

Mayor Timothy M. Keller

**EC-20-165**  
**CITY OF ALBUQUERQUE**  
**Albuquerque, New Mexico**  
**Office of the Mayor**

**INTER-OFFICE MEMORANDUM**

September 8, 2020

**TO:** Pat Davis, President, City Council

**FROM:** Timothy M. Keller, Mayor

**SUBJECT:** Authorize supplemental agreement for Assertive Community Treatment (ACT) IT services through December 31, 2020 and add \$24,000 to the contract for a total of \$124,000

The Department of Family and Community Services wishes to enter into a second supplemental agreement with Phoenix Consulting for the purpose of application administration and end user support for the Assertive Community Treatment (ACT) database. The total cost of the contract is \$124,000.

The cost of the original agreement was \$50,000. An additional 50,000 was added with the first supplemental agreement to cover the cost of project completion. The Division of Behavioral Health and Wellness is requesting an additional \$24,000 to retain the current contactor to provide application administration and end user support for the ACT database through December 31, 2020. This contract is funded using General Funds.

The Department of Family and Community Services respectfully forwards this request to the Council for consideration and action.

201-055-3

Authorize supplemental agreement for Assertive Community Treatment (ACT) IT services through December 31, 2020 and add \$24,000 to the contract for a total of \$124,000

Approved:

SML 9/23/20  
Sarita Nair Date  
Chief Administrative Officer

Approved as to Legal Form:

DocuSigned by:  
Esteban A. Aguilar, Jr. 9/22/2020 | 12:36 PM MDT  
7961D99D046F4DB...  
Esteban A. Aguilar, Jr. Date  
City Attorney

DS  
PP  
Recommended:

DocuSigned by:  
Carol M. Pierce 9/18/2020 | 6:45 PM MDT  
72F4E134004641B...  
Carol M. Pierce Date  
Director, Family and Community Services

## **Cover Analysis**

### **1. What is it?**

This is an EC requesting approval for FY20 second supplemental agreement with Phoenix Consulting for IT services to provide application administration and end user support for the Assertive Community Treatment (ACT) database. The amount requested is \$24,000 for a total of \$124,000. The contract will be in effect through December 31, 2020.

### **2. What will this piece of legislation do?**

This legislation will allow Phoenix Consulting to continue providing application and end user support for the TPN database.

### **3. Why is this project needed?**

Approval will allow the Contractor to continue supporting the ACT database and invoicing services for substance use treatment providers.

### **4. How much will it cost and what is the funding source?**

The total cost of the contract is \$124,00. The cost of the original agreement was \$50,000. An additional \$50,000 was added with the first supplemental agreement to cover the cost of project completion. The Division of Behavioral Health and Wellness is requesting an additional \$24,000 to support the TPN database through December 31, 2020, so that an RFP for ongoing services can be issued. This contract is funded using General Funds.

### **5. Is there a revenue source associated with this Plan? If so, what level of income is projected?**

No

**FISCAL IMPACT ANALYSIS**

TITLE: Authorize supplemental agreement for  
Assertive Community Treatment  
(ACT) IT services through December 31, 2020  
and add \$24,000 to the contract for a  
total of \$124,000

R: O:

FUND: 110

DEPT: Family and Community Services

- ☒ No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- ☐ (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	2021	Fiscal Years 2022	2023	Total
Base Salary/Wages	-			-
Temporary Wages	-			-
Fringe Benefits at	-		-	-
Fringe Benefits at	-	-		-
Subtotal Personnel	-	-	-	-
Operating Expenses	-			-
Property	-	-	-	-
Indirect Costs	-			-
Total Expenses	\$ -	\$ -	\$ -	\$ -
<input type="checkbox"/> Estimated revenues not affected				
<input type="checkbox"/> Estimated revenue impact				
Amount of Grant	-	-		-
City Cash Match	-			-
City Inkind Match			-	-
City IDOH	-	-		-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.

\* Range if not easily quantifiable.

Number of Positions created

**COMMENTS:** Add 24,000 to the current contract with Phoenix Consulting for the purpose of application administration and end user support for the Assertive Community Treatment (ACT) database until 12/31/2020. In FY 2021, no fiscal impact, the difference will be covered from within department ID 2916600 - FC- Mental Health.

**COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:**

PREPARED BY: 

Anna Marie Lujan 9/8/2020  
FISCAL MANAGER

APPROVED:

DocuSigned by:

Carol M. Pierce  
DIRECTOR (date) 9/18/2020 | 6:45 PM MDT

REVIEWED BY:

DocuSigned by:

Michael King  
EXECUTIVE BUDGET ANALYST

DocuSigned by:

Lawrence Davis

BUDGET OFFICER (date) 9/22/2020 | 10:23 AM MDT

DocuSigned by:

Christine Boerner

CITY ECONOMIST (date) 9/22/2020 | 10:25 AM MDT

9/22/2020 | 12:31 PM MDT

SECOND SUPPLEMENTAL AGREEMENT  
TO  
PROFESSIONAL/TECHNICAL AGREEMENT  
CCN# 202000363.2

**THIS SECOND SUPPLEMENTAL AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Albuquerque, New Mexico, a municipal corporation (hereafter referred to as the "City"), and **Phoenix Consulting, 1696 Perma Dr. NE, Rio Rancho, NM**, a New Mexico Corporation (hereafter referred to as the "Contractor").

**RECITALS**

WHEREAS, the City and the Contractor entered into an Agreement dated October 22, 2019, hereafter referred to as the "Original Agreement," whereby the Contractor agreed to provide certain services to the City; and

WHEREAS, the City has determined that funding will be increased in the amount of Twenty-Four Thousand Dollars (\$24,000.00), for a total amount of One Hundred Twenty-Four Thousand Dollars (\$124,000.00); and

WHEREAS, application administration and end user support for the Assertive Community Treatment (ACT) database must be paid through December 31, 2020; and

WHEREAS, the fixed cost of cloud services must be paid through December 31, 2020; and

WHEREAS, the City and the Contractor wish to ratify all actions taken by the parties in accordance with the terms of this Second Supplemental Agreement, from October 22, 2019 to the date of execution of this Second Supplemental Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. Section 3.A. of the Original Agreement is hereby amended to read as follows:

Compensation: For performing the Services specified in Section 2 of this Agreement, the City agrees to pay the Contractor a total amount not to exceed One Hundred Twenty-Four Thousand Dollars and No Cents (\$124,000.00), which includes the amount of \$50,000 for the Original Agreement, \$50,000 for the First Supplemental Agreement, and \$24,000 for this Second Supplemental Agreement which amount includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and

expenses incurred by the Contractor in performing the Services per the "City Budgets" attached hereto and made a part hereof as Exhibit A.

2. Section 3.B. of the Original Agreement is hereby amended to read as follows:

Method of Payment: Such amount shall be payable at the rate of: Two Thousand Seven Hundred and No/100 Dollars (\$2700.00) per month for End User Support; One Thousand Three Hundred and No/100 Dollars (\$1300.00) per month for cloud services through December 31, 2020.

3. The Original Agreement is hereby amended to include the following provision:

Force Majeure. Neither the Contractor nor the City shall be liable for failure to perform its obligations under this Agreement due to causes beyond the control and without the fault or negligence of either party which would render such performance impossible or hazardous. Such causes include, but are not restricted to, acts of God or the public enemy, acts of State or Federal governments, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in reasonable time (hereinafter "Force Majeure Event").

The party seeking to rely upon a Force Majeure Event(s) for any failure to perform shall promptly inform the other in writing of such event, indicating the expected duration thereof and the period for which suspension in performance is requested and the parties shall consult with each other in good faith with respect to modification of this Agreement to reflect such suspension or other changes (if any) desired by either of them as a result thereof.

The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

4. The parties acknowledge it is the intent and explicit agreement of the parties that all of the terms and conditions of this Agreement are applicable continuously commencing on October 22, 2019.
5. Except as herein expressly amended, the term and conditions of the Original Agreement shall remain unchanged and shall continue in full force and effect unless there is a conflict between the terms and conditions of the Original Agreement or the First Supplemental Agreement, and this Second Supplemental Agreement, in which event, the terms and conditions of this Second Supplemental Agreement shall control.
6. Approval Required. This Agreement shall not become effective or binding until approved by the highest authority required by the City under this Agreement.

7. Electronic Signatures. The parties agree that this agreement may be electronically signed and that the electronic signatures appearing on the agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

**SIGNATURES ON NEXT PAGE**

DRAFT

CCW202000363  
AGREEMENT

THIS AGREEMENT is made and entered into this 22<sup>nd</sup> day of October, 2019, by and between the City of Albuquerque, New Mexico, a municipal corporation ("City"), and Phoenix Consulting Group, a New Mexico Corporation, 1696 Perma Dr. NE, Rio Rancho, NM 87144 ("Contractor").

**RECITALS**

WHEREAS, the City has maintained a database system for the Assertive Community Treatment (ACT) program to better serve the citizens of Albuquerque; and

WHEREAS, the Contractor represents that it has the experience, resources and expertise necessary to execute the activities and services desired; and

WHEREAS, the Contractor is qualified to provide such services; and

WHEREAS, the City desires to engage the Contractor to render certain services in connection therewith and the Contractor is willing to provide such services; and

WHEREAS, the City Council approved both the Contractor and the Compensation by line item in the FY2020 Budget; and

WHEREAS, should a delay in final execution of the contract occur, work on the contract may begin prior to the final execution of the Agreement; and

WHEREAS, the City and the Contractor wish to ratify all actions taken by the parties from July 1, 2019 to the date of execution of this Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

**1. Scope of Services.** The Contractor shall perform the following services ("Services") in a satisfactory and proper manner, as determined by the City, in three categories of technical work to include: Application Administration and End User Support, Development of Enhancements and Software Changes, and Business Intelligence Development. Within each scope category, project deliverables, prioritization, cost and timeline shall be developed and updated monthly in consultation with the City, with the exception of End User Support.

**A. Application Administration and End User Support.** The Contractor shall provide technical support for the Application and Tableau via email, phone and in person to users of the application and city staff. Major deliverables shall include:

i. Provide ongoing, routine maintenance to the ACT database system including, but not limited to, software maintenance and problem solving, ensuring optimal up-time.



ii. Ensure application environments stay current by applying operating system, software environment, and security fixes as indicated.

**B. Development of Enhancements and Software Changes.** The Contractor shall add additional functionality to the ACT database system as requested and where feasible, in consultation with City. Major deliverables shall include:

i. Provide upgrades and enhancements to the ACT database system, including rewriting the code to the current version of the ACT database system at the request of and following discussion with City Staff.

ii. Develop an electronic Universal Referral form.

iii. Develop and update the data collection mechanism.

iv. Migrate to a new application (from the existing application) that preserves data inputs.

**C. Business Intelligence Development.** The Contractor shall provide Business Intelligence Development and ensure the continued security of the ACT database. Major deliverables shall include:

i. Provide user-generated report capability.

ii. Ensure the security and confidentiality of all client data in the ACT database system, including the maintenance of the password system to secure and facilitate the network system, particularly in the areas of data changes and recovery/creation of user passwords, and adherence to any HIPAA requirements.

iii. Develop, launch, and maintain as necessary the ACT database system reports and analysis.

**2. Time of Performance.** Services of the Contractor shall commence upon execution of Agreement, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement; provided, however, that in any event, all of the Services required hereunder shall be completed June 30, 2020. The parties acknowledge in the event of a delay in executing this Agreement, it is the intent and explicit agreement of the parties that all of the terms and conditions of this Agreement are applicable continuously commencing on July 1, 2019.

**3. Compensation and Method of Payment.**

**A. Compensation.** For performing the Services specified in Section 1 hereof, the City agrees to pay the Contractor up to the amount of Fifty Thousand and No/100 dollars (\$50,000.00) which amount includes any applicable gross receipts taxes and which amount shall

constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing the Services. Purchase of software licenses and fees, server fees and other software or hardware expenses shall be developed through an ancillary purchase agreement with the City.

**B. Method of Payment.** Such amount shall be payable at the rate of: Two Thousand Five Hundred and No/100 Dollars (\$2500.00) per month for End User Support; Three Hundred Eighty-eight and No/100 Dollars (\$388.00) per month for Tableau Licenses through October 31, 2019 or when this Agreement is executed, whichever comes first; One Thousand Three Hundred and No/100 Dollars (\$1300.00) per month for cloud services through October 31, 2019 or when this Agreement is executed, whichever comes first; and One Hundred Twenty-five and No/100 Dollars (\$125.00) per hour for Application Administration, Development of Enhancements and Software Changes, and Business Intelligence Development. All rates include any applicable gross receipt taxes. Payments shall be made to the Contractor monthly for completed Services upon receipt by the City of properly documented requisitions for payment as determined by the budgetary and fiscal guidelines of the City and on the condition that the Contractor has accomplished the Services to the satisfaction of the City. Each requisition for payment must adequately identify and describe services performed within the above-described scope, and the corresponding amount associated with those services utilizing the identified hourly rate, using the form provided in Attachment A.

**C. Appropriations.** Notwithstanding any provision in this Agreement to the contrary, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement may be terminated at the end of the City's then current Fiscal Year upon written notice given by the City to the Contractor. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

**D. Payment Contingent on Performance.** The scope identifies the expectations of performance and deliverables. Should the Contractor fail to comply with these expectations to the City's satisfaction, the City is entitled to withhold payment or a portion of payment until the Contractor has demonstrated full compliance expectations outlined in the Scope.

**4. Independent Contractor.** Neither the Contractor nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Contractor is considered as an independent contractor at all times in the performance of the Services described in Section 1. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

**5. Personnel.**

A. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of or have any contractual relationships with the City.

B. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

C. None of the work or the Services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or Services subcontracted hereunder shall be specified by written contract or Agreement and shall be subject to each provision of this Agreement.

6. **Indemnity.** The Contractor agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from the Services performed by the Contractor under this Agreement or by reason of any asserted act or omission, neglect or misconduct of the Contractor or Contractor's agents or employees or any subcontractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

7. **Insurance.** The Contractor shall procure and maintain at its expense until final payment by the City for Services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the Services and on the renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days' written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, the City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

A. **Commercial General Liability Insurance.** A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence
\$1,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$50,000	Fire - Legal
\$5,000	Medical Payments

Said policy of insurance must include coverage for all operations performed for the City by the Contractor, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

**B. Automobile Liability Insurance.** An automobile liability policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policy of insurance must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

**C. Workers' Compensation Insurance.** Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensations Act of the State of New Mexico.

**D. Increased Limits.** If, during the term of this Agreement, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

**8. Discrimination Prohibited.** In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans with Disabilities Act of 1990, as now enacted or hereafter amended.

**9. ADA Compliance.** In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (the 'ADA'), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA.

**10. Conflict of Interest.** No officer, agent or employee of the City will participate in any decision relating to this Agreement which affects that person's financial interest, the financial interest of his or her spouse or minor child or the financial interest of any business in which he or she has a direct or indirect financial interest.

**11. Interest of Contractor.** The Contractor agrees that it presently does not have, and shall acquire no direct or indirect interest which conflicts in any manner or degree with the performance of the terms of this Agreement. The Contractor will not employ any person who has any such conflict of interest to assist the Contractor in performing the Services.

**12. No Collusion.** The Contractor represents that this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without

fraud and in good faith. The Contractor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

**13. Debarment, Suspension, Ineligibility and Exclusion Compliance.** The Contractor certifies that it has not been debarred, suspended or otherwise found ineligible to receive funds by any agency of the executive branch of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States. The Contractor agrees that should any notice of debarment, suspension, ineligibility or exclusion be received by the Contractor, the Contractor will notify the City immediately.

**14. Reports and Information.** At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Agreement. Unless otherwise authorized by the City, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to the City.

**15. Open Meetings Requirements.** Any nonprofit organization in the City which receives funds appropriated by the City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the City, is subject to the requirements of § 2-5-1 et seq., R.O.A. 1994, Public Interest Organizations. The Contractor agrees to comply with all such requirements, if applicable.

**16. Establishment and Maintenance of Records.** Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

**17. Audits and Inspections.** At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

**18. Ownership, Publication, Reproduction and Use of Material.** No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute

and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

19. **Compliance with Laws.** In performing the Services required hereunder, the Contractor shall comply with all applicable laws, ordinances, and codes of the federal, state and local governments.

20. **Changes.** The City may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in written amendments to this Agreement.

21. **Assignability.** The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the City thereto.

22. **Termination for Cause.** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by the Contractor under this Agreement shall, at the option of the City, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

23. **Termination for Convenience of City.** The City may terminate this Agreement at any time by giving at least forty-five (45) days' notice in writing to the Contractor. If the Contractor is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the Services actually performed bear to the total Services of the Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the Contractor, the preceding Section hereof relative to termination shall apply.

24. **Construction and Severability.** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

25. **Enforcement.** The Contractor agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

**26. Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

**27. Applicable Law and Venue.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque. The venue for actions arising out of this Agreement is Bernalillo County, New Mexico.

**28. Approval Required.** This Agreement shall not become binding upon the City until approved by the highest approval authority of the City required under this Agreement.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the date first above written.

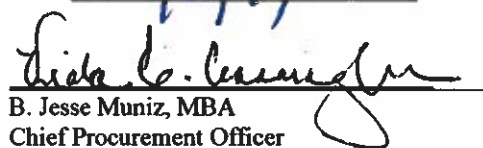
**CITY OF ALBUQUERQUE**

Approved By:



Carol M. Pierce, Director  
Department of Family and Community Services

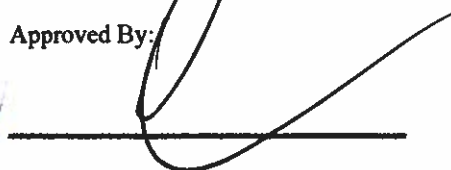
Date: 10/1/19

  
for B. Jesse Muniz, MBA  
Chief Procurement Officer

Date: 10.22.19

**Phoenix Consulting Group:**

Approved By:



Name: Vincent Duran

Title: CEO

Date: 9/19/19



**CONTRACT CONTROL FORM**Contact: Ellen L. Braden  
Phone: 768-2788

DS

EB

Req. Num.:  
Acct. Num.:  
Act. Num.:CCN: 202000363.1**PRELIMINARY**Type of Agreement: Professional/Technical Services

For Grants Only:

Indirect Costs for General Fund  
ServicesDescription: Further updates to ACT database required

% \_\_\_\_\_

Dept/Div: FAMILY & COMMUNITY SERVICES/COMMUNITY  
RECREATION

\$ \_\_\_\_\_

Vendor: Phoenix Consulting Group IncorporatedContract Term: 07/01/2019 to: 06/30/2020Contract Amount: \$50,000.00 PayableFY Aggregate: \$150,000.00Contract Total: \$100,000.00Date Submitted: 04/15/2020**PROCUREMENT:****WAIVERS REQUIRED:**RFP: No

Waiver Letter Attached: \_\_\_\_\_ Approved: \_\_\_\_\_

Ins:

Waiver Letter Attached: \_\_\_\_\_ Approved: \_\_\_\_\_

**DRAFT CONTRACT:**

Recd by Legal: \_\_\_\_\_ Rejected/Returned to Dept: \_\_\_\_\_ / \_\_\_\_\_

Returned to Legal: \_\_\_\_\_ / \_\_\_\_\_ Approved: \_\_\_\_\_ Initials: \_\_\_\_\_

**INSURANCE AND BONDS REQUIRED:**Bonds Required: NONE

Attached: \_\_\_\_\_

Insurance Required: NONE

Attached: \_\_\_\_\_

\*\*\*\*\*

**FINAL CONTRACT REVIEW**

APPROVALS REQUIRED:	Date Delivered	Returned to Dept.	Approved by (Electronic Signature)	Approval Date (Electronic)	Approved by (Written Initials)	Approval Date (Written)
Purchasing:					DS JB	4/21/2020
Asst. City Attorney:					DS PP	4/17/2020
CIP:						
City Attorney:					DS EAJ	4/17/2020
CAO:					DS SN	4/22/2020
Department:					DS UP	4/16/2020
Budget:						
Others:						

Council:

EC/Bill:

Date:

CCN# 202000363.1

FIRST SUPPLEMENTAL AGREEMENT  
TO  
PROFESSIONAL/TECHNICAL AGREEMENT  
CCN# 202000363

**THIS FIRST SUPPLEMENTAL AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Albuquerque, New Mexico, a municipal corporation (hereafter referred to as the "City"), and **Phoenix Consulting, 1696 Perma Dr. NE, Rio Rancho, NM**, a New Mexico Corporation (hereafter referred to as the "Contractor").

**RECITALS**

WHEREAS, the City and the Contractor entered into an Agreement dated October 22, 2019, hereafter referred to as the "Original Agreement," whereby the Contractor agreed to provide certain services to the City; and

WHEREAS, the City has determined that funding will be increased in the amount of Fifty Thousand Dollars (\$50,000.00) to One Hundred Thousand Dollars (\$100,000.00); and

WHEREAS, the development and deployment of the updated ACT database and Universal Referral Form involved more work than either party anticipated, and exceeded the original proposal and budget; and

WHEREAS, the fixed cost of end user support, software licenses and cloud services must be paid through the end of the contract year; and

WHEREAS, the City and the Contractor wish to ratify all actions taken by the parties in accordance with the terms of this First Supplemental Agreement, from October 22, 2019 to the date of execution of this First Supplemental Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. Section 4.A. of the Original Agreement is hereby amended to read as follow:

Maximum Compensation: For performing the Services specified in Section 2 of this Agreement, the City agrees to pay the Contractor a total amount not to exceed One Hundred Thousand Dollars and No Cents (\$100,000.00), which amount includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing the Services per the "City Budgets" attached hereto and made a part hereof as Exhibit A.

2. The Original Agreement is hereby amended to include the following provision:

Force Majeure. Neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under this Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, epidemics, quarantine restrictions, wars, civil disturbances, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"). Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither party shall be liable to the other for any liability claims, damages or other loss caused by or resulting from a Force Majeure Occurrence.

3. The parties acknowledge it is the intent and explicit agreement of the parties that all of the terms and conditions of this Agreement are applicable continuously commencing on October 22, 2019.
4. Except as herein expressly amended, the term and conditions of the Original Agreement shall remain unchanged and shall continue in full force and effect unless there is a conflict between the terms and conditions of the Original Agreement and this First Supplemental Agreement, in which event, the terms and conditions of this First Supplemental Agreement shall control.
5. Approval Required. This Agreement shall not become effective or binding until approved by the highest authority required by the City under this Agreement.

IN WITNESS WHEREOF, the City and the Contractor have executed this First Supplemental Agreement as of the date first above written.

CITY OF ALBUQUERQUE

CONTRACTOR: PHOENIX CONSULTING

Approved By:

Approved By:

DocuSigned by:

DocuSigned by:

*Sarita Nair*

Signature *Vince Duran*

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Sarita Nair

Name: Vince Duran

Chief Administrative Officer

Title: CEO

4/22/2020

PHOENIX CONSULTING

Date:

Date: 4/16/2020

DocuSigned by:

*Carol Pierce*

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Carol M. Pierce, Director

Department of Family and Community Services

4/16/2020

Date:

DocuSigned by:

*Jennifer Bradley*

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Jennifer Bradley

Chief Procurement Officer

4/21/2020

Date: