

**TERMS AND CONDITIONS**

**RFP-5293-23-KF “Pool Naming Rights and Therapy Provider for the New Upcoming City of Grand Junction, CO Community Recreation Center (CRC)”**

- 1.1. Americans with Disability Act (ADA) Compliance Mandate:** In accordance with HB21-1110. all documents produced and submitted in response to this solicitation must adhere to the provisions outlined in §§24-85-101, C.R.S., and subsequent sections, as well as the Accessibility Standards for Individuals with a Disability, as established by the Office of Information Technology under section §24-85-103 (2.5), C.R.S. Additionally, all documents must align with the State of Colorado's technology standards related to accessibility, including Level A.A. conformity with the latest iteration of the Web Content Accessibility Guidelines (WCAG) as integrated within the State of Colorado's technology standards.
- 1.2. Compliance:** All Offerors submitting a proposal agree to comply with all conditions, requirements, and instructions of this RFP as stated or implied herein or modified by addenda. Should the City omit anything which is necessary to the clear understanding of the requirements, or should it appear that various instructions are in conflict, the Offeror(s) shall secure instructions from the Purchasing Agent prior to the submittal deadline.
- 1.3. Procurement Process:** The current version of the [City of Grand Junction Purchasing Manual applies to this solicitation.](#)
- 1.4. Additional Terms and Conditions:** the City reserves the right to add terms and conditions during negotiations. The additional terms and conditions will be within the scope of this RFP and will not affect the proposal evaluations.
- 1.5. Altering Proposals:** Any alteration(s) made prior to opening date and time, must be initiated by the Offeror. Proposals may not be altered or amended after submission deadline.
- 1.6. Withdrawal of Proposal:** A proposal must be firm and valid for award and may not be withdrawn or canceled by the Offeror for sixty (60) days following the submittal deadline date, and only prior to award.
- 1.7. Acceptance of Proposal Content:** The Proposal selected by the City shall become a part of the License Agreement Documents. Failure of the successful Offeror to accept the obligations in the License Agreement shall result in cancellation of the award and such Offeror will be removed from future solicitations. When a License Agreement is executed by and between the Offeror and the City, the Offeror may be referred to as the “Provider” or “Organization.”
- 1.8. Exceptions and Substitutions:** All proposals which align with the intent of this RFP will be considered for award. All exception(s) or substitutions will be required in the proposal at time of solicitation opening. Should an Offeror(s) deviate from

the specified requirements, it does so at the Offeror's own risk. The City retains the right to accept or reject any proposed substitutions or alternatives. When a proposal contains substitutions and/or alternatives, the Offeror must clearly indicate any exception(s) in the section to which the exception(s) pertain(s).

Any accepted exception(s) or substitution(s) must meet or exceed the stated intent, requirement(s), and specification(s). If an Offeror does not state any exceptions, the City will acknowledge that no exceptions have been taken. If the Offeror is awarded the License Agreement, it will be obligated to perform in strict accordance with the License Agreement Documents.

- 1.9. Confidential Material:** All materials submitted in response to this RFP shall ultimately become public record and will be subject to inspection after License Agreement award. **"Proprietary or Confidential Information"** is defined as any information which is not generally known to competitors, and which provides a competitive advantage. Unrestricted disclosure of proprietary information places it in the public domain. Only submittal information clearly identified with the words **"Confidential Disclosure"** and uploaded as a separate document may establish the information as confidential or proprietary.

Any material to be treated as confidential or proprietary in nature must include a written explanation for the request. Consistent with the Colorado Open Records Act (CORA), the request shall be reviewed and decided by the City. If denied, the Offeror will have the opportunity to withdraw its proposal, or to remove the confidential or proprietary information. Neither cost nor pricing information nor the entire proposal may be claimed as confidential or proprietary.

- 1.10. Response Material Ownership:** All proposals become the property of the City upon receipt and may only be returned to the Offeror at the City's option. Selection or rejection of the proposal shall not affect this right. The City shall have the right to use all ideas or adaptations of the ideas contained in any proposal received in response to this RFP, subject to limitations in the materials marked as "Confidential" or "Proprietary." Disqualification of a proposal does not eliminate the City's right.

- 1.11. Minimal Standards for Responsible Prospective Offerors:** The Offeror must affirmatively demonstrate its responsibility. A prospective Offeror must meet the following minimum requirements:

- Have adequate financial resources, and assurances to provide therapy clinic services
- Be able to provide required contributions for proposed completion schedule.
- Have a satisfactory record of integrity and ethics.
- Be otherwise qualified and eligible to receive an award and enter into a License Agreement with the City.

- 1.12. Open Records:** All proposals will be open for public inspection after the License Agreement is awarded.

**1.13. Public Opening:** Proposal(s) shall be opened publicly in a virtual meeting immediately following the proposal deadline. Offerors, its representatives and interested persons may be present. Proposals will be received and acknowledged only so as to avoid disclosure of process. Only the company name(s) and business location of the Offeror(s) will be disclosed.

**1.14. Acceptance of RFP Terms:** A proposal submitted in response to this RFP shall constitute a binding offer which shall be acknowledged by the Offeror on the Letter of Interest or Cover Letter. The Offeror must be legally authorized to execute a Letter of Interest or Cover Letter together with contractual obligations. By submitting a proposal, the Offeror accepts all terms and conditions, as set forth herein. An Offeror shall identify clearly and thoroughly any *variations* between its proposal and the City's requirements. Failure to do so may be deemed a waiver of any right(s) to subsequently modify the term(s) of performance, except as specified in the RFP.

A proposal which includes terms and conditions which do not conform to the terms and conditions of this RFP is subject to rejection as non-responsive. The City reserves the right to permit the Offeror(s) to withdraw nonconforming terms and conditions from its proposal prior to a determination by the City of non-responsiveness based on the submission of nonconforming terms and conditions.

**1.15. Execution, Correlation, Intent, and Interpretations:** The License Agreement Documents are in draft form and may be modified based upon the mutual agreement of the parties. After these modifications that suit the needs of both the City and the therapy provider, the agreement shall be signed by the City and the therapy provider.

**1.16. Licenses and Permits:** The therapy provider shall secure and pay for all permits, governmental fees, and licenses necessary for the proper execution and completion of the legal relationship. . The therapy provider shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority, including the City, prior to the utilization of the premises for the therapy clinic. If the therapy provider observes that any of the License Agreement Documents are at variance in any respect, it will promptly notify the Purchasing Agent in writing, and necessary changes will be made. If the therapy provider performs any Services knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the City, it shall assume full responsibility and shall bear all costs attributable to the non-conforming Services.

**1.17. Compliance with Laws, Ordinances, and Regulations:** Proposals must comply with all Federal, State, County and local laws governing the Service and the fulfillment of the Service(s) for and on behalf of the public. The Offeror hereby warrants that it is qualified to assume the responsibilities and render the terms of a legal relationship that are agreed upon through discussions between the City and the therapy provider , which will reflect the mutual understanding of both parties to the agreement.

- 1.18. Responsibility for those Performing the Services:** The Organization shall be responsible to the City for the acts and omissions of all its employees and all other persons performing any of the Services under the License Agreement.
- 1.19. News Releases:** News releases related to the CRC and this relationship will be generated in collaboration between the City and the therapy provider, and both parties must approve the content of the release.
- 1.20. Payment:** The license for Therapy Clinic base fee will be stated in the License Agreement and is the total amount payable by the therapy provider to the City on the agreed upon due date. All other terms will be done in accordance with the final negotiated license agreement.
- 1.21. Acceptance Not Waiver:** The City's acceptance or approval of Service(s) furnished hereunder shall not in any way relieve the Offeror of its responsibility to maintain the high quality, integrity, and timeliness of its Services. The City's approval or acceptance of, or payment for, any Services shall not be construed as a future waiver of any right(s) under this License Agreement, or of any cause of action arising out of performance under this License Agreement.
- 1.22. Amendment:** No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the License Agreement. All Amendments to the License Agreement shall be made in writing by the City Attorney.
- 1.23. Assignment:** The Offeror shall not sell, assign, transfer, or convey the License Agreement resulting from this RFP, in whole or in part, without the prior written approval from the City.
- 1.24. Debarment/Suspension:** The Offeror hereby certifies that the Offeror is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Governmental department or agency.
- 1.25. Confidentiality:** All information disclosed by the City to the Offeror for the purpose of the Project or information which comes to the attention of the Offeror during the course of performing such legal relationship is to be kept strictly confidential.
- 1.26. Conflict of Interest:** No public official and/or City employee shall have interest in any License Agreement resulting from this Request for Proposal.
- 1.27. License Agreement:** This Request for Proposal, submitted documents, and any negotiations, when properly accepted by the City, shall constitute an enforceable agreement equally binding between the City and the therapy provider. The License Agreement represents the entire and integrated agreement between the City and the therapy provider and supersedes all prior negotiations, representations, or agreements, either written or oral, including the Proposal documents. The License Agreement may be amended or modified only with an Amendment.
- 1.28. Project Manager/Administrator:** The Project Manager/Administrator, on behalf of the City, shall render decisions in a timely manner pertaining to the legal

relationship proposed. The Project Manager/Administrator shall be responsible for approval and/or acceptance of any related changes to the Project.

- 1.29. Cancellation of Solicitation:** Any Solicitation may be cancelled by the City or any solicitation response by an Offeror may be rejected in whole or part when it is in the best interest of the City.
- 1.30. License Agreement Termination:** The License or Agreement shall remain in effect until any of the following occurs: (1) terms expire; (2) for convenience terminated by either party with a written *Notice of Cancellation* stating therein the reasons for such cancellation and the effective date of cancellation at least thirty (30) days past notification.
- 1.31. Employment Discrimination:** During the terms of legal relationship, the Organization agrees to:
  - 1.31.1.** Not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, citizenship status, marital status, veteran status, sexual orientation, national origin, or any legally protected status except when such condition is a legitimate occupational qualification necessary for the normal operations of the Organization. The Organization agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - 1.31.2.** In all solicitations or advertisements for employees placed by or on behalf of the Organization, shall state that such Organization is an Equal Opportunity Employer.
  - 1.31.3.** Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- 1.32. Immigration Reform and Control Act of 1986 and Immigration Compliance:** The Organization certifies that it does not and will not during the performance of the Agreement employ personnel without authorization services or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986 and/or law regulating immigration compliance.
- 1.33. Ethics:** The Organization shall not accept or offer gifts or anything of value and/or enter into any business arrangement with any employee, official, or agent of the City.
- 1.34. Failure to Enforce:** Failure by the City at any time to enforce the provisions of the License Agreement shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the License Agreement or any part thereof, or the right of the City to enforce any provision of the License Agreement at any time in accordance with the terms thereof.
- 1.35. Force Majeure:** The Organization shall not be held responsible for failure to perform the duties and responsibilities imposed by the License Agreement due to

legal strikes, fires, riots, rebellions, and acts of God beyond the control of the Organization, unless otherwise specified in the License Agreement.

- 1.36. Indemnification:** The Organization shall defend, indemnify and save harmless the City and all its officers, employees, insurers, and self-insurance pool, from and against all liability, suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property to the extent caused by the Organization, or of any Organization's agent, employee, subcontractor or supplier in the execution of, or performance under, the License Agreement which may result from proposal award. The Organization shall pay any judgment with costs which may be obtained by and/or against the City arising out of or under the performance to the extent caused by the Organization.
- 1.37. Independent Organization:** The Offeror shall be legally considered an independent of the Organization and neither the Organization nor its employees shall, under any circumstances, be considered servants, or agents of the City. The City shall be at no time legally responsible for any negligence or other wrongdoing by the Organization, its servants, or agents. The City shall not provide to the Organization any insurance coverage or other benefits, including Workers' Compensation, normally provided by the City to its employees.
- 1.38. Nonconforming Terms and Conditions:** A proposal which includes terms and conditions that do not conform to the terms and conditions of this Request for Proposal is subject to rejection as non-responsive. The City reserves the right to permit the Offeror to withdraw nonconforming terms and conditions from its proposal prior to a determination by the City of non-responsiveness based on the submission of nonconforming terms and conditions.
- 1.39. Ownership:** All documents, drawing, plans, prints, designs, concepts, and work prepared pursuant to the License Agreement, created by the Organization for this Project, shall become the property of the City. All information furnished by the City are, and shall remain, City property.
- 1.40. Oral Statements:** No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this document and/or the License Agreement. All modifications to this request and any agreement must be made in writing by the City.
- 1.41. Patents/Copyrights:** The Organization agrees to protect the City from any claims involving infringements of patents and/or copyrights and/or other intellectual property protections. In no event shall the City be liable to the Organization for any claims, damages, awards and/or costs of defense arising on the grounds of patent(s)/copyright(s) infringement. Patent/copyright infringement shall null and void any agreement resulting from response to this Request for Proposal.
- 1.42. Governing Law:** Any agreement made as a result of responding to this Request for Proposal shall be deemed to have been made in, and shall be construed and interpreted in accordance with, the laws of the City of Grand Junction, Mesa

County, Colorado. Any action arising out of or under the License Agreement shall be in District Court, 21<sup>st</sup> Judicial District, Mesa County, Colorado.

- 1.43. Expenses:** Expenses incurred in preparation, submission, and presentation of a proposal in response to this solicitation are the responsibility of the Offeror and shall not be charged to the City.
- 1.44. Sovereign Immunity:** The City specifically reserves and asserts its rights to sovereign immunity pursuant to Colorado Law.
- 1.45. Public Funds/Non-Appropriation of Funds:** Funds for projects have been provided through the City's budget approved by the City Council for the stated fiscal year only. Colorado law prohibits the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations which may arise past the end of the stated City's fiscal year shall be subject to budget approval.
- 1.46. Collusion Clause:** Each Offeror by submitting a proposal certifies that it is not party to any collusive action or any action that may be in violation of the Sherman Antitrust Act. Any and all proposal(s) shall be rejected if there is evidence or reason to believe collusion exists among the Offerors. The City may or may not, at its discretion, accept future proposals for the same service or commodities for participants in such collusion.
- 1.47. Gratuities:** The Organization certifies and agrees that no gratuities or kickbacks were paid in connection with this License Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this License Agreement. If the Organization breaches or violates this warranty, the City may, at its discretion, terminate the License Agreement without liability to the City.
- 1.48. Performance of the License Agreement:** The City reserves the right to enforce the performance of the License Agreement in any manner prescribed by law or equity as deemed by the City to be in the best interest of the City (in the event of breach or default) of resulting License Agreement award.
- 1.49. Benefit Claims:** The City shall not provide to the Organization any insurance coverage or other benefits, including Worker's Compensation, normally provided by the City for its employees.
- 1.50. Default:** The City reserves the right to terminate the License Agreement in the event the Organization fails to meet delivery or completion schedules, or otherwise perform in accordance with the License Agreement. Breach of License Agreement or default authorizes the City to purchase like services elsewhere and charge the full cost to the defaulting Organization.
- 1.51. Multiple Offers:** If an Offeror submits more than one proposal, THE ALTERNATE PROPOSAL must be clearly marked "Alternate Proposal." The City reserves the right to make award in the best interest of the City.
- 1.52. Definitions:**

- 1.52.1. “City,” or “Owner” is the City of Grand Junction, Colorado and is used throughout the License Agreement Documents and designate its authorized representative(s).
  - 1.52.2. “Level A.A.” Higher level of accessibility compliance. It includes Level A criteria, plus additional criteria which addresses more complex accessibility issues. Meeting level AA criteria generally ensures a high level of usability for people with disabilities.
  - 1.52.3. “Offeror” refers to the person(s) legally authorized by the Organization to make an offer and/or submit a response (fee) proposal in response to the City’s RFP.
  - 1.52.4. “Organization” is the entity, or provider identified in the agreement and is referred to throughout the License Agreement Documents. The term Organization designates its authorized representative(s).
  - 1.52.5. “Project” refers to the planned effort with a specific goal, scope, and timeline aimed at achieving a particular outcome or result. Typically unique, temporary and require coordinated efforts, resources, and activities to accomplish the predefined objectives.
  - 1.52.6. “Services” includes all labor, materials, equipment, services and/or professional skill necessary to produce the requirements of the License Agreement Documents.
  - 1.52.7. “Subcontractor” is an individual or company who has a direct contract with the Organization to perform specific tasks or provide certain service(s). The term subcontractor is referred to throughout the License Agreement and means the subcontractor or its authorized representative(s).
- 1.53. **Public Disclosure Record:** If the Offeror has knowledge of its employee(s) or subcontractors having an immediate family relationship with a City employee or elected official, the Offeror must provide the Purchasing Agent with the name(s) of the individuals. The individuals are required to file a “Public Disclosure Record,” and/or a statement of financial interest, before conducting business with the City.