



REQUEST FOR PROPOSAL - PROFESSIONAL
SERVICES

RTM RFP 24-002

INVESTMENT ADVISORY SERVICES

City of Phoenix

Retirement Office

200 W. Washington Street, 10th Floor

Phoenix, AZ

85003

RELEASE DATE: January 15, 2025 8:00 am

DEADLINE FOR QUESTIONS: January 29, 2025, 2:00 pm

PROPOSAL DEADLINE: February 28, 2025, 2:00 pm

City of Phoenix Retirement Office
REQUEST FOR PROPOSAL - PROFESSIONAL SERVICES
RTM RFP 24-002
Investment Advisory Services

1. INSTRUCTIONS.....4

1.1. Introduction4

1.2. Description – Statement of Need.....4

1.3. Minimum Qualifications5

1.4. Agreement Term and Contractual Relationship5

1.5. Scope of Work and Special Terms and Conditions.....6

1.6. City’s Vendor Self-Registration and Notification.....6

1.7. Preparation of Offer.....6

1.8. Exception.....7

1.9. Inquiries7

1.10. Addenda8

1.11. Licenses8

1.12. Certifications8

1.13. Submission of Offer8

1.14. Withdrawal of Offer9

1.15. Offer Results.....9

1.16. Award of Contract9

1.17. COPERS’ Right to Disqualify for Conflict of Interest10

1.18. Solicitation Transparency Policy.....10

1.19. Protest Process11

1.20. Public Record12

1.21. Late Offers.....12

1.22. Right to Disqualify12

1.23. Statement of Bonding Ability13

1.24. Performance Bond13

1.25. Contract Award13

1.26. Evaluation of Competitive Sealed Offers13

1.27. Determining Responsiveness and Responsibility13

1.28. Detailed Evaluation of Offers and Determination of Competitive Range14

1.29.	Offers Not Within the Competitive Range	14
1.30.	Discussions with Offerors in the Competitive Range.....	14
1.31.	Best and Final Offers (BAFO)	15
1.32.	Fixed Offer Price Period.....	15
1.33.	Obtaining a Copy of the Solicitation and Addenda.....	16
1.34.	Business in Arizona	16
1.35.	Evaluation Criteria.....	16
2.	AGREEMENT	17
2.1.	Professional Services Agreement	17
2.2.	Term of Agreement	17
2.3.	Payment	17
2.4.	Scope of Work and Special Terms and Conditions.....	18
2.5.	Standard Terms and Conditions.....	18
2.6.	Special Terms and Conditions.....	32
2.7.	Defense and Indemnification	41
2.8.	Insurance Requirements	42
3.	SUBMITTALS	46
3.1.	Submittals	46

ATTACHMENTS:

A - SIGNATURE PAGE

B - EXHIBIT A - SCOPE OF WORK

C - EXHIBIT B - FEE SCHEDULE

D - EXHIBIT C - CERTIFICATE OF INSURANCE

E - EVALUATION REQUIREMENTS INSTRUCTIONS

F - SUBMITTALS OFFER PAGE

G - PART C -PRICING PROPOSAL TEMPLATE

H - RTM RFP 24-002 REFERENCES

I - SUBMITTALS- CONFLICT OF INTEREST AND TRANSPARENCY

J - PART A - QUALIFICATIONS AND EXPERIENCE

K - PART B - METHOD OF APPROACH

L - SUBMITTAL CHECKLIST

1. INSTRUCTIONS

1.1. Introduction

1.1.1. Summary

Please see the Description - Statement of Need section

1.1.2. Contact Information

Project Contact:

Trista Sims

Management Assistant

Email: trista.sims@phoenix.gov

Phone: [\(602\) 256-4323](tel:(602)256-4323)

Procurement Contact:

Trista Sims

Management Assistant

Email: trista.sims@phoenix.gov

Phone: [\(602\) 256-4323](tel:(602)256-4323)

Department:

Retirement

1.1.3. Timeline

Release Project Date	January 15, 2025 8:00 am
Pre-Proposal Meeting (Non-Mandatory)	January 22, 2025, 2:00 – 3:30 pm Teams Pre-Proposal Meeting Link
Question Submission Deadline	January 29, 2025, 2:00 pm
Question Response Deadline	February 14, 2025, 2:00 pm
Proposal Submission Deadline	February 28, 2025, 2:00 pm
Consultant Selection Date	March 24, 2025

1.2. Description – Statement of Need

The Board of Directors of the City of Phoenix Employees' Retirement System (referred to herein as the "Trustees" or "Board"), as trustees of the City of Phoenix Employees Retirement Plan ("COPERS" or the "Plan") invites sealed proposals for financial and investment advisory

services for a five-year term commencing on or about April 1, 2025, to provide a full range of financial and investment advisory services to the Board as described in the Scope of Work and Special Terms and Conditions ("Services").

COPERS is a qualified tax-exempt, defined benefit plan covering non-sworn employees of the City of Phoenix, Arizona, with assets of approximately \$3.384 billion. Additional valuation information is available at the following link: www.phoenix.gov/COPERS. COPERS has approximately 20,000 active, inactive, and retired members. COPERS was created under Chapter XXIV of the Phoenix City Charter. Complete background information as well as copies of the Phoenix City Charter and prior actuarial valuation information is available on COPERS website at www.phoenix.gov/COPERS.

This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.

Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence: by reaching the end of the term including any extensions exercised, or pursuant to the provisions of this Agreement.

1.3. Minimum Qualifications

The qualified and responsive Offeror must meet **all** minimum qualifications listed below. Should an Offeror fail to meet one of the minimum qualifications identified, the Offer will be disqualified as non-responsive.

1. have been in operation for a minimum of ten (10) years.
2. have a minimum of ten (10) years' experience in and expertise at providing all of the Financial Consulting Solicitation Services to include the Services as listed in this Solicitation, for a minimum of three defined benefit pension clients who have at least 20,000 members and \$1B in assets under management.
3. submit a letter from a bonding or insurance company stating that the Offer can qualify for and procure the performance bond and/or payment surety required Section I, Paragraph 1.23 - Statement of Bonding Ability and Paragraph 1.24 - Performance Bond.
4. be lawfully authorized to conduct business in Arizona or must have no impediments to conducting business in Arizona.

1.4. Agreement Term and Contractual Relationship

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 agreement. COPERS 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.

1.5. Scope of Work and Special Terms and Conditions

Consultant will provide consulting services that will be in accordance with the Scope of Work as set forth in Exhibit A - Scope of Work section, which may be supplemented with additional detail from time to time during the term of the Agreement, and that are satisfactory to COPERS. In performing these services, Consultant will also specifically comply with the applicable Special Terms and Conditions that are set forth in Section 2.6. Consultant will provide progress reports to the COPERS Board, or “COPERS” per a mutually agreed-upon schedule.

1.6. City’s Vendor Self-Registration and Notification

Vendors must be registered in the City’s procurePHX Self-Registration System at <https://www.phoenix.gov/procure> to respond to solicitations and access procurement information. COPERS may, at its sole discretion, reject any Offer from an Offeror who has not registered.

1.7. Preparation of Offer

All forms provided in Submittal Section must be completed and submitted with the Offer. The signed and completed Conflict of Interest and Transparency form must be included or your Offer may be deemed non-responsive.

It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the 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. COPERS is not responsible for Offeror’s errors or omissions.

All time periods stated as a number of days will be calendar days.

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:

- A. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
- B. Study and carefully correlate Offeror’s knowledge and observations with the solicitation and other related data.

- C. Promptly notify COPERS of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in or between the solicitation and other related documents.
- D. COPERS 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 COPERS and will not be returned.
- E. Offerors are reminded that the specifications stated in the solicitation are the minimum level required and that Offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Offers offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.

1.8. Exception

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, stated on a separate page labeled "Exceptions Statement" to copersadmin@phoenix.gov by February 28, 2025, 2:00 pm (Arizona Time). 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.

It is the intent of COPERS to award a contract on a fair, competitive basis. For this reason, COPERS 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, COPERS will, at its option, not allow exceptions to any material requirement if, in the opinion of COPERS, the exceptions alter the overall intent of the Solicitation, unless the exception would be of material benefit to the City. Additionally, COPERS may, at its option, deem any submittal non-responsive based on exceptions by the Offeror

1.9. Inquiries

All questions that arise relating to this solicitation should be submitted in writing by email to the Procurement Officer and must be received by the due date indicated in the Timeline. COPERS will not consider questions received after the deadline.

No informal contact initiated by Offerors on the proposed service will be allowed with members of COPERS staff from date of distribution of this solicitation until after COPERS awards the contract. All questions concerning or issues related to this solicitation must be presented in writing.

The Procurement Officer will answer written inquiries in an addendum and publish any addenda on the Procurement Website.

1.10. Addenda

COPERS will not be responsible for any oral instructions made by any employees or officers of COPERS regarding this solicitation. Any changes to the solicitation will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the Offer submittal.

1.11. 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.

1.12. Certifications

By signature in the Offer section of the Offer and Acceptance page(s), 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.
- Offeror has no conflict of interests.

1.13. Submission of Offer

The COPERS Board will ONLY accept Submittals electronically for this RFP process. Offerors may not submit hard copies of any Offer to this Solicitation.

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 an Offer.

The Procurement Officer will send an invitation to the Offeror which will include submittal instructions and a link to upload the Offeror's proposal. Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events. Late Offers will not be considered. The prevailing clock will be COPERS' clock.

- A. It is the responsibility of the Offeror to ensure that the Offer is timely and to confirm that there are no technical reasons that any Offer submitted electronically may be delayed. The date and time on the upload as received/stamped by COPERS' file transfer site will provide proof of submission and verification whether the Offer was received on or prior to the exact time and date indicated in the Schedule of Events.

- B. Any original documents (such as bonds, guaranties, powers of attorney), if required by the Solicitation, must be separately delivered to, and received by COPERS on or prior to the exact time and date indicated in the Schedule of Events, with a clear indication of the Offer for which it is attributed.
- C. Please submit the items as defined in Section III – Submittals, Section IV – Evaluation Criteria, and any relevant 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 COPERS' best interest to do so.

1.14. 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. If Offeror withdraws the Offer electronically by email to the Procurement Officer, the request to withdraw must be in the form of a letter attached to the email that includes either an image of the duly authorized representative's signature or an electronic signature from a verifiable source, such as Adobe Sign, DocuSign or a similar verifiable software program.

1.15. Offer Results

Offers will be opened on the Offer due date, time and location indicated in the Timeline, 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 COPERS personnel having a legitimate interest in them or persons assisting COPERS in the evaluation. Offers are not available for public inspection until after COPERS has posted the award recommendation on the City's website.

1.16. 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 in an acceptable manner.

- A. Factors that may be considered by the COPERS Board include:
 - 1. Technical capability of the Offeror to accomplish the scope of work required in the Solicitation. This may include performance history on past and current government or industrial contracts; and,
 - 2. Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,
 - 3. Safety record; and,
 - 4. Offeror history of complaints and termination for convenience or cause.

- B. Notwithstanding any other provision of this solicitation, the COPERS Board 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.
- C. A response to a solicitation is an offer to contract with the COPERS Board based upon the terms, conditions, and specifications contained in the COPERS Board solicitation. Offers do not become contracts until they are executed by the COPERS Board. The COPERS Board requires formal signing of a separate Professional Services Consultant agreement, to include the Standard Terms and Conditions, Special Terms and Conditions, all of the terms, conditions and specifications contained in this solicitation, and in any addendum.

1.17. COPERS' Right to Disqualify for Conflict of Interest

COPERS 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 COPERS. This disqualification is at the sole discretion of COPERS. 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, COPERS or any court.

1.18. Solicitation Transparency Policy

- A. 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 COPERS or with COPERS staff 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 the resulting contract(s) are awarded to all Offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of COPERS'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. Offerors may not discuss the solicitation with any COPERS employees or evaluation panel members.
- B. 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.
- C. With respect to the selection of the successful Offerors, COPERS 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 COPERS and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.

- D. 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 COPERS for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.
- E. "To discuss" means any contact by the Offeror, regardless of whether COPERS responds to the contact. Offerors that violate this policy will be disqualified until the resulting contract(s) are awarded, or all Offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of COPERS' intent to reissue the same or a similar solicitation. COPERS interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as COPERS cancels with a statement that COPERS will rebid the solicitation.

1.19. Protest Process

- A. 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 COPERS. If denied, the opening and award will proceed unless COPERS determines that it is in COPERS' best interests to set new deadlines, amend the solicitation, cancel or re-bid.
- B. 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.
- C. Offeror may protest an adverse determination issued by COPERS regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.
- D. 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. COPERS will post recommendations on the City's website to award the contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within COPERS' full and final discretion.
- E. All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:
 - 1. Identification of the solicitation number;
 - 2. The name, address and telephone number of the protester;
 - 3. A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;

4. The form of relief requested; and
 5. The signature of the protester or its authorized representative.
- F. The Procurement Officer will render a written decision within a reasonable period after the protest is filed. COPERS 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. Protests must be filed with the Procurement Officer.

1.20. Public Record

All Offers submitted in response to this solicitation will become the property of COPERS 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 is 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 the 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.

1.21. 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.

1.22. Right to Disqualify

COPERS 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. COPERS 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 COPERS. This disqualification is at the sole discretion of COPERS. 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, COPERS or any court as to the exercise by COPERS of such

right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by COPERS. COPERS reserves the right to replace the disqualified Offeror.

1.23. 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 COPERS.

1.24. Performance Bond

A performance surety in the amount of 10% of the total contract shall be provided by the Consultant immediately after notice of award and no later than 14 calendar days. COPERS 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 COPERS and the Consultant, and that the Consultant endorses the CD over to COPERS at the beginning of the contract period. Interest earnings from the CD can be retained by the Consultant.

1.25. Contract Award

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

1.26. Evaluation of Competitive Sealed Offers

COPERS 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.

1.27. Determining Responsiveness and Responsibility

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

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 non-responsive.

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, COPERS 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, COPERS may determine the Offer to be nonresponsive.

Responsibility: To obtain true economy, COPERS must conduct solicitations to minimize the possibility of a subsequent default by the Consultant, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible Consultant. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

The Procurement Officer, in consultation with legal counsel, will review each Offer to determine if the Offeror is responsible. COPERS' determination as to whether an Offeror is responsible will be based on all information furnished by the Offeror, interviews (if any), and information received from Offeror's references, including information about Offeror's history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources COPERS 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 COPERS as it deems necessary. A review of responsibility may occur up to contract award.

The Offeror's unreasonable failure to promptly supply information about an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror.

1.28. 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.

1.29. Offers Not Within the Competitive Range

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

1.30. Discussions with Offerors in the Competitive Range

COPERS 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 COPERS 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.

Demonstrations - Offerors in the competitive range may be invited to construct a hands-on sample or presentation of their solution at COPERS. In addition, each finalist may prepare and deliver a presentation of their proposed solution based on the script developed by the evaluation panel. COPERS 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).

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

To the fullest extent permitted by law, COPERS 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, COPERS will not give Offerors specific prices or specific financial requirements that Offerors must meet to qualify for further consideration. COPERS 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.

1.31. Best and Final Offers (BAFO)

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

If an Offeror's BAFO modifies its initial Offer, the modifications must be identified in the BAFO. COPERS will evaluate BAFOs based on the same requirements and criteria applicable to initial Offers. COPERS 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, COPERS will then perform final scoring and prepare final rankings.

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

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

1.32. Fixed Offer Price Period

All Offers shall be firm and fixed for a period of 180 calendar days from the solicitation opening date.

1.33. Obtaining a Copy of the Solicitation and Addenda

Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/>. Any interested Offerors without internet access may obtain this solicitation by calling the Procurement Officer or picking up a copy during regular business hours at the City of Phoenix, Retirement Department, 200 W. Washington Street, 10th Floor, Phoenix, AZ. It is the Offeror's responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their Offer.

1.34. Business in Arizona

COPERS will not enter contracts with Offerors (or any company(ies) not granted authority to transact business, or not in good standing, in the state of Arizona by the Arizona Corporation Commission, unless the Offeror asserts a statutory exception prior to entering a contract with COPERS.

1.35. Evaluation Criteria

EVALUATION CRITERIA

In accordance with the 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 COPERS based upon the evaluation criteria listed below.

Qualifications and Experience - 250 POINTS

Method of Approach - 450 POINTS

Pricing - 300 POINTS

TOTAL AVAILABLE POINTS - 1000 POINTS (Maximum)

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

2. AGREEMENT

2.1. Professional Services Agreement

**BETWEEN
THE CITY OF PHOENIX EMPLOYEES' RETIREMENT SYSTEM (COPERS)
AND
CONSULTANT NAME**

This AGREEMENT is made and entered into this April 1, 2025, (“the Effective Date”), or as of the City Clerk date, whichever is later, by and between the City of Phoenix Employees’ Retirement System (COPERS), Arizona, a qualified defined benefit plan (hereinafter referred to as “COPERS”) and _____, (hereinafter referred to as “ Consultant”).

RECITALS

- A. COPERS is authorized by the provisions of the City Charter to execute agreements for professional services.
- B. COPERS desires to obtain the services that are specifically set forth in this Agreement.
- C. COPERS procured these professional services in accordance with the Phoenix City Code and Administrative Regulation 3.10.
- D. Consultant possesses the skills and expertise necessary to provide such services as desired by COPERS.
- E. This Agreement is authorized by the Board on TBD.

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

2.2. Term of Agreement

- A. This Agreement begins on the Effective Date in the above introductory paragraph, and upon approval by COPERS, for a five-year term or as extended by the Board.
- B. This Agreement will terminate upon the earliest occurrence of any of the following:
 - 1. reaching the end of the term exercised as set forth in A;
 - 2. completing the services set forth in the Scope of Work attached as EXHIBIT A – SCOPE OF WORK (the “Services”);
 - 3. payment of the maximum compensation under Paragraph Payment of this Agreement; or
 - 4. termination pursuant to the provisions of this Agreement.

2.3. Payment

- A. The total amount to be remitted by COPERS to Consultant for all Services satisfactorily performed under this Agreement will not exceed the total aggregate amount of \$ _____ for

the term of the agreement including reasonable and necessary expenses, if approved in advance by COPERS and included in the Fee Schedule EXHIBIT B. Under this Agreement, COPERS 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 COPERS.

- B. Consultant will submit monthly invoices on or before the 10th 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, COPERS will return the invoice to the Consultant. Consultant will promptly resubmit the revised invoice to COPERS. Each revised invoice will document the date that the revised invoice is submitted to COPERS. 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 COPERS to identify an error does not waive any of the COPER's rights.
- C. Invoices shall be mailed to: City of Phoenix [Retirement](#) Department, Retirement Program Administrator, 200 W Washington St 10th Floor, Phoenix, AZ 85003 or emailed to: copersadmin@phoenix.gov.

2.4. Scope of Work and Special Terms and Conditions

Consultant will provide consulting 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 Consultant. In performing these services, Consultant will also specifically comply with the applicable Special Terms and Conditions that are set forth in Section 2.6. Consultant will provide progress reports to COPERS according to a mutually agreed-upon schedule.

2.5. Standard Terms and Conditions

2.5.1. *Definition of Key Words Used in the Solicitation*

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of Offer as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, COPERS may, at its sole option, ask the Offeror to provide the information or evaluate the Offer without the information.

May: Indicates something that is not mandatory but permissible.

For purposes of this solicitation, the following definitions will apply:

“A.R.S.” Arizona Revised Statute

“Days” Means calendar days unless otherwise specified.

2.5.2. *Contract Interpretation*

- A. **Applicable Law:** This Agreement will be governed by the law of the State of Arizona, and suits pertaining to this Consultant will be brought only in Federal or State courts in Maricopa County, State of Arizona.
- B. **Contract Order of Precedence:** In the event of a conflict in the provisions of the Contract, as accepted by COPERS and as they may be amended, the following will prevail in the order set forth below:
 - 1. Federal terms and conditions, if any
 - 2. Scope of Work and Fee Schedule
 - 3. Special terms and conditions
 - 4. Standard terms and conditions
 - 5. Instructions to Consultants
 - 6. Other documents referenced or included in the Solicitation
- C. **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 Consultant in the performance of Consultant’s obligations under the agreement are considered to be City’s employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Consultant 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 COPERS and the City harmless with respect thereto.
- D. **Severability:** The provisions of this Agreement 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.
- E. **Non-Waiver of Liability:** COPERS 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 Consultant agrees that it will not insist upon or demand any statement whereby COPERS agrees to limit in advance or waive any right

COPERS might have to recover actual lawful damages in any court of law under applicable Arizona law.

- F. **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 Agreement. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

2.5.3. *Contract Administration and Operation*

- A. **Records:** All books, accounts, reports, files and other records relating to the contract will be subject at all reasonable times to inspection and audit by COPERS for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by COPERS . Confidentiality will be maintained, and COPERS will not violate any proprietary or other confidentiality agreements Consultant has in place.
- B. **Discrimination Prohibited:** Consultant agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended. Any Consultant, in performing under this Agreement, will 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 supplier and/or lessee will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and 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 will 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 supplier 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 Agreement. Consultant further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this Agreement entered into by supplier/lessee.
- C. **Equal Employment Opportunity and Pay:** In order to do business with COPERS, Consultant must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Consultant will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.
1. **For a Consultant 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 Consultant 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 Consultant 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 labor or services in connection with this Agreement. Consultant further agrees that this clause will be incorporated in all subcontracts, Consultant agreements or subleases of this agreement entered into by supplier/lessee.
2. **For a Consultant with more than 35 employees:** Consultant 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 Consultant 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 Consultant 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 Agreement. Consultant 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 Consultant 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.
 3. **Documentation:** Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
 4. **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.
- D. **Legal Worker Requirements:** COPERS is prohibited by A.R.S. § 41-4401 from awarding a contract to any Consultant who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Consultant agrees that:
1. Consultant and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.
 2. A breach of a warranty under paragraph 1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
 3. COPERS retains the legal right to inspect the papers of any Consultant or subcontractor employee who works on the contract to ensure that the Consultant or subcontractor is complying with the warranty under paragraph 1.
- E. **Compliance with Laws:** Consultant agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Agreement regardless of whether they are being referred to by COPERS. Consultant agrees to permit City inspection of Consultant's business records, including personnel records to verify any such compliance. Because the Consultant will be acting as an independent contractor, COPERS assumes no responsibility for the Consultant's acts.
- F. **Lawful Presence Requirement:** Pursuant to A.R.S. §§ 1-501 and -502, COPERS 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 COPERS-provided affidavit affirming that the 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, COPERS 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.
- G. **Continuation During Disputes:** Consultant agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the Agreement, the Consultant will continue to perform the obligations required of Consultant during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.

2.5.4. 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.

2.5.5. *Audit/Records*

- A. COPERS reserves the right, at reasonable times, to audit Consultant'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 five years following termination of the Agreement.
- B. If, following an audit of this Agreement, the audit discloses the Consultant has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Consultant will be liable for reimbursement of the reasonable, actual cost of the audit.

2.5.6. *Independent Contractor Status; Employment Disclaimer*

- A. The parties agree that Consultant 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 Consultant's agents, employees or helpers will be deemed to be the employee, agent, or servant of COPERS. COPERS 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 Consultant.
- B. 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 Consultant 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. Consultant 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 COPERS and the City with respect thereto.

2.5.7. *IRS W9 Form*

- A. **IRS W9 Form.** In order to receive payment, the Consultant shall have a current IRS W-9 form on file with the City of Phoenix. The form can be downloaded at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>

2.5.8. *Contract Changes*

- A. **Contract 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 COPERS and Consultant before such addition, deletion or alteration will be performed. Changes to the Services may be made and the compensation to be paid to Consultant 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 Consultant will be allowed except as provided herein, nor will Consultant do any work or furnish any materials not covered by this Agreement unless first authorized in writing. Any work or materials furnished by Consultant without prior written authorization will be at Consultant's risk, cost and expense, and Consultant agrees to submit no claim for compensation or reimbursement for additional work done or materials furnished without prior written authorization.

- B. **Non-Assignability:** This Agreement is in the nature of a personal services contract and Consultant shall have no power to assign this Agreement, including any right, duty, or obligation of Consultant under this Agreement, without the prior written consent of COPERS. Consultant shall not subcontract with any third party for any component of the Services without the prior written consent of COPERS. Any attempt to assign or subcontract without COPERS's prior written consent shall be void. An essential consideration provided to COPERS by Consultant to induce COPERS to enter into the Agreement is Consultant's representation that the individual(s) performing services shall include Consultant's principals as selected through the Qualified Vendor solicitation process. Therefore, should such named individual(s) sever their relationship with Consultant, or otherwise be unavailable to carry out Consultant's duties under this Agreement for a period of time deemed to be excessive by COPERS in its sole and absolute discretion, then COPERS may, without notice, immediately terminate this Agreement for cause.
- C. **Non-Exclusive Contract:** Any contract resulting from this Solicitation will be awarded with the understanding and agreement that it is for the sole convenience of COPERS. COPERS reserves the right to obtain like goods or services from another source when necessary.

2.5.9. Risk of Loss and Liability

- A. **Force Majeure:** Except for payment of sums due, neither party will be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. Consultant 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 COPERS to provide data within COPERS's possession or to make necessary decisions or provide necessary comments in connection with any required reports prepared by Consultant 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”).

- B. **Contract Performance:** Consultant will furnish all necessary labor, tools, equipment, and supplies to perform the required services at COPERS. COPERS's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of COPERS's authorized representative, performance becomes unsatisfactory, COPERS will notify the Consultant. The Consultant will correct any specific instances of unsatisfactory performance in the time allotted by COPERS' authorized representative. In the event the unsatisfactory performance is not corrected within the time specified, COPERS will have the immediate right to complete the work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Consultant and/or terminate the Agreement at its option.

2.5.10. COPERS' Contractual Rights

Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made, and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this Agreement.

- A. **Non-Exclusive Remedies:** The rights and remedies of COPERS under this Agreement are non-exclusive.
- B. **Default in One Installment to Constitute Breach:** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.
- C. **On Time Delivery:** Because COPERS is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Consultant.
- D. **Default:** In case of default by the Consultant, COPERS may, by written notice, cancel this Agreement and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the Solicitation and/or Performance Bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.
- E. **Covenant Against Contingent Fees:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty,

COPERS will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

- F. **Cost Justification:** In the event only one response is received, COPERS may require that the Consultant submit a cost proposal in sufficient detail for COPERS to perform a cost/price analysis to determine if the Offer price is fair and reasonable.
- G. **Work Product and Materials:** All work product or materials created or purchased under this Agreement belongs to COPERS and must be delivered to COPERS at its request upon termination of this Agreement. Consultant agrees to assign to COPERS all rights and interests Consultant may have in materials prepared under this Consultant that are “works for hire” within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

2.5.11. *Contract Termination*

- A. **Gratuities:** COPERS may, by written notice to the Consultant, cancel this Agreement if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant, to any officer or employee of COPERS making any determinations with respect to the performing of such Agreement. In the event this Agreement is canceled by COPERS pursuant to this provision, COPERS will be entitled, in addition to any other rights and remedies, to recover or withhold from the Consultant the amount of the gratuity.
- B. **Conditions and Causes for Termination:**
 - 1. This Agreement may be terminated at any time by mutual written consent, or by COPERS, with or without cause, upon giving thirty-day written notice to Consultant. COPERS at its convenience, by written notice, may terminate this Agreement, in whole or in part. If this Agreement is terminated, COPERS will be liable only for payment under the payment provisions of this Agreement for services rendered and accepted material received by COPERS before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to COPERS after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit COPERS to examine such books and records as may be necessary in order to verify the reasonableness of any claims.
 - 2. Immediately upon receiving a written notice to terminate or suspend Services, Consultant will:
 - i. Discontinue advancing the work in progress, or such part that is described in the notice.
 - ii. Deliver to COPERS all collected raw data, draft reports, preliminary reports, working papers, estimates and forecasts entirely or partially completed, together with all unused materials supplied by COPERS.

- iii. Appraise the work it has completed and submit its appraisal to COPERS for evaluation.
 - iv. 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 Consultant in terminating the work, including demobilization of field service. No payment will be made for loss of anticipated profits or unperformed services.
 3. COPERS reserves the right to cancel the whole or any part of this Agreement due to failure of Consultant to carry out any term, promise, or condition of the Agreement. COPERS will issue a written notice of default to Consultant for acting or failing to act as in any of the following:
 - i. In the opinion of COPERS, Consultant provides personnel who do not meet the requirements of the Agreement;
 - ii. In the opinion of COPERS, Consultant fails to perform adequately the stipulations, conditions or services/specifications required in this Agreement;
 - iii. In the opinion of COPERS, Consultant attempts to impose on COPERS personnel or materials, products or workmanship, which is of an unacceptable quality;
 - iv. Consultant fails to furnish the required service and/or product within the time stipulated in the Agreement;
 - v. In the opinion of COPERS, Consultant fails to make progress in the performance of the requirements of the Agreement and/or gives COPERS a positive indication that Consultant will not or cannot perform to the requirements of the Agreement.
- C. **Final Payment:** COPERS shall make final payment for all Services performed and accepted within sixty (60) days after Consultant has delivered to COPERS any final progress reports, documentation, materials and evidence of costs and disbursement as required under this Agreement.
- D. **Temporary Suspension.** COPERS may, by written notice, direct Consultant to suspend performance on all or any part of the Services for such period of time as may be determined by COPERS to be necessary or desirable for its convenience. If such suspension causes additional expense to Consultant in performance, and such additional expense is not due to fault or negligence of Consultant, 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 Consultant for a price adjustment must be supported by appropriate documentation asserted promptly after Consultant has been notified to suspend performance.
- E. **Agreement Cancellation:** All parties acknowledge that this Agreement is subject to cancellation by COPERS pursuant to the provision of Section 38-511, Arizona Revised Statutes.

2.5.12. Notice

A. 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 Consultant:

Legal name and address of Consultant.

If to COPERS:

Scott Steventon, Retirement Program Administrator, or designee

City of Phoenix Human Retirement Department

200 W Washington St, 10th Floor

Phoenix, Arizona 85003

Telephone: (602) 534-4400

Email: copersadmin@phoenix.gov

B. 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.

C. Notices sent by e-mail 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.

2.5.13. 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.

2.5.14. Conflicts of Interest

A. Consultant 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 COPERS has any financial interest in the

consulting firm. For breach of violation of this warranty, COPERS will have the right to annul this Agreement without liability, including any such commission, percentage, brokerage or contingent fee.

- B. COPERS reserves the right to immediately terminate the Agreement in the event that COPERS determines that Consultant has an actual or apparent conflict of interest.
- C. Upon a finding by COPERS that gratuities in the form of entertainment, gifts or inducements were offered or given by Consultant, or any agent or representative of Consultant, to any officer or employee of COPERS 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, COPERS may, by one calendar day written notice to Consultant, terminate the right of Consultant to proceed under this Agreement, provided that the existence of the facts upon which COPERS made such finding will be an issue and may be litigated in an Arizona court of competent jurisdiction. In the event of such termination, COPERS will be entitled to the same remedies against Consultant as could be pursued in the event of default by Consultant.
- D. This Agreement is subject to the requirements of Arizona Revised Statutes §38-511.

2.5.15. *Waiver of Claims for Anticipated Profits*

Consultant waives any claims against COPERS 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.

2.5.16. *State and Local Transaction Privilege Taxes*

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden and legal liability to remit taxes are on the Consultant that is conducting business in Arizona and COPERS of Phoenix. Any failure by the Consultant to collect applicable taxes from COPERS will not relieve the Consultant from its obligation to remit taxes. It is the responsibility of the prospective Offeror to determine any applicable taxes. COPERS will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will COPERS provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your Offer. You may also find information at <https://www.phoenix.gov/finance/plt> or <https://www.azdor.gov/Business>. Once your Offer is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If COPERS finds over payment of a project due to tax consideration that was not due, the Consultant will be liable to COPERS for that amount, and by contracting with COPERS, the Consultant agrees to remit any overpayments back to COPERS for miscalculations on taxes included in an offer price.

2.5.17. *Tax Indemnification*

Consultant will pay all federal, state and local taxes applicable to its operation and any persons employed by the Consultant and require the same of all subcontractors. Consultant will hold COPERS harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation, and require the same of all subcontractors.

2.5.18. Tax Responsibility Qualification

Consultant may be required to establish, to the satisfaction of COPERS, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest). Consultant agrees to a waiver of the confidentiality provisions contained in City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes. Consultant agrees to provide written authorization to City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or Arizona Use Taxes in order to assist the Department in evaluating Consultant's qualifications for and compliance with contract for duration of the term of Agreement.

2.5.19. No Israel Boycott

If this Agreement is valued at \$100,000 or more and requires Consultant (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, or construction, then Consultant must certify and agree that it does not and will not boycott goods or services from Israel, pursuant to Title 35, Chapter 2, Article 9 of the Arizona Revised Statutes. Provided that these statutory requirements are applicable, Consultant by entering this Agreement now certifies that it is not currently engaged in and agrees for the duration of the Agreement to not engage in, a boycott of goods or services from Israel.

2.5.20. No Forced Labor of Ethnic Uyghurs

If this Agreement requires Consultant (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, goods, or construction, then pursuant to Title 35, Chapter 2, Article 10 of the Arizona Revised Statutes Consultant must certify and agree that it and any contractors, subcontractors, or suppliers it utilizes do not and will not use the forced labor of ethnic Uyghurs in the People's Republic of China or any goods or services produced by such forced labor. Provided these statutory requirements are applicable, Consultant, by entering this Agreement, now certifies it is not currently engaged in, and agrees for the duration of the Agreement to not engage in, (a) the use of forced labor of ethnic Uyghurs in the People's Republic of China; (b) the use of any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (c) the use of any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

2.5.21. Advertising

Except as required by law, Consultant shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Agreement or any part thereof without the prior written consent of COPERS. The name of any City site on which services are performed by the Consultant pursuant to this Agreement shall not be used in any advertising or other promotional context by Consultant without the prior written consent of COPERS.

2.5.22. *Strict Performance*

Failure of either party to insist upon the strict performance of any item or condition of the Agreement or to exercise or delay the exercise of any right or remedy provided in the Agreement, or by law, or the acceptance of materials or services, obligations imposed by this contract, or by law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the Agreement.

2.5.23. *Authorized Changes*

COPERS reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within sixty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on COPERS unless evidenced in writing and approved by the Chief Procurement Officer prior to the institution of the change.

2.5.24. *Claims or Demands Against COPERS*

- A. Consultant acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of COPERS of Phoenix, pertaining to claims or demands against COPERS, including provisions therein for set-off of indebtedness to COPERS against demands on COPERS, and Consultant agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in Chapter 18, Section 14 of the Charter of COPERS 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 COPERS. If for any reason it is determined that COPERS Charter and state law conflict, then state law will control.
- B. 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 which the cause of action accrues within Arizona Revised Statutes § 12-821.01(A) and (B).

2.5.25. *No Third-Party Beneficiaries*

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.

2.6. Special Terms and Conditions

2.6.1. *Term of Contract*

The term of this Contract will commence on or about April 1, 2025 and will continue for a period of five (5) years thereafter.

2.6.2. *Contacts with Third Parties*

i. Consultant or its subcontractor will not contact third parties to provide any information in connection to the Services provided under this Agreement without the prior written consent of COPERS. Should Consultant or its subcontractor 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 COPERS, Consultant or its subcontractor will promptly inform COPERS giving the particulars of the information sought and will not disclose such information or give such testimony without the written consent of COPERS or court order. The obligations of Consultant and its subcontractor under this Section will survive the termination of this Agreement.

ii. Consultant agrees that the requirements of this Section will be incorporated into all subcontractor agreements entered into by the Consultant. 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.

2.6.3. *SBE / DBE Utilization*

A. COPERS extends to each individual, firm, Consultant and subconsultant 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.

2.6.4. *Fiscal Year Clause*

COPERS's fiscal year begins July 1st and ends June 30th each calendar year. COPERS 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, Consultant 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.

2.6.5. *Final Payment*

- A. **PAYMENT:** COPERS will make final payment for all Services performed and accepted within 60 days after Consultant has delivered to COPERS any final progress reports, documentation, materials and evidence of costs and disbursement as required under this

Agreement. Any use by COPERS of preliminary reports, raw data or other incomplete material returned by Consultant will be at COPERS's sole risk for such use.

- B. **TEMPORARY SUSPENSION:** COPERS may, by written notice, direct Consultant to suspend performance on all or any part of the Services for such period of time as may be determined by COPERS to be necessary or desirable for its convenience. If such suspension causes additional expense to Consultant in performance, and not due to fault or negligence of Consultant, 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 Consultant for a price adjustment must be supported by appropriate documentation asserted promptly after Consultant has been notified to suspend performance.

2.6.6. Professional Competency

- A. **Qualifications:** Consultant 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. Consultant 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.
- B. **Level Of Care And Skill:** Services provided by Consultant will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of Consultant's profession currently practicing in the same industry under similar conditions. Acceptance or approval by COPERS of Consultant's work will in no way relieve Consultant of liability to COPERS for damages suffered or incurred arising from the failure of Consultant to adhere to the aforesaid standard of professional competence.

2.6.7. Specific Performance

- A. Consultant agrees that in the event of a breach by Consultant of any material provision of this Agreement, COPERS 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 COPERS will elect to treat any such breach on the part of Consultant as a discharge of the Agreement, COPERS 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 COPERS under law or equity.

2.6.8. Documentation

- A. **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 COPERS. Should COPERS, 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,

Consultant will relinquish to the possession and control of COPERS its entire file related to this Agreement and only those portions of said file deemed by COPERS to be not privileged will be returned to Consultant pending the resolution of the existing or anticipated litigation.

- B. **Format And Quality:** All documents prepared by Consultant will be prepared in a format and at a quality approved by COPERS.
- C. **Document Review:** Consultant will review all documents provided by COPERS related to the performance of the Services and will promptly notify COPERS of any defects or deficiencies discovered in such review.
- D. **Submittals:** Consultant will provide timely and periodic submittals of all documents required of Consultant, including subcontracts, if any, as such become available to COPERS for review.

2.6.9. Public Records

- A. Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, the Consultant acknowledges that all documents provided to COPERS may be subject to disclosure by laws related to open public records. Consequently, the Consultant understands that disclosure of some or all of the items subject to this Agreement may be required by law.
- B. In the event City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Consultant, COPERS agrees to provide the Consultant with notice of that request, which shall be deemed given when deposited by COPERS with the USPS for regular delivery to the address of the Consultant specified in their proposal. Within ten days of City notice by COPERS, the Consultant will inform COPERS in writing of any objection by the Consultant to the disclosure of the requested information and obtain a court order enjoining such disclosure [disclosure\[MLW1\]](#) ., if necessary to resolve the public record's request Failure by the Consultant to object timely shall be deemed to waive any objection and any remedy against COPERS for disclosure.
- C. In the event the Consultant objects to disclosure within the time specified, the Consultant agrees to handle all aspects related to request, including properly communicating with the requestor and timely responding with information the disclosure of which the Consultant does not object thereto. Furthermore, the Consultant agrees to indemnify and hold harmless COPERS 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 COPERS in any legal action and payment of any penalties or judgments. This provision shall survive the termination of this Agreement.

2.6.10. Confidentiality

“Confidential Information” means all non-public, confidential, sensitive, or proprietary information disclosed or made available by COPERS to Consultant or its affiliates, employees, subcontractors, partners, or agents (collectively “Recipient”), whether disclosed before or after the Effective Date, whether disclosed orally, in writing, or via permitted electronic access, and whether or not marked, designated, or otherwise identified as confidential. Confidential Information includes, but is not limited to: user contents, electronic data, meta data, employment data, network configurations, information security practices, business operations, strategic plans, financial accounts, personally identifiable information, protected health information, protected criminal justice information, and any other information that by the nature and circumstance of the disclosure should be deemed confidential. Confidential Information does not include this document or information that: (a) is now or subsequently becomes generally available to the public through no wrongful act or omission of Recipient; (b) Recipient can demonstrate by its written records to lawfully have had in its possession prior to receiving such information from COPERS; (c) Recipient can demonstrate by its written records to have been independently developed by Recipient without direct or indirect use of any Confidential Information; (d) Recipient lawfully obtains from a third party who has the right to transfer or disclose it; or (e) COPERS has approved in writing for disclosure.

Recipient shall: (a) protect and safeguard Confidential Information with at least the same degree of care as Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, such as ensuring data is encrypted in transit and at rest and maintaining appropriate technical and organizational measures in performing the Services under the Agreement; (b) not use Confidential Information, or permit it to be accessed or used, for any purpose other than in accordance with the Agreement; (c) not use Confidential Information, or permit it to be accessed or used, in any manner that would constitute a violation of law, including without limitation export control and data privacy laws; and (d) not disclose Confidential Information except to the minimum number of recipients who have a need to know and who have been informed of and agree to abide by confidentiality obligations that are no less restrictive than the terms of this Agreement. If Recipient is required by law or court order to disclose any Confidential Information, Recipient will first give written notice to COPERS and provide COPERS with a meaningful opportunity to seek a protective order or limit disclosure.

Upon COPERS' written request or expiration of this Agreement, whichever is earlier, Recipient shall, at no additional costs to COPERS, promptly return or destroy all Confidential Information belonging to COPERS that Recipient has in its possession or control. After return or destruction of the Confidential Information, Recipient shall certify in writing as to its compliance with this paragraph.

If applicable, Consultant agrees to comply with all COPERS information technology policies and security standards, as may be updated from time to time, when accessing COPERS' networks and computerized systems whether onsite or remotely.

In addition to, and not in lieu of, all other rights and remedies available to COPERS, Consultant will defend, indemnify, and hold COPERS harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Consultant's breach of this Section (Confidentiality). Consultant's obligations pursuant to this Section (Confidentiality) shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Agreement.

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 COPERS' discretion result in immediate termination of this Agreement without notice. The obligations of Consultant under this Section shall survive the termination of this Agreement.

2.6.11. Data Protection

The parties agree this Section shall apply to COPERS's Confidential Information and all categories of legally protected personally identifiable information (collectively "PII") that Consultant processes pursuant to the Agreement. "Personally identifiable information" is defined as in the Federal Privacy Council's Glossary available at: <https://www.fpc.gov/resources/glossary/>.

As between the parties, COPERS is the data controller and owner of PII and Consultant is a data processor. In this Section, the term "process," "processing," or its other variants shall mean: an operation or set of operations which is performed on PII, whether or not by automated means, including without limitation: collection, recording, copying, analyzing, caching, organizing, structuring, storage, adaptation, alteration, retrieval, transmission, dissemination, alignment, combination, restriction, erasure, or destruction.

- A. When Consultant processes PII pursuant to the Agreement, Consultant shall, at no additional cost to COPERS:
 1. process PII only within the United States and only in accordance with the Agreement and not for Consultant's own purposes, including product research, product development, marketing, or commercial data mining, even if COPERS data has been aggregated, anonymized, or pseudonymized;
 2. implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; A.R.S. § 18-552 (Notification of Security System Breaches); A.R.S. § 44-7601 (Discard and Disposal of Personal Identifying Information Records); Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice; (When considering what measures are appropriate and in line with good industry practice, Consultant shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate to the nature of the data to be protected and the harm that might result from such

- unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Consultant will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS); however, Consultant must remediate vulnerabilities that are rated critical within 14 days and vulnerabilities that are rated high within 30 days. If requested by COPERS, Consultant shall promptly provide a written description of the technical and organizational methods it employs for processing PII.)
3. not subcontract any processing of PII to any third party (including affiliates, group companies or sub-contractors) without the prior written consent of COPERS; and Consultant shall remain fully liable to COPERS for any processing of PII conducted by a sub-processor appointed by Consultant;
 4. take reasonable steps to ensure the competence and reliability of Consultant's personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access;
 5. maintain written records of all information reasonably necessary to demonstrate Consultant's compliance with this Agreement and applicable laws;
 6. allow COPERS or its authorized agents to conduct audit inspection during the term of the Agreement, but no more than once per year, which may include providing access to the premises, documents, resources, personnel Consultant or Consultant's sub-contractors use in connection with the Services; provided however, COPERS may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Consultant at no cost to COPERS in lieu of the audit inspection rights of this Section;
- B. If the Consultant becomes aware of any actual or potential data breach (each an "Incident") arising from Consultant's processing obligations pursuant to the Agreement, Consultant shall notify COPERS at SOC@phoenix.gov without undue delay within 48 hours; and:
1. provide COPERS with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available;
 2. take action immediately, at Consultant's own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident;
 3. cooperate with COPERS in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by COPERS; and

4. not directly contact any individuals who may be impacted by the Incident or release or publish any filing, communication, notice, press release, or report concerning the Incident without COPERS' prior written approval (except where required to do so by applicable laws).

In addition to, and not in lieu of, all other rights and remedies available to COPERS, Consultant will defend, indemnify, and hold COPERS and the City harmless against all losses, claims, costs, attorneys' fees, damages or proceedings arising out of Consultant's breach of this Section (Data Protection). Consultant's obligations pursuant to this Section (Data Protection) shall not be subject to any limits of liability or exclusions as may be stated elsewhere in the Agreement.

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 COPERS' discretion result in immediate termination of this Agreement without notice. The obligations of Consultant under this Section shall survive the termination of this Agreement.

2.6.12. Background Screening

- A. Consultant agrees that all Consultant and subcontractors' workers (collectively "Contract Worker(s)") pursuant to this Agreement will be subject to background and security checks and screening will comply with all applicable laws, rules and regulations. Consultant further agrees that the background screening is necessary to preserve and protect the public health, safety, and welfare.
- B. Background Screening Risk Level: The current risk level and background screening required for this Agreement is MAXIMUM RISK LEVEL.
- C. Maximum Risk Level: A maximum risk background screening will be performed every five years when the Contract Worker's work assignment will any responsibility for the receipt of payment of COPERS funds or control of inventories, assets, or records that are at risk of misappropriation:
- D. Requirements: The background screening for this maximum 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. In addition, Maximum screening levels may require additional checks as included herein, depending on the scope of, and may be amended if the scope of work changes.
- E. Consultant Certification; COPERS Approval of Background Screening:
 1. Unless otherwise provided for in the Scope, Consultant will be responsible for:
 - i. determining whether Contract Worker(s) are disqualified from performing work for COPERS for maximum risk level background checks; and,
 - ii. submitting pass/fail results to COPERS for approval; and

- iii. reviewing the results of the background check every three to five years; dependent on the scope and,
 - iv. to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
 - v. Submitting the list of qualified Contract Workers to the contracting department, and
 - vi. If, upon review of the background information, COPERS will advise the Contractor if it believes a Contract Worker should be disqualified. The Consultant will evaluate the Contract Worker if the Consultant believes that there are extenuating circumstances that suggest that the person should not be disqualified, the Consultant will discuss those circumstances with the contracting department. The contracting department decision on disqualification of the Contract Worker is final.
2. For sole proprietors, the Consultant must comply with the background check for himself and any business partners, or members or employees who will assist on the Agreement and for whom the requirements of the Agreement apply.
3. By executing this Agreement, Consultant certifies and warrants that Consultant has read the background screening requirements and criteria in this section, and that all background screening information furnished to COPERS is accurate and current.
4. COPERS's final documented decision will be an "approve" or "deny" for identified Contract Workers.
5. COPERS's will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Consultant, or any contracted agency that assists with review, after COPERS's completed review.
6. By executing this Agreement, Consultant further certifies and warrants that Consultant has satisfied all background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
7. COPERS may, in its sole discretion, accept or reject any or all the Contract Workers proposed by the Consultant for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this Agreement will not be proposed to perform work under other COPERS Contracts or engagements without COPERS's prior written approval.
8. Terms of This Section Applicable to all Consultant's Contracts and Subcontracts: Consultant will include Contract Worker background screening in all contracts and subcontracts for Services furnished under this Agreement.
9. Materiality of Background Screening Requirements; Indemnity: The background screening requirements are material to COPERS's entry into this Agreement and any

breach of these provisions will be deemed a material breach of this Agreement. In addition to the indemnity provisions set forth in this agreement, Consultant will defend, indemnify and hold harmless COPERS for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Consultant. The background screening requirements are the minimum requirements for the Agreement. COPERS in no way warrants that these minimum requirements are sufficient to protect Consultant from any liabilities that may arise out of the Consultant's Services under this Agreement or Consultant's failure to comply with this section. Therefore, Consultant 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.

10. Continuing Duty; Audit: Consultant's obligations and requirements will continue throughout the entire term of this Agreement. Consultant will maintain all records and documents related to all background screenings and COPERS reserves the right to audit Consultant's records.

2.6.13. *Key Personnel*

KEY PERSONNEL:

- A. Consultant assigns the following designated personnel who shall be capable of and devoted to the successful accomplishment of the Services outlined in this Agreement. These specific individuals shall be assigned to key positions as follows:
- Name, Title
 - Name, Title
 - Name, Title
 - Name, Title
- B. This Agreement is predicated, in part and among other considerations, on the utilization of the specific individual(s) and/or personnel qualification(s) identified and/or described in Consultant's Offer. Therefore, no substitution of such designated personnel shall be made without prior written approval of COPERS.
- C. **Key personnel changes:** Proposed substitution of personnel under this Agreement shall be of equal experience and/or shall exceed the current incumbent's experience and qualifications.
1. Resume: Provide a resume of the proposed personnel. Include relevant experience and qualifications specific to the Services outlined in this Agreement.
 2. Organization chart: Provide a revised organizational chart to COPERS.

- D. **Notice to COPERS:** COPERS requires an advance notice of fourteen (14) calendar days for all key personnel changes. For immediate staff changes where this timeframe is not possible, Consultant shall notify COPERS of staff changes immediately, or no later than forty-eight (48) hours after Consultant is notified by their staff.

- E. **COPERS's Review:** COPERS will review the proposed staff member's resume and determine if the experience and qualifications is equal to and/or exceeds the minimum experience and qualifications required by the Section II of the Scope of Work. COPERS will provide a written response to Consultant within ten (10) business days accepting or declining the proposed personnel. COPERS is the sole decision-maker of replacement personnel assigned to perform Services under the Agreement.

- F. COPERS's approval of a personnel substitution shall not be construed as an acceptance of the substitution's performance potential. Consultant shall bear all transitional expenses incurred for any costs associated with removing or replacing Key Personnel who are performing work under the contract.

2.7. Defense and Indemnification

2.7.1. *Investment Advisor – Financial Management Agreements*

Financial Consultant ("Indemnitor") agrees to faithfully discharge the duties set forth in this Agreement and must defend, indemnify, and hold harmless the City and COPERS and its officers, officials (elected or appointed), agents, and employees ("Indemnitee") from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses (including but not limited to court costs, attorneys' 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, from the acts, omissions or negligent conduct of Indemnitor or any of its owners, officers, directors, members, manager, agents, employees or subcontractors ("Indemnitor's Agents") arising out of or with respect to Indemnitor's Scope of Work. This defense and indemnity obligation includes holding Indemnitee harmless for any claim or 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 claims, except where it is proven that those Losses are solely a result of Indemnitee's own negligent or willful acts or omissions. It is agreed that Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, 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 and COPERS. The obligations of Indemnitor under this provision survive the termination or expiration of this Agreement.

2.8. Insurance Requirements

2.8.1. *Consultant's Insurance*

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

COPERS in no way warrants that the limits stated in this section are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this Agreement by the Consultant, its agents, representatives, employees, or subcontractors and Consultant may purchase such additional insurance as they determined necessary.

2.8.2. *Scope and Limits of Insurance*

Consultant 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.

2.8.3. *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 Occurrence \$1,000,000

- A. The policy must name COPERS and 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 Consultant related to this Agreement.
- B. There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to COPERS and the City of Phoenix as an additional insured.
- C. COPERS and the City of Phoenix is an additional insured to the full limits of liability purchased by the Consultant.
- D. The Consultant's insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by COPERS and the City of Phoenix.

2.8.4. *Automobile Liability*

Bodily injury and property damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL) \$1,000,000

- A. The policy must be endorsed to include COPERS and the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant, relating to this Agreement.
- B. COPERS and the City of Phoenix is an additional insured to the full limits of liability purchased by the Consultant.
- C. The Consultant's insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by COPERS.

2.8.5. 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

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

2.8.6. Professional Liability (Errors and Omissions Liability)

Each Claim \$1,000,000

Annual Aggregate \$1,000,000

- A. 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 Agreement.
- B. Consultant warrants that any retroactive date under the policy must precede the effective date of this Agreement; 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 Agreement is completed.

2.8.7. Technology Errors and Omissions Liability

Each Claim \$1,000,000

Annual Aggregate \$1,000,000

The policy must cover errors and omissions or negligent acts in the delivery of products, services, and/or licensed programs for those services as defined in the Scope of Services of this Agreement.

Consultant warrants that any retroactive date under the policy must precede the effective date of this Agreement; and that continuous coverage will be maintained for the life of the Agreement.

2.8.8. Network Security and Privacy Liability

Each Claim \$1,000,000

Annual Aggregate \$1,000,000

Policy must cover but not be limited to (1) coverage for third party claims and losses with respect to network risk and invasion of privacy (2) crisis management and third-party identity theft response costs and (3) cyber extortion.

Consultant warrants that any retroactive date under the policy must precede the effective date of this Agreement; and that continuous coverage will be maintained for the life of the Agreement.

2.8.9. Notice of Cancellation

For each insurance policy required by the insurance provisions of this Agreement, the Consultant must provide to COPERS, within 5 days of notice of award of contract, a notice that a policy is suspended, voided or cancelled for any reason. Such notice must be mailed to Scott Steventon, Retirement Program Administrator at 200 W. Washington St., 10th Floor, Phoenix, AZ 85003 or emailed to copersadmin@phoenix.gov.

2.8.10. Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. COPERS and the City in no way warrant that the required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.

2.8.11. Verification of Coverage

Consultant must furnish COPERS with certificates of insurance (ACORD form or equivalent approved by COPERS) as required by this Agreement. 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 COPERS before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

All certificates required by this Agreement must be sent directly to Scott Steventon, Retirement Program Administrator at 200 W. Washington St., 10th Floor, Phoenix, AZ 85003 or emailed to copersadmin@phoenix.gov within 10 days of notice of award of contract and annually thereafter.

The COPERS project/Agreement number and project description must be noted on the certificate of insurance. COPERS reserves the right to review complete copies of all insurance policies required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

2.8.12. Subcontractors

Consultant's certificates shall include all subcontractors as additional insureds under its policies OR Consultant shall be responsible for ensuring and verifying that all subcontractors have valid and collectable insurance. At any time throughout the life of the Agreement, COPERS reserves the right to require proof from the Consultant that its subcontractors have insurance coverage. All subcontractors providing services included under this Agreement's Scope of Services are subject to the insurance coverages identified above and must include COPERS as an additional insured. In certain circumstances, the Consultant may, on behalf of its subcontractors, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Consultant assumes liability for all subcontractors with respect to this Agreement.

2.8.13. Approval

Any modification or variation from the insurance coverages and conditions in this Agreement must be documented by an executed contract amendment.

3. SUBMITTALS

3.1. Submittals

3.1.1. AFFIDAVIT

The undersigned Offeror hereby submits to COPERS the enclosed proposal based upon all terms and conditions set forth in COPERS's Request for Proposals (RFP) and referenced materials. Offeror further specifically agrees hereby to provide services in the manner set forth in the proposal submitted by the Offeror.

The undersigned Offeror acknowledges and states, under penalty of perjury, as follows:

- A. COPERS 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 the resulting contract.
- B. COPERS 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. COPERS 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. COPERS 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 COPERS.
- G. This proposal is valid for a minimum of 180 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 COPERS 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.

3.1.2. Copies

Please submit one electronic copy (portable drive or CD) of the Submittal Section and all other required documentation. Please do not lock the electronic copy with password protection so that COPERS may digitally incorporate the successful Offer into the awarded contract.

Please submit only the Submittal Section, 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 opening date and is irrevocable unless it is in COPERS' best interest to release Offer(s).