Except as specifically provided in this Agreement, the Contractor shall not disclose data generated in the performance of the service to any third person without the prior written consent of the City Manager or his/her designee.
- 8.2.** Personal identifying information, financial account information, protected health information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, Contractor must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices, handheld devices, networking devices, removable storage devices, or other electronic media, as well as data in transit, such as during email or file transfer.
- 8.3.** When personal identifying information, financial account information, protected health information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. Contractor must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal. This includes implementing and monitoring compliance with policies and procedures that require the redaction, destruction, erasure, or other disposal of paper documents and electronic media containing personal identifying information, financial account information, protected health information, or restricted City information so that these types of information cannot practicably be read or reconstructed. Contractor will provide the City with its information security policies and procedures regarding the redaction, destruction, erasure, or other disposal of documents and information.
- 8.4.** In the event that data collected or obtained by the Contractor in connection with this Agreement is suspected to have been compromised, Contractor shall notify the contracting City department immediately. Contractor agrees to reimburse the City for any costs incurred by the City to investigate and respond to potential breaches of this data, including, where applicable, the cost of notifying individuals who may be impacted by the breach, attorneys' fees, and for any monetary damages or penalties the City is assessed. In case of a breach or critical breach of the City's information, it will be the City, not the Contractor, that will inform any and all individuals affected by any such breach. Only upon prior written consent of the City, or at the specific direction of the City, will the Contractor notify individuals affected by a breach or critical breach of the City's information.
- 8.5.** Contractor agrees that the City may assess or test the security of any applications, web services, or computerized systems created or provided by the Contractor that process, store, or transmit City information. If the City





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finds vulnerabilities that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS) in these applications, web services, or computerized systems, the Contractor agrees to remediate the vulnerability at no cost to the City and within an agreed-upon timeframe not to exceed 90 days. To clarify, the Contractor must remediate found vulnerabilities in computerized systems they provide; Contractor is not liable for remediating any vulnerability found in the City's network or computing infrastructure used to support the applications, web services, or systems created or provided by the Contractor.

- 8.6.** Contractor agrees to abide by all current applicable legal and industry data security and privacy requirements. These include, but are not limited to, Arizona Revised Statutes §44-7501 — Notification of breach of security system; Arizona Revised Statutes §44-7601 — Discarding and disposing of records containing personal identifying information; Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules; Health Information Technology for Economic and Clinical Health (HITECH) Act, and Payment Card Industry Data Security Standards.
- 8.7.** Contractor agrees to demonstrate that they have adequate controls and safeguards when they host or process personal identifying information, financial account information, protected health information, or restricted City information. This may be accomplished through a third-party audit utilizing a widely recognized auditing standard, such as Statement on Standards for Attestation Engagements (SSAE) No. 16, or through earning industry certification, such as ISO/IEC 27001.
- 8.8.** By signing and entering this Agreement the Contractor specifically acknowledges that it is responsible for the security of cardholder data that Contractor possesses or otherwise stores, processes or transmits on behalf of the City. Additionally, you must provide to the City a copy of your written Notice to customers that you are responsible for the security of cardholder data that you obtain and otherwise store, process or transmit.
- 8.9.** Contractor agrees to comply with all City information security and technology policies, standards, and procedures when accessing City networks and computerized systems whether onsite or remotely.
- 8.10.** Contractor agrees that the requirements of this Section shall be incorporated into all subcontractor agreements entered into by the Contractor. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Agreement without notice.
- 8.11.** The obligations of Contractor under this Section shall survive the termination of this Agreement.



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### 9. CONTACTS WITH THIRD PARTIES:

- 9.1** Contractor or its subcontractors will not contact third parties to provide any information in connection to the Services provided under this Agreement without the prior written consent of the City. Should Contractor or its subcontractors be contacted by any person requesting information or requiring testimony relative to the Services provided under this Agreement or any other prior or existing Agreement with the City, Contractor or its subcontractors will promptly inform the City giving the particulars of the information sought and will not disclose such information or give such testimony without the written consent of the City or court order. The obligations of Contractor and its subcontractors under this Section will survive the termination of this Agreement.
- 9.2** Contractor agrees that the requirements of this Section will be incorporated into all subcontractor agreements entered into by the Contractor. It is further agreed that a violation of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

### 10. SBE/ DBE UTILIZATION:

The City extends to each individual, firm, vendor, supplier, contractor and subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of small and/or disadvantaged businesses to reflect both the industry and community ethnic composition. The use of such businesses is encouraged whenever practical.

### 11. AUDIT/RECORDS:

- 11.1.** The City reserves the right, at reasonable times, to audit Contractor's books and records relative to the performance of service under this Agreement. All records pertaining to this Agreement will be kept on a generally accepted accounting basis for a period of six years following termination of the Agreement.
- 11.2.** If, following an audit of this Agreement, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Contractor will be liable for reimbursement of the reasonable, actual cost of the audit.

### 12. COMPLIANCE WITH LAWS:

Contractor will comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Agreement. If a subsequently enacted law imposes substantial additional costs on Contractor, a request for an amendment may be submitted pursuant to this Agreement



## SECTION II – PROFESSIONAL SERVICES CONSULTING AGREEMENT

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### 13. AMENDMENTS:

Whenever an addition, deletion or alteration to the Services described in *EXHIBIT A – SCOPE OF WORK* substantially changes the Scope of Work thereby materially increasing or decreasing the cost of performance, a supplemental agreement must first be approved in writing by the City and Contractor before such addition, deletion or alteration will be performed. Changes to the Services may be made and the compensation to be paid to Contractor may be adjusted by mutual agreement, but in no event may the compensation exceed the amount authorized without further written authorization. It is specifically understood and agreed that no claim for extra work done or materials furnished by Contractor will be allowed except as provided herein, nor will Contractor do any work or furnish any materials not covered by this Agreement unless first authorized in writing. Any work or materials furnished by Contractor without prior written authorization will be at Contractor's risk, cost and expense, and Contractor agrees to submit no claim for compensation or reimbursement for additional work done or materials furnished without prior written authorization.

### 14. NO ORAL ALTERATIONS:

No alteration or variation of the terms of this Agreement will be binding on the parties herein unless such alteration or variation is in writing and signed by each of the parties to this Agreement. No oral understanding or agreement not incorporated in this Agreement will be binding on any of the parties herein.

### 15. NOTICES:

**15.1.** Any notice, consent or other communication ("Notice") required or permitted under this Agreement will be in writing and either: (1) delivered in person; (2) sent via e-mail, return receipt requested; (3) sent via facsimile transmission; (4) deposited with any commercial air courier or express delivery service; or (5) deposited in the United States mail, postage prepaid.

If to Contractor:

Legal name and address of contractor.

If to City:

Mary Lynne Mekenney, Procurement Officer  
City of Phoenix Human Resources Department  
251 W Washington St, 7<sup>th</sup> Floor  
Phoenix, Arizona 85003  
Telephone: (602) 495-5325  
[Mary.lynne.mekenney@phoenix.gov](mailto:Mary.lynne.mekenney@phoenix.gov)



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- 15.2.** Notice will be deemed received: (1) at the time it is personally served; (2) on the day it is sent via e-mail; (3) on the day it is sent by facsimile transmission; (4) on the second day after its deposit with any commercial air courier or express delivery service; or (5) five business days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice will be computed from the time the Notice is deemed received.
- 15.3.** Notices sent by e-mail and facsimile transmission will also be sent by regular mail to the recipient at the above address. This requirement for duplicate Notice is not intended to change the effective date of the Notice sent by e-mail or facsimile transmission.

**16. INTEGRATION:**

This Agreement constitutes and embodies the full and complete understanding and agreement of the parties hereto and supersedes all prior understandings, agreements, discussions, proposals, bids, negotiations, communications, and correspondence, whether oral or written. No representation, promise, inducement or statement of intention has been made by any party hereto which is not embodied in this Agreement, and no party will be bound by or liable for any statement of intention not so set forth.

**17. GOVERNING LAW; FORUM; VENUE:**

This Agreement is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principles) will govern their interpretation and enforcement. Any action brought to interpret or enforce any provision of this Agreement that cannot be administratively resolved, or otherwise related to or arising from this Agreement, will be commenced and maintained in the state or federal courts of the State of Arizona, Maricopa County, and each of the parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

**18. FISCAL YEAR CLAUSE:**

The City's fiscal year begins July 1st and ends June 30th each calendar year. The City may make payment for services rendered or costs encumbered only during a fiscal year and for a period of 60 days immediately following the close of the fiscal year, under the provisions of Arizona Revised Statutes §42-17108. Therefore, Contractor must submit billings for services performed or costs incurred prior to the close of a fiscal year within ample time to allow payment within this 60-day period.

**19. TERMINATION OR SUSPENSION OF SERVICES:**

**19.1 City's Right to Terminate:**

The City reserves the right to terminate this Agreement without cause, or to



## SECTION II – PROFESSIONAL SERVICES CONSULTING AGREEMENT

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abandon the Services, or any part of the Services not then completed, by notifying Contractor in writing. Immediately upon receiving a written notice to terminate or suspend Services, Contractor will:

- Discontinue advancing the work in progress, or such part that is described in the notice.
- Deliver to the City all collected raw data, draft reports, preliminary reports, working papers, estimates and forecasts entirely or partially completed, together with all unused materials supplied by the City.
- Appraise the work it has completed and submit its appraisal to the City for evaluation.
- Be paid in full the pro rata value for Services performed to the date of its receipt of the Notice of Termination, including reimbursement for all reasonable costs and expenses incurred by Contractor in terminating the work, including demobilization of field service. No payment will be made for loss of **anticipated profits or unperformed services**.

### 20. FINAL PAYMENT:

**20.1 PAYMENT:** The City will make final payment for all Services performed and accepted within 60 days after Contractor has delivered to the City any final progress reports, documentation, materials and evidence of costs and disbursement as required under this Agreement. Any use by the City of preliminary reports, raw data or other incomplete material returned by Contractor will be at the City's sole risk for such use.

**20.2 TEMPORARY SUSPENSION:** The City may, by written notice, direct Contractor to suspend performance on all or any part of the Services for such period of time as may be determined by the City to be necessary or desirable for its convenience. If such suspension causes additional expense to Contractor in performance, and not due to fault or negligence of Contractor, the payment will be adjusted on the basis of actual costs resulting directly from the suspension, and the period for performance of the Services will be extended by mutual agreement. Any claim by Contractor for a price adjustment must be supported by appropriate documentation asserted promptly after Contractor has been notified to suspend performance.

### 21. PROFESSIONAL COMPETENCY:

**21.1. QUALIFICATIONS:** Contractor represents that it is familiar with the nature and extent of this Agreement, the Services, and any conditions that may affect its performance under this Agreement. Contractor further represents that it is fully experienced and properly qualified, is in compliance with all applicable license requirements, and is equipped, organized, and financed to perform such Services.

**21.2. LEVEL OF CARE AND SKILL:** Services provided by Contractor will be performed in a manner consistent with that level of care and skill ordinarily



## SECTION II – PROFESSIONAL SERVICES CONSULTING AGREEMENT

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exercised by members of Contractor's profession currently practicing in the same industry under similar conditions. Acceptance or approval by the City of Contractor's work will in no way relieve Contractor of liability to the City for damages suffered or incurred arising from the failure of Contractor to adhere to the aforesaid standard of professional competence.

### 22. SPECIFIC PERFORMANCE:

Contractor agrees that in the event of a breach by Contractor of any material provision of this Agreement, the City will, upon proper action instituted by it, be entitled to a decree of specific performance thereof according to the terms of this Agreement. In the event the City will elect to treat any such breach on the part of Contractor as a discharge of the Agreement, the City may nevertheless maintain an action to recover damages arising out of such breach. This paragraph is not intended as a limitation of such other remedies as may be available to the City under law or equity.

### 23. FORCE MAJEURE:

Contractor will not be responsible or liable for, or deemed in breach hereof because of any delay in the performance of its obligations hereunder to the extent caused by circumstances beyond its control, without its fault or negligence, and that could not have been prevented by the exercise of due diligence, including but not limited to fires, natural disasters, riots, wars, unavoidable and unforeseeable site conditions, failure of the City to provide data within the City's possession or to make necessary decisions or provide necessary comments in connection with any required reports prepared by Contractor in connection with the Services and the unforeseeable inability to obtain necessary site access, authorization, permits, licenses, certifications and approvals (such causes hereafter referred to as "Force Majeure").

### 24. DOCUMENTATION:

**24.1 DISSEMINATION AND RETENTION:** There will be no dissemination or publication of any information gathered, or documents prepared in the course of the performance of the Services without the prior written consent of the City. Should the City, upon advice of counsel, deem it necessary, due to existing or anticipated litigation, to assert a legal privilege of protection and non-disclosure with regard to the subject matter of this Agreement, then, and in that event, upon written demand, Contractor will relinquish to the possession and control of the City its entire file related to this Agreement and only those portions of said file deemed by the City to be not privileged will be returned to Contractor pending the resolution of the existing or anticipated litigation.

**24.2 FORMAT AND QUALITY:** All documents prepared by Contractor will be prepared in a format and at a quality approved by the City.



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**24.3 DOCUMENT REVIEW:** Contractor will review all documents provided by the City related to the performance of the Services and will promptly notify the City of any defects or deficiencies discovered in such review.

**24.4 SUBMITTALS:** Contractor will provide timely and periodic submittals of all documents required of Contractor, including subcontracts, if any, as such become available to the City for review.

### **25. RELEASE OF INFORMATION - ADVERTISING AND PROMOTION:**

Contractor will not publish, release, disclose or announce to any member of the public, press, official body, or any other third party: (1) any information concerning this Agreement, the Services, or any part thereof; or (2) any documentation or the contents thereof, without the prior written consent of the City, except as required by law. The name of any site on which Services are performed will not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.

### **26. CONFLICTS OF INTEREST:**

**26.1** Contractor acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Phoenix City Council or any employee of the City has any financial interest in the consulting firm. For breach of violation of this warranty, the City will have the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee.

**26.2** The City reserves the right to immediately terminate the contract in the event that the City determines that Contractor has an actual or apparent conflict of interest.

**26.3** Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the City for the purpose of securing this Agreement, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Agreement, the City may, by one calendar day written notice to Contractor, terminate the right of Contractor to proceed under this Agreement, provided that the existence of the facts upon which the City made such finding will be an issue and may be litigated in an Arizona court of competent jurisdiction. In the event of such termination, the City will be entitled to the same remedies against Contractor as could be pursued in the event of default by Contractor.

**26.4** This Agreement is subject to the requirements of Arizona Revised Statutes §38-511.



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### 27. PUBLIC RECORDS:

- 27.1** Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, the Contractor acknowledges that all documents provided to the City may be subject to disclosure by laws related to open public records. Consequently, the Contractor understand that disclosure of some or all of the items subject to this Agreement may be required by law.
- 27.2** In the event City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Contractor, the City agrees to provide the Contractor with notice of that request, which shall be deemed given when deposited by the City with the USPS for regular delivery to the address of the Contractor specified in their proposal. Within ten days of City notice by the City, the Contractor will inform the City in writing of any objection by the Contractor to the disclosure of the requested information. Failure by the Contractor to object timely shall be deemed to waive any objection and any remedy against the City for disclosure.
- 27.3** In the event the Contractor objects to disclosure within the time specified, the Contractor agrees to handle all aspects related to request, including properly communicating with the requestor and timely responding with information the disclosure of which the Contractor does not object thereto. Furthermore, the Contractor agrees to indemnify and hold harmless the City from any claims, actions, lawsuits, or any other controversy or remedy, in whatever form, that arises from the failure to comply with the request for information and the laws pertaining to public records, including defending the City in any legal action and payment of any penalties or judgments. This provision shall survive the termination of this Agreement.

### 28. CLAIMS OR DEMANDS AGAINST THE CITY:

- 28.1** Contractor acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Contractor agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in Chapter 18, Section 14 of the Charter of the City of Phoenix alters, amends or modifies the supplemental and complementary requirements of the State of Arizona Notice of Claim statutes, Arizona Revised Statutes §§ 12-821 and 12-821.01, pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law will control.
- 28.2** Moreover, nothing in this Agreement will constitute a dispute resolution process, an administrative claims process, or contractual term as used in Arizona Revised Statutes § 12-821.01(C), sufficient to affect the date on





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which the cause of action accrues within Arizona Revised Statutes § 12-821.01(A) and (B).

### **29. WAIVER OF CLAIMS FOR ANTICIPATED PROFITS:**

Contractor waives any claims against the City and its officers, officials, agents and employees for loss of anticipated profits caused by any suit or proceeding, directly or indirectly, involving any part of this Agreement.

### **30. CONTINUATION DURING DISPUTES:**

**30.1** Contractor agrees as a condition of this Agreement that in the event of any dispute between the parties, provided no Notice of Termination has been given by the City, and if it is feasible under the terms of this Agreement each party will continue to perform the obligations not related to the dispute required of it during the resolution of such dispute, unless enjoined or prohibited by a court of competent jurisdiction.

**30.2** Failure or delay by either party to exercise any right, power or privilege specified in or appurtenant to this Agreement will not be deemed a waiver.

### **31. THIRD PARTY BENEFICIARY CLAUSE:**

The parties expressly agree that this Agreement is not intended by any of its provisions to create any right of the public or any member thereof as a third-party beneficiary nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

### **32. EQUAL EMPLOYMENT OPPORTUNITY AND PAY:**

**32.1.** In order to do business with the city, contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity requirements. Contractor will direct any questions in regard to these requirements to the equal opportunity department, (602) 262-6790.

**32.2.** For a contractor with 35 employees or fewer: contractor in performing under this agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The contractor further agrees that this clause will be incorporated in all subcontracts related to this agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such



## SECTION II – PROFESSIONAL SERVICES CONSULTING AGREEMENT

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labor or services in connection with this agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, contractor agreements or subleases of this agreement entered into by supplier/lessee.

- 32.3.** For a contractor with more than 35 employees: Contractor in performing under this agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee. The contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.
- 32.4. DOCUMENTATION:** Suppliers and lessees may be required to provide additional documentation to the equal opportunity department affirming that a nondiscriminatory policy is being utilized.
- 32.5. MONITORING:** The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

### **33. CONTRACT INTERPRETATION:**

#### **33.1. APPLICABLE LAW:**

This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.

#### **33.2. CONTRACT ORDER OF PRECEDENCE:** In the event of a conflict in the



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provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:

- a. Professional Services Agreement Standard Terms and Conditions
- b. Exhibit E Supplemental terms and Conditions
- c. Exhibit C and D Insurance and Indemnification Terms and Insurance Certificate
- d. Exhibit A and B Statement or Scope of Work and Fee Schedule

**33.3. SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

**33.4. PAROL EVIDENCE:** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

### 34. MISCELLANEOUS

**34.1. ORGANIZATION – EMPLOYMENT DISCLAIMER:** The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the agreement are considered to be City's employees and that no rights of City civil services, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect there.

**34.2. COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

**34.3. FACSIMILE OR ELECTRONIC SIGNATURES.** Either or all parties may execute this Agreement by facsimile or other scanned or electronic signature, and any such facsimile or other scanned or electronic signature shall be deemed an original signature.



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**34.4. NON-WAIVER OF LIABILITY:** The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.

**35. NO ISRAEL BOYCOTT:**

By entering into this Agreement, the Contractor certifies that they are not currently engaged in, and agrees for the duration of the Agreement to not engage in, a boycott of goods or services from Israel.

**36. PERFORMANCE BOND:**

A performance surety in the amount of 10% of the total contract amount shall be provided by the Contractor immediately after notice of award. The City of Phoenix will not issue a written purchase order or give notice to proceed in any form until the surety is received by the Procurement Officer. The performance surety must be in the form of a bond, cashier's check, certified check or money order. Personal or company checks are not acceptable unless certified. If surety is in the form of a bond, the company issuing the surety must be authorized by the Insurance Department of Arizona to transact business in the State of Arizona or be named on the approved listing of non-admitted companies. A Certificate of Deposit (CD) issued by a local Phoenix bank may also be used as a form of surety provided that the CD is issued jointly in the name of the City of Phoenix and the Contractor, and that the Contractor endorses the CD over to the City at the beginning of the contract period. Interest earnings from the CD can be retained by the Contractor.



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**37. APPROVALS**

**IN WITNESS WHEREOF**, the parties herein have caused this Agreement to be executed, effective as of the date in the first paragraph (the “Effective Date”);

CITY OF PHOENIX, a municipal corporation

ED ZUERCHER, City Manager

By: \_\_\_\_\_  
Name: Lori Bays  
Title: Human Resources Director

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM,  
CRIS MEYER, City Attorney

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

If your company is a corporation:

Name of company Corporation

a State corporation



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By: \_\_\_\_\_

Name

Title, (President and CEO, etc.)

If your company is a Limited Liability with Individual Members:

Name of company, LLC,

a State limited liability company

By: \_\_\_\_\_

Name

Member

By: \_\_\_\_\_

Name

Member

If your company is a Limited Liability with Individual Manager:

Name of company, LLC,

a State limited liability company

By: \_\_\_\_\_

Name



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Manager

If your company is a Limited Liability with the Member or Manager is a Corporation:

Name of company, LLC,

a State limited liability company

Its Manager (Member)

By: \_\_\_\_\_

Name

President

If your company is a Limited Liability with the Member or Manager is a General Partnership:

Name of company, LLC,

a State limited liability company

Its Manager (Member)

By: \_\_\_\_\_

Name

an Arizona general partnership,

Its Manager or Managing General Partner



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**EXHIBIT A – SCOPE OF WORK**

**1. INTRODUCTION**

The occupational physical therapy network provider will provide services to City of Phoenix employees in conjunction with the occupational medical services contractor. The City employs a workforce of over 14,300 employees (full-time, full-time temporary, and part-time).

In the last three years, the City has spent the following on physical therapy services for workers' compensation:

2018	\$2,768,203.88
2019	\$2,892,722.97
2020	\$3,137,870.52

**2. DELIVERABLES**

- 2.1.** Contractor shall provide occupational physical therapy services at a minimum of thirty-five (35) locations throughout Phoenix metropolitan area and all within Maricopa County with extended service hours to include Monday through Saturday and evening hours.
- 2.2.** Contractor shall ensure all therapists providing physical therapy services for the City are licensed to perform such services in Arizona. Physical therapy assistants must be certified by the State of Arizona.
- 2.3.** Contractor shall provide all labor, tools, equipment, and supplies necessary for performing and documenting these services. The adequacy of all reporting and record keeping shall be determined by the City's Human Resources Department Safety Division staff.
- 2.4.** Contractor shall schedule initial physical therapy evaluation for all employee referrals from the City's Occupational Medical Services Contractor within one (1) business day of receiving the referral.

The City acknowledges that situations beyond Contractor's control may arise from time to time which would cause an initial physical therapy evaluation to be delayed and will evaluate these situations on a case-by-case basis. If a pattern of unacceptable initial physical therapy evaluation delays occur, the City will require Contractor to provide a written plan of action for the immediate resolution of any delays within the Contractor's control.





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- 2.5.** Contractor shall provide each City employee seeking services with an appointment document reflecting the time of arrival and departure from the provider's facility. Contractor shall maintain a copy of this document in the employee's physical therapy record.
- 2.6.** The Contractor shall monitor wait times at its facilities and notify the City of any wait times extending past scheduled appointments. In the event City employees experience excessive wait times beyond ten (10) minutes of the scheduled appointment time at a facility, the City reserves the right to require Contractor to remove the facility from the City's program.

Future referrals to any facility in the Contractor's network identified as having excessive wait times as defined above will be left to the discretion of the City on a case-by-case basis.

- 2.7.** Contractor shall submit for independent utilization review all requests for physical therapy in excess of twelve (12) visits per non-surgical industrial case, and eighteen (18) visits per surgical industrial case to determine the medical necessity of continued physical therapy. Contractor shall notify the appropriate claims adjuster at the City's third party administrator at the time the case is being referred.
- 2.8.** Contractor shall provide for immediate electronic delivery of employee status, progress reporting and SOAP notes to the referring physician no later than 24 hours after patient appointment. The Contractor will be responsible for maintaining a log of the successful deliveries of electronic SOAP notes from the Contractor location to the referring physician. This log will include: patient name; date of injury; date of service; contractor location; name of therapy provider; name of treating physician; type of electronic transmission (e.g., email, fax); delivery address or number (e.g. email, fax); and date of successful electronic transmission. It is the Contractor's responsibility to maintain documentation that supports and confirms proof of the date of successful electronic transmission to the treating physician by email or fax.

The City reserves the right to request the above log be provided at any time to evaluate contract compliance with communications to treating physicians.

- 2.9.** The City ensures payment for up to the first three (3) physical therapy visits of any industrial claim before the claim is denied. If Contractor is contacted by the third party administrator or the City's workers compensation staff



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within the first three (3) visits to discontinue services, the Contractor will comply. Contractor shall obtain further approval for continuation of care from the City's third party administrator after the first three (3) visits on all other claims. If at any time the third party administrator is unable to confirm acceptance of the industrial claim, Contractor shall obtain approval for continuation of care directly from the City's workers compensation staff prior to providing services beyond the initial three (3) physical therapy visits.

- 2.10.** Contractor shall designate a contact person to work in a centralized administrative location, available to the City of Phoenix, to handle all of the administrative issues related to this contract. All procedures implemented as a part of this contract and any changes to those procedures will be coordinated by this contact person. The designated contact person must be available by phone or in person Monday through Friday from 8:00 am to 5:00 pm Arizona time, and return all calls to City Safety Division staff as soon as possible, but within twenty-four (24) hours. The designated contact person must have an understanding of industrial medicine and the medical requirements of federal and state programs.
- 2.11.** The City's authorized representative shall decide all questions that may arise as to the quality or acceptability of the services performed under the contract. If, in the opinion of the City's authorized representative, performance of the services becomes unsatisfactory, the City will notify the Contractor's designated contact person as soon as possible of the noted discrepancy.

Contractor shall correct any specific instances of unsatisfactory performance according to a time schedule provided by the City's authorized representative. In the event the unsatisfactory performance is not corrected within the time specified above, the City has the immediate right to complete the services to its satisfaction and bill the Contractor for any costs above contracted price. Future referral to any provider that fails to correct unsatisfactory performance is left up to the discretion of the City on a case-by-case basis.

- 2.12.** The City may, but is not required to, inspect and obtain copies of all written licenses, permits, and/or approvals issued by a governmental entity or agency to Contractor applicable to providing these services. The City may, but is not required to, examine any directly appurtenant books, documents, papers, and records of the provider involving any transactions related to these services during the three-year period following the final payment for the services. The City will give Contractor twenty-four (24) hours' notice of its request to make examination during regular business hours.



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- 2.13.** Contractor shall self-audit and ensure that the contracted percentage of savings stated in the Fee Schedule is being applied correctly to the payments being received and that the Contractor’s facilities are being paid in strict accordance with that percentage of savings.

The Contractor’s designated contact person in charge of overseeing the City of Phoenix account will immediately notify the City of Phoenix Human Resources Department Safety Division staff when it is determined that the contracted discounts are not being applied correctly so that immediate action can be taken to identify overpayments.

In the event of overpayments to the Contractor’s facilities, the Contractor shall initiate, oversee and ensure prompt refund of overpayments to the City.

- 2.14.** Contractor shall submit a monthly report to City Safety staff and pertinent Bill Review Contractor staff listing business locations where the network will be providing occupational physical therapy services to City employees. The report will provide the name of the business, if not all the same, the street address, and the telephone number for each location. The types of services for each facility should be listed, as well as operational hours for each location. In addition, an update on newly added or deleted vendors must accompany each monthly report.

**3. PERFORMANCE GUARANTEES**

- 3.1.** With regard to Scope of Work, Deliverables 2.4, if the pattern of scheduling delays that are within the Contractor’s control continues, and the Contractor is unable to provide written documentation as to why the initial evaluation could not be scheduled within one (1) business day, the Contractor agrees to absorb the cost of each initial evaluation which falls in this category.
- 3.2.** With regard to Scope of Work, Deliverables 2.6, in the event that a clinic/facility within the Contractor’s network has two (2) City employee appointment times in any thirty (30) day period in which the wait time between the scheduled appointment time and the time the employee was called in for treatment exceeded ten (10) minutes, the following will apply: The clinic/facility will be given a written warning. If in the same thirty (30) day period a third appointment at the same facility exceeds the allowed ten (10) minutes, additional discount for each late appointment will apply and the Contractor agrees to absorb any charges associated with specific cases referred to the specific facility.



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- 3.3.** With regard to Scope of Work, Deliverables 2.7, in the event that the utilization review criteria are not followed for any reason, the Contractor will provide an additional 10% discount to the City for each individual claim and each individual date of service with therapy that was not timely submitted for review. Timely is defined as one (1) business day after the Contractor becomes aware of the therapist’s recommendation for additional visits.
- 3.4.** With regard to Scope of Work, Deliverables 2.8, if a random audit of 25 transmissions (a maximum of one per quarter) reveals more than 10% of reviewed transmissions not meeting the 24 hour deadline, a \$200 performance guarantee will be deducted from the next invoice payment.
- 3.5.** With regard to Scope of Work, Deliverables 2.13, the Contractor and the City’s third party administrator will work closely to ensure that all agreed upon discounts are applied correctly in the billing process. In the event that the City’s bills are not being audited correctly and the Contractor’s facilities have been overpaid, the Contractor shall immediately recover and return the monies owed to the City.



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**EXHIBIT B – FEE SCHEDULE**

**Most Favored Nations:** If the Contractor enters (or has previously entered) any written agreement that has the effect of establishing a Fee Schedule benefitting another Client with a similarly sized and risked employee pool in a manner more favorable in any material respect to the Fee Schedule set forth herein, the Contractor shall furnish to the City as soon as reasonably practicable, a compendium containing the more favorable Fee Schedule (an “Election Notice”). The City may elect to receive the more favorable Fee Schedule set forth in such Election Notice that is reasonably applicable to the City upon written notice to the Contractor within thirty (30) days of receipt of a copy of such Election Notice.

Contractor’s Fee Schedule to be inserted upon award.



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### EXHIBIT C - INDEMNIFICATION & INSURANCE REQUIREMENTS

#### 1. DEFENSE & INDEMNIFICATION:

Contractor (“Indemnitor”) must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever (“Losses”) caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontracts (“Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amount arising out of or recovered under any state’s Workers’ Compensation Law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor’s duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee’s own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to any work performed by Indemnitor or Indemnitor’s Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

#### 2. CONTRACTOR’S INSURANCE:

Contractor and subcontracts must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontracts. Contractor and subcontracts must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontracts and Contractor may purchase additional insurance as they determine necessary.



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**2.1. SCOPE AND LIMITS OF INSURANCE:** Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a “following form” basis, and (2) all terms under each line of coverage below are met.

**2.1.1. Commercial General Liability – Occurrence Form**

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each	\$1,000,000

- The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor related to this Contract.
- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

**2.1.2. Automobile Liability**

Bodily Injury and Property Damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, relating to this Contract.



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- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor’s insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

**2.1.3. Worker’s Compensation and Employers’ Liability**

Workers’ Compensation Statutory Employers’ Liability:

Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- Policy must contain a waiver of subrogation against the City of Phoenix.
- This requirement does not apply when a contractor or subcontract is exempt under A.R.S. §23-902(E), **AND** when such contractor or subcontract executes the appropriate sole proprietor waiver form.

**2.1.4. Professional Liability (Errors and Omissions Liability)**

Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

- The policy must cover liability arising from the failure to meet the professional standards required or expected in the delivery of those services as defined in the Scope of Services of this Contract.
- Contractor warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

**2.2. NOTICE OF CANCELLATION:** For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to **Mary Lynne Mekenney, Human Resources Department, 251 W Washington Street, 7th Floor, Phoenix, AZ 85003.**

**2.3. ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly





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licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

- 2.4. VERIFICATION OF COVERAGE:** Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly to **Mary Lynne Mekenney, Human Resources Department, 251 W Washington Street, 7th Floor, Phoenix, AZ 85003**. The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.**

- 2.5. SUBCONTRACTS:** Contractor’s certificates shall include all subcontracts as additional insureds under its policies **OR** Contractor shall be responsible for ensuring and verifying that all subcontracts have valid and collectable insurance. At any time throughout the life of the contract, the City of Phoenix reserves the right to require proof from the Contractor that its subcontracts have insurance coverage. All subcontracts providing services included under this Contract’s Scope of Services are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Contractor may, on behalf of its subcontracts, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Contractor assumes liability for all subcontracts with respect to this Contract.
- 2.6. APPROVAL:** Any modification or variation from the insurance coverages and conditions in this Contract must be documented by an executed contract amendment.



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**EXHIBIT D - CONTRACTOR'S INSURANCE CERTIFICATE**

Contractor's Insurance Certificate



## SECTION II – PROFESSIONAL SERVICES CONSULTING AGREEMENT

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### EXHIBIT E - SUPPLEMENTAL TERMS AND CONDITIONS

#### 1. **NON-ASSIGNABILITY:**

This Agreement is in the nature of a personal services agreement and Contractor shall have no power to assign its rights and obligations under this Agreement without the prior written consent of the City. Any attempt to assign without such prior written consent shall be void.

#### 2. **TITLE:**

All documents including but not limited to artwork, copy, posters, billboards, photographs, video tapes, audio tapes, systems designs, drawings, estimates, field notes, investigations, software, reports, diagrams, surveys, analyses, studies or any other original works of authorship created by Contractor in the performance of this Agreement are to be and remain “works for hire” under Title 17, United States Code, and the property of the City and all copyright ownership and authorship rights in the work(s) shall belong to the City pursuant to 17 U.S.C. § 201(b). In the event that the work(s) that is/are the subject matter of this Agreement is deemed to not be work for hire, then Contractor hereby assigns to the City all of the right, title and interest for the entire world in and to the work(s) and the copyright therein. Contractor agrees to cooperate and execute additional documents reasonably necessary to conform to its obligations under this paragraph.

All documents, together with all unused materials supplied by the City, are to be delivered to the City upon termination of this Agreement before the final payment is made to Contractor.

#### 3. **CONTRACT WORKER ACCESS CONTROLS, BADGE AND KEY ACCESS REQUIREMENT:**

**3.1 Contractor and Subcontract Workers Background Screening:** Contractor agrees that all Contractor and subcontracts’ workers (collectively “Contract Worker(s)”) pursuant to this Agreement will be subject to background and security checks and screening (collectively “Background Screening”) at Contractor’s sole cost and expense, unless otherwise provided for in the scope of work. Contractor’s background screening will comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening is necessary to preserve and protect the public health, safety and welfare.

**3.1.1** The City requires a completed Contract Worker Badge/Key/Intrusion Detection Responsibilities Agreement for each Contract Worker who requires a badge or key.



## SECTION II – PROFESSIONAL SERVICES CONSULTING AGREEMENT

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- 3.2 Background Screening Risk Level:** The City has established two levels of risk: Standard and Maximum risk. If the scope of work changes, the City may amend the level of risk, which could require the Contractor to incur additional contract costs to obtain background screens or badges. But, the current risk level and background screening required for this Agreement is **STANDARD RISK LEVEL**.
- 3.3 Standard Risk Level:** A standard risk background screening will be performed when the Contract Worker's work assignment will:
- require a badge or key for access to City facilities; or
  - allow any access to sensitive, confidential records, personal identifying information or restricted City information; or
  - allow unescorted access to City facilities during normal and non-business hours.
- 3.4 Requirements:** The background screening for this standard risk level will include a background check for real identity/legal name, and will include felony and misdemeanor records from any county in the United States, the state of Arizona, plus any other jurisdiction where the Contractor worker has lived at any time in the preceding seven years from the Contract Worker's proposed date of hire.
- 3.5 Contractor Certification; City Approval of Background Screening:**
- 3.5.1** Unless otherwise provided for in the Scope, Contractor will be responsible for:
- determining whether Contract Worker(s) are disqualified from performing work for the City for standard risk level background checks; and,
  - for reviewing the results of the background check every five years; and,
  - to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
  - Submitting the list of qualified Contract Workers to the contracting department.
- 3.5.2** For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.
- 3.5.3** By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current. Also, by executing this agreement, Contractor further certifies and warrants that Contractor



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has satisfied all background screening requirements for the standard risk background screening, and verified legal worker status, as required.

- 3.6 Terms of This Section Applicable to all Contractor’s Contracts and Subcontracts:** Contractor will include Contract Worker background screening in all contracts and subcontracts for services furnished under this agreement.
- 3.7 Materiality of Background Screening Requirements; Indemnity:** The background screening requirements are material to City’s entry into this agreement and any breach of these provisions will be deemed a material breach of this contract. In addition to the indemnity provisions set forth in this agreement, Contractor will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor’s services under this Agreement or Contractor’s failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.
- 3.8 Continuing Duty; Audit:** Contractor’s obligations and requirements will continue throughout the entire term of this Agreement. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor’s records.

**SECTION III – EVALUATION REQUIREMENTS**

**1. EVALUATION CRITERIA**

In accordance with Administrative Regulation, 3.10, Competitive Sealed Proposal awards shall be made to the responsible Offeror(s) whose proposal is determined in writing to be the most advantageous to the City based upon the evaluation criteria listed below. The evaluation factors are listed in the relative order of importance.

Qualifications and Experience	350 POINTS
Method of Approach	300 POINTS
Pricing	350 POINTS
<b>TOTAL AVAILABLE POINTS:</b>	<b>1000 Maximum</b>

The overall completeness, accuracy and quality of the proposal may be taken into consideration when evaluating the qualifications and experience.

Respond to the questions provided on the two Excel spreadsheets found with the RFP documents on <https://solicitations.phoenix.gov>.

- Tab 1 -- Qualifications and Experience/Tab 2 -- Method of Approach
- Tab 3 – Pricing

The submittal documents must be submitted in the format provided and follow the same order as requested. Deviations from the required format may be deemed an incomplete response and unresponsive.

**The responses to the questions in Tab 1/Tab 2 and Tab 3 must be submitted on separate Excel spreadsheets as provided in the RFP. To be clear, Tab 1 & Tab 2 are required to be submitted on one spreadsheet.**

**Tab 3 is required to be submitted in a separate Excel file.**

**Do not password protect the Excel spreadsheets or in any way prohibit the document from being copied.**

## SECTION IV - SUBMITTALS

### AFFIDAVIT

1. The undersigned Offeror hereby submits to the City of Phoenix (City) the enclosed proposal based upon all terms and conditions set forth in the City's Request for Proposals (RFP) and referenced materials. Offeror further specifically agrees hereby to provide services in the manner and on the terms and conditions set forth in the proposal submitted by the Offeror.
2. The undersigned Offeror acknowledges and states, under penalty of perjury, as follows:
  - a. The City is relying on Offeror's submitted information and the representation that Offeror has the capability to successfully undertake and complete the responsibilities and obligations submitted in its proposal and in Agreement.
  - b. The City has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by Offeror.
  - c. Offeror has read and fully understands all the provisions and conditions set forth in the RFP documents, upon which its proposal is based.
  - d. The forms and information requested in the RFP are complete and made part of the proposal. The City is not responsible for any Offeror errors or omissions.
  - e. This proposal may be withdrawn by requesting such withdrawal in writing at any time prior to the proposal deadline but may not be withdrawn after such date and time.
  - f. The City reserves the right to reject any and all proposals and to accept the proposal that, in its judgment, will provide the best quality development to the City.
  - g. This proposal is valid for a minimum of 120 days after the RFP proposal deadline.
  - h. All costs incurred by Offeror in connection with this proposal shall be borne solely by Offeror. Under no circumstances shall the City be responsible for any costs associated with Offeror's proposal or the RFP process.
  - i. Offeror has not in any manner, directly or indirectly, conspired with any person or party to unfairly compete or compromise the competitive nature of the RFP process.
  - j. The contents of this proposal have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of

business prior to the official opening of this proposal.

- k. To the best of the Offeror's knowledge, the information provided in its proposal is true and correct and neither the undersigned Offeror nor any partner, corporate officer or managing employee have ever been convicted of a felony or a crime involving moral turpitude.

**3. COPIES**

- a. The City of Phoenix will accept submittals electronically ONLY for this RFP process. No hardcopies will be accepted. To submit proposals electronically, offerors must send an email to the Procurement Officer by the date stated on the Schedule of Events indicating the offeror's intent to submit a proposal. The Procurement Officer will send an invitation to the offeror which will include submittal instructions. Offers must be able to be downloaded by the Department on or prior to the exact time and date indicated in the Schedule of Events on the cover page. Late offers will not be considered. The prevailing clock will be the Department clock.
- b. **Please submit only the responses to Sections III-Evaluation Requirements, Section IV-Submittals, the required supporting documentation, and Addenda. Do not submit a copy of the entire Solicitation document.** This Offer will remain in effect for a period of 180 calendar days from the bid opening date and is irrevocable unless it is in the City's best interest to do so.

**4. REFERENCES**

Offeror shall furnish the names and contact information for 3 clients for whom the Offeror is **furnishing** or has furnished services similar to those described in this RFP. Do not list City of Phoenix employees or officials as references.

A. Company and Reference Name:

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Telephone and email:

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B. Company and Reference Name:

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Telephone and email:

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C. Company and Reference Name:

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Telephone and email:

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**5. Signature(s)**

By executing below, the Offeror avows the statements and information provided herein are true, correct and complete and that the signatory executed below is authorized to execute this Affidavit on behalf of the Offeror.

Offeror's Contracting Entity (Legal Name<sup>1</sup>): \_\_\_\_\_

*<sup>1</sup>The successful Offeror must be authorized to transact business in Arizona and be in good standing prior to contract award.*

Printed Name of Authorized Representative\*: \_\_\_\_\_

Title: \_\_\_\_\_

Business Mailing Address: \_\_\_\_\_

Telephone and Email Address: \_\_\_\_\_

Signature: \_\_\_\_\_

*\*Proposal must be signed by an individual authorized to contractually bind the Offeror.*

**SOLICITATION DISCLOSURE**

This form must be signed and submitted to the City and all questions must be answered (or N/A) or your Offer may be considered non-responsive.

1. Name of person submitting this disclosure form.

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First	MI	Last	Suffix
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2. Contract Information

Solicitation # or Name:

3. Name of individual(s) or entity(ies) seeking a contract with the City (i.e. parties to the Contract)

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4. List any individuals(s) or entity(ies) that are owners, partners, parent, sublessees, joint venture or subsidiaries of the individual or entity listed in Question 3. Please include all Board members, executive committee members and officers for each entry. If not applicable, indicate N/A.

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5. List any individuals or entities that will be subcontracts on this contract or indicate N/A.

- Subcontracts may be retained, but not known as of the time of this submission.
- List of subcontracts, including the name of the owner(s) and business name:

6. List any attorney, lobbyist, or Contractor retained by any individuals listed in Questions 3, 4, or 5 to assist in the proposal or seeking the resulting contract. If none, indicate N/A.

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7. Disclosure of conflict of interest:

Are you aware of any fact(s) with regard to this Solicitation or resulting Agreement that would raise a "conflict of interest" issue under City Code Section 43-34? "An elected City official or a City employee shall not represent any person or business for compensation before the City regarding any part of a procurement, including any resulting Agreement, if during the time the elected official is or was in office or the employee is or was employed by the City such elected official or employee played a material or significant role in the development of the Solicitation, any other part of the procurement, or the Agreement award."

- I am not aware of any conflict(s) of interest under City Code Section 43-34.
- I am aware of the following potential or actual conflict(s) of interest:

## 8. Notice Regarding Prohibited Interest in Contracts

State law and the Phoenix City Charter and Code prohibit public officers or employees, their close relatives, and any businesses they, or their relatives, own from (1) representing before the City any person or business for compensation, (2) doing business with the City by any means other than through a formal procurement, and (3) doing business with the City without disclosing that the person has an interest in the Agreement. This prohibition extends to subcontracts on City contracts and also applies to parent, subsidiary, or partner businesses owned by a public officer or employee. See A.R.S. Sections 38-501 through 38-511, for more information (City Charter, Chapter 11, applies the state conflict-of-interest law to City employees).

Please note that any contract in place at the time a person becomes a public officer or employee may remain in effect. But the contract may not be amended, extended, modified, or changed in any manner during the officer's or employee's city service without following city administrative regulations.

Are you aware of any fact(s) with regard to this Agreement that would raise a "conflict of interest" issue under A.R.S. Sections 38-501 through 38-511. (See Arizona Revised Statutes regarding conflict of interest at [www.azleg.gov](http://www.azleg.gov))?

- I am not aware of any conflict(s) of interest under Arizona Revised Statutes Sections 38-501 through 38-511.
- I am aware of the following conflict(s) of interest:

## 9. Acknowledgements

Solicitation Transparency Policy – No Contact with City Officials or Staff During Evaluation

- I understand that a person or entity who seeks or applies for a city contract, or any other person acting on behalf of that person or entity, is prohibited from contacting city officials and employees regarding the contract after a Solicitation has been posted.
- This "no-contact" provision only concludes when the contract is awarded at a City Council meeting. If contact is required with City official or employees, the contact will take place in accordance with procedures by the City. Violation of this prohibited contacts provision, set out in City Code Sections 2-190.4 and 43-36, by respondents, or their agents, will lead to **disqualification**.

## 10. Fraud Prevention and Reporting Policy

- I acknowledge that the City has a fraud prevention and reporting policy and takes fraud seriously. I will report fraud, suspicion of fraud, or any other inappropriate action to: telephone no. 602-261-8999 or 602-534-5500 (TDD); or [aud.integrity.line@phoenix.gov](mailto:aud.integrity.line@phoenix.gov).

The purpose of the fraud policy is to maintain the City's high ethical standards. The policy includes a way for our business partners to report wrongdoing or bad behavior. Suspected fraud should be reported immediately to the Phoenix Integrity Line. The City has adopted a zero-tolerance policy regarding fraud.

OATH

I affirm that the statements contained in this form, including any attachments, to the best of my knowledge and belief are true, correct, and complete.

Should any of the answers to the above questions change during the course of the Agreement, particularly as it relates to any changes in ownership, applicant agrees to update this form with the new information within 30 days of such changes. Failure to do so may be deemed a breach of contract.

PRINT NAME	TITLE
SIGNATURE	DATE
COMPANY (CORPORATION, LLC, ETC.) NAME and DBA	