

Notice of Request for Qualifications (RFQ)

SOLICITATION NUMBER: 2019-013-RFQ

SERVICE: Primary Legal Counsel Services

SOQ DUE DATE & TIME: February 5, 2019 by 1:00 pm (Arizona) time

MAILING/DELIVERY ADDRESS: Phoenix-Mesa Gateway Airport Authority
Attn: Marian Whilden, Procurement Coordinator
5835 S. Sossaman Road
Mesa, AZ 85212

The Phoenix-Mesa Gateway Airport Authority (PMGAA) requests Statements of Qualifications (SOQ) from qualified firms to provide Primary Legal Counsel Services for the Phoenix-Mesa Gateway Airport (Gateway Airport) in Mesa, Arizona. This solicitation may be downloaded from our website at www.gatewayairport.com under the Business|Procurements & Notices section. All submissions and Offeror conduct must comply with applicable PMGAA policies, rules and procedures. PMGAA may cancel this solicitation at any time for any legally permissible reason.

PMGAA will accept Statements of Qualifications for the specified service until the time and date cited above. Statements of Qualifications must be submitted in a sealed envelope with the solicitation number and the consultant's name and address clearly indicated on the envelope. Submittals received on or before the correct time and date will be time stamped by a staff member and publicly recorded. Late submittals will not be considered. Additional instructions for preparing your SOQ are provided in the solicitation package. Requests for additional information or clarification of requirements must be in writing and submitted to:

Contact: Marian Whilden, Procurement Coordinator
Telephone: (480) 988-7646
Email: mwhilden@gatewayairport.com

Deadline for submitting questions to PMGAA is January 22, 2019 by 5:00 pm (Arizona time). Responses to questions received will be issued in an addendum to the Request for Qualifications in accordance with Section One of this RFQ and posted at www.gatewayairport.com under the Business|Procurements & Notices section of the website. Offerors are responsible for checking the PMGAA website at www.gatewayairport.com, under the Business|Procurements & Notices section for any addenda that may be created for this solicitation and including issued addenda in its submitted Statement of Qualifications.

Direct contact with PMGAA Board of Directors and/or PMGAA representatives or staff other than as specified in this solicitation, on any subject related to this solicitation is expressly prohibited except with the prior knowledge and written permission of the procurement coordinator listed above. Unauthorized contact of any PMGAA Board of Directors, and/or PMGAA staff or representatives may be cause for rejection of qualifications.

Issue Date: January 2, 2019

Request for Qualifications

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Notice of Intent

Solicitation Number 2019-013-RFQ – Primary Legal Counsel Services

Please fax or email this page upon receipt of solicitation package

Fax: (480) 988-2315

Email: mwhilden@gatewayairport.com

This notice is to be completed by any Offeror who intends to submit a response to the Phoenix-Mesa Gateway Airport Authority (PMGAA) for the above titled solicitation. The submittal of this form in no way obligates an Offeror to provide any services or materials to PMGAA.

Offeror Responsibilities:

- Offerors are responsible for checking the PMGAA website at www.gatewayairport.com, under the Business | Procurements & Notices section for any addenda that may be created for this solicitation.
- Offerors shall submit responses in accordance with requirements stated in the solicitation.
- Offerors may not submit responses to a solicitation via email or fax.

For any clarifications, please contact Marian Whilden, Procurement Coordinator, at (480) 988-7646 or e-mail: mwhilden@gatewayairport.com.

.....
Date: _____

Name: _____

Company: _____

Telephone: _____

Email: _____

Yes, I intend to respond to this solicitation

If you are unable to respond on this item, kindly indicate your reason for “No Response” below and fax back.

No, I do not intend to respond to this solicitation for the following reason(s):

How did you hear about this solicitation? (Please circle or write in)

Arizona Business Gazette

East Valley Tribune

PMGAA Web Site

Direct email

Industry Association: _____

Other: _____

Introduction

Purpose:

The purpose of the Request for Qualifications (RFQ) is to solicit offers from qualified firms, or teams of firms to provide Primary Legal Counsel Services to the Phoenix-Mesa Gateway Airport Authority (PMGAA) in accordance with Board Policy No.: 18-42. PMGAA expects to enter into a contract with the successful Offeror(s) with an initial term of three years with two one-year possible extensions at PMGAA's discretion. These legal services will be provided as needed and on a case-by-case basis at the discretion of PMGAA.

Background:

The Phoenix-Mesa Gateway Airport is owned and operated by PMGAA, a joint powers airport authority. The PMGAA Board of Directors is represented by the Cities of Apache Junction, Mesa and Phoenix, Towns of Gilbert and Queen Creek, and the Gila River Indian Community. The Board of Directors provides policy direction for PMGAA while an Executive Director and professional staff conduct the day-to-day activities of PMGAA.

PMGAA oversees the operation and development of the Phoenix-Mesa Gateway Airport.

The Airport is a commercial service airport with facilities to accommodate all types of air transportation, including scheduled commercial air service, general aviation, flight training and testing, and air cargo operations. The Airport operates its own Fixed Base Operator (FBO). During fiscal year 2017, the Airport served approximately 1.4 million airline passengers, accommodated 290,000 aircraft operations, and pumped 16.2 million gallons of fuel.

The Airport is situated on approximately 3,000 acres of land with 1,000 acres ready for development. Major tenants of the airport include: two commercial passenger airlines, four car rental brands, restaurant and gift shop concessionaires, a U.S. Customs Office, and state and county educational institutions.

PMGAA spent the following amounts (rounded to the nearest \$1,000) on legal services in the fiscal years (ended June 30) listed:

- FY 2014 \$165,000
- FY 2015 \$194,000
- FY 2016 \$122,000
- FY 2017 \$132,000
- FY 2018 \$212,379

Section One - Offeror Information and Instructions

A. GENERAL INFORMATION ON SOLICITATION PROCESS

1. **Availability of Solicitation.** The solicitation package is available via the Internet at www.gatewayairport.com under the Business | Procurements & Notices section.
2. **Addendums.** If PMGAA deems it necessary to amend the solicitation, an Addendum will be prepared in writing and posted to the PMGAA website. Offerors are responsible for obtaining all addenda via the PMGAA website at www.gatewayairport.com under the Business | Procurements & Notices section or by other means. Any Addenda issued by PMGAA are to be included in the response and will become a part of the contract. Offeror shall acknowledge receipt of each addendum by signing and returning the document, as part of the Offeror's submittal under this RFQ, and by the specified due date and time of the RFQ.
3. **Familiarization with Requirements.** It is the Offeror's responsibility to examine the entire solicitation package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a response. Negligence in preparing a submittal confers no right of withdrawal after due date and time. All submissions must comply with applicable PMGAA rules, regulations and policies.
4. **Cost of Submittal Preparation.** PMGAA shall not reimburse the cost of, nor pay any expenses related thereto, developing, presenting or providing any response to this solicitation. Bids, proposals and/or statements of qualifications submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.
5. **Inquiries.**
 - a. **Contact Person.** Any inquiry related to a solicitation, including any requests for or inquiries regarding standards referenced in the solicitation should be directed to the staff member listed on the cover page of the solicitation. The Offeror shall not contact or direct inquiries concerning this solicitation to any other PMGAA employee unless the solicitation specifically identifies additional person(s) as a contact.
 - b. **Submission of Inquiries.** All inquiries shall be submitted in writing and/or electronic mail and shall refer to the appropriate solicitation number, page and paragraph. PMGAA shall consider the relevancy of the inquiry but is not required to respond in writing.
 - c. **Verbal Responses.** Oral interpretations or clarifications will be without legal effect. An Offeror shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the solicitation.
6. **Public Record.** All submittals in response to this solicitation shall become the property of PMGAA, shall not be returned to Offeror and shall become a matter of public record available for review subsequent to the contract award. Please review PMGAA's complete "Public Access to Procurement Information" contained in PMGAA's Procurement Policy that is available under the Policies, Documents and Forms link at: <http://www.gatewayairport.com/policiesdocumentsandforms>.
7. **Solicitation Results.** Results are not provided in response to telephone inquiries. A tabulation of responses received will remain on file at PMGAA, and a Notice of Intent to Award shall be posted to the web site.

8. **Debarment/Suspended.** By submitting a Statement of Qualifications, Offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this solicitation by any Federal department or agency.

9. **Protest of Solicitation or Specifications (Before Bid Opening).**
 - a. Any interested person aggrieved in connection with the solicitation of a contract shall protest irregularities in the IFB, RFP, or RFQ within three business days from the date the protester knew or should have known of the basis for the protest and, in any case, at least five business days before opening bids or proposals.
 - b. All protests must be made in writing to the Purchasing Director. Each protest must state the specific factual and legal grounds on which the protest is based. The protester must also include with the protest all pertinent documents and all supporting evidence. PMGAA need not accept any protest that fails to comply with the requirements of this section. The protester's failure to timely protest specifications or other solicitation terms and conditions constitutes a waiver of the protest.
 - c. If a timely protest before bid opening is made, PMGAA may proceed with the solicitation or with the award of the contract unless the Purchasing Director determines in writing that the protest should be sustained or that an addendum addressing the protest should be issued.

10. **Protest of Award Recommendation.**
 - a. A protest made after the deadline for bids or proposals, including challenges to the evaluation committee, must be submitted in writing to the Purchasing Director.
 - b. A protest must be received by the Purchasing Director within five business days following public posting of PMGAA's award recommendation. The formal protest must contain the following information.
 - i. PMGAA's solicitation identification number and title.
 - ii. Name and address of the protester, the title or position of the person submitting the protest, and a statement that the protest has been authorized by the protester and the protest is made in good faith.
 - iii. A statement of all facts alleged and all rules, regulations, statutes, or constitutional provisions that entitles the protester to relief.
 - iv. All other information, documents, materials, legal authority, and evidence in support of the protest.
 - v. A statement indicating the precise relief sought by the protester.
 - c. The Purchasing Director will make a written decision on the protest within ten business days after it is received.
 - d. The Protester may appeal the Purchasing Director's decision to the Executive Director. Any appeal must be filed with the Executive Director within three business days after the protester receives the Purchasing Director's decision.
 - e. The Executive Director may hear the appeal or appoint an independent hearing officer to do so. If a hearing officer is appointed, the hearing officer shall conduct an informal hearing on the appeal within 10 business days from receipt of the appeal. The hearing officer shall promptly prepare an informal decision and recommendation on the appeal for the Executive Director's consideration. The hearing officer shall promptly serve the recommendation on the protester.
 - f. Upon receipt of the hearing officer's recommendation, or if no hearing officer is appointed, the Executive Director shall decide any protest for a solicitation valued at less than \$50,000.

For solicitations valued less than \$50,000 or sustained protests, the Executive Director's decision is final. For solicitations valued over \$50,000 and the Executive Director is recommending denial of the protest, the Executive Director shall make a recommendation to the Board, and the Board shall make the final decision regarding award of the contract.

- g. Notice of the Board's final decision must be furnished to the protesting party, in writing, by the Purchasing Director.
11. **Legal Remedies.** All claims and controversies shall be subject to the current PMGAA Procurement Policy.
12. **Special Provisions.** Wherever special provisions are written into the Special Provisions and Specifications (Section Two), which are in conflict with conditions stated in these Information and Instructions to Offerors, the provisions stated in Special Provisions and Specifications, shall take precedence.
13. **Certification.** By submitting a bid, proposal or statement of qualifications, Offeror certifies:
- It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, or A.R.S. Section 31-1461, et. seq.
 - It 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 this solicitation.
14. **Title VI Solicitation Notice.** PMGAA, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all Offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit statements of qualifications in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
15. **Federal Fair Labor Standards Act.** All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.
- The Offeror has full responsibility to monitor compliance to the referenced statute or regulation. The Offeror must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division
16. **Occupational Safety and Health Act of 1970.** All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Offeror must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Offeror retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Offeror must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

B. SOQ PREPARATION AND SUBMITTAL

1. SOQ Preparation.

- a. Forms. All SOQs shall include the required forms provided in this solicitation. It is permissible to copy these forms if required.
- b. No Facsimile or Electronic Mail Responses. SOQs may not be submitted via facsimile or electronically. Facsimiles or other electronic mail SOQs shall not be considered.
- c. Confidential, Trade Secret and Proprietary Information. Requests for nondisclosure of information deemed Confidential, Trade Secret, and/or Proprietary must be made in accordance with PMGAA's Procurement Policy. Please review PMGAA's complete "Public Access to Procurement Information" contained in PMGAA's Procurement Policy that is available under the Policies, Documents and Forms link at:
<http://www.gatewayairport.com/policiesdocumentsandforms>.

2. SOQ Submittal.

- a. Submission Package. One (1) original and the specified number of copies of the submittal (see Section Two) should be contained in each submission package. Each submittal package/envelope should be firmly sealed and clearly marked on the outside with the solicitation number, "Statement of Qualification" and the name and address of the Offeror.
- b. Late Submittals. Late submittals will be rejected and returned to the Offeror.
- c. No Modifications. Modifications are not permitted after SOQs have been opened except as otherwise provided under applicable law, such as a specific request by PMGAA such as a requested Best and Final Offer (BAFO). All modifications shall be made in writing and executed and submitted in the same form and manner as the original SOQ.
- d. Withdrawal of SOQ. SOQ submittals may be withdrawn at any time prior to the specified due date and time. An Offeror (or authorized representative) may withdraw the response by notifying the designated contact for this solicitation in writing on company letterhead. Facsimiles or other electronic format withdrawals shall not be considered.

3. SOQ Evaluation.

- a. Conformance to RFQ. Each SOQ received will be checked for the presence or absence of required information in conformance with the submission requirements of this RFQ and to ensure that the submittal is fully responsive to the specifications listed.
- b. Disqualification. An Offeror who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity will have its response rejected.
- c. Clarifications. PMGAA reserves the right to obtain Offeror clarifications where necessary to arrive at full and complete understanding of Offeror's response. Clarification means a communication with an Offeror for the sole purpose of eliminating ambiguities in the SOQ and does not give Offeror an opportunity to revise or modify its submittal.
- d. Response Rejection. Submission of additional terms, conditions and/or agreements with the SOQ response may result in rejection.

4. Award of Contract.

- a. Rights of PMGAA. The PMGAA reserves the right to award to whichever Offeror(s) deemed most advantageous to the PMGAA. The PMGAA may reject any or all submittals, waive any

minor informality in submittals received, reject any alternate submittals and reserves the right to reject the submittal(s) of any Offeror who has previously failed to perform competently in any contract with the PMGAA.

- b. Selection. The contract shall be awarded using the criteria outlined in Section Two.
- c. Notification. Prior to contract award, the selected successful Offeror(s) will be notified of their apparent selection for contract award, and (a) contract(s) will be drawn which will include by reference this solicitation and any other contractual language as may be required by the PMGAA or by law.
- d. Standard Terms and Conditions. Offeror acknowledges that, by virtue of submitting a response to this RFQ, Offeror agrees all Standard Terms and Conditions, as stated in Section III of this RFQ, will be included in the executed Contract between Offeror and PMGAA as a result of this solicitation.
- e. Professional Services Agreement. Selected Offeror(s) will be required to execute a Professional Services Agreement with PMGAA which will include by reference this solicitation. If the Agreement is not executed within 30 days from the Notice of Intent to Award, PMGAA reserves the right to cancel and award to the next highest ranked firm.

Section Two – Special Provisions and Specifications

A. SCOPE OF SERVICES

Timeliness of response and accessibility to assigned counsel is an important aspect of this service. Accessibility includes the ability to be reached promptly by telephone, cell phone, or e-mail and to be available to attend meetings in person on short notice. When Phoenix-Mesa Gateway Airport Authority (PMGAA) requests legal services, the firm should be able to provide an estimate of the time to complete the work and keep the requesting party apprised of any delays or special considerations. The firm(s) must be able to work cooperatively with any Specialty Legal Services retained by PMGAA. Primary Legal Counsel will coordinate with PMGAA and the provider of any Specialty Legal Services procured by PMGAA to ensure consistent, coordinated legal services that are in the best interest of PMGAA. Unless otherwise agreed between PMGAA and Primary Legal Counsel, Primary Legal Counsel will be responsible for managing the matters for which Specialty Legal Services are engaged.

PMGAA will select one or more law firms to provide primary legal services including legal advice and counsel to PMGAA on major issues and projects arising from the operation of Phoenix-Mesa Gateway Airport. It is the responsibility of the Primary Legal Counsel to provide legal services to PMGAA in accordance with the Scope of Services detailed in this RFQ and subsequent executed Professional Services Agreement. The Primary Legal Counsel will regularly work with the Executive Director and staff with respect to various legal needs of PMGAA. The Primary Legal Counsel will communicate directly with the PMGAA Board when, in the professional judgment of the Primary Legal Counsel, such communication is in the best interest of PMGAA, or upon request from the PMGAA Board. The PMGAA Board, as a whole, may consult with or request assistance from the Primary Legal Counsel at any time. Upon the direction of the Board, one or more individual members of the Board may consult with or request assistance from the Primary Legal Counsel on behalf of the Board.

Matters for which Primary Legal Counsel will be responsible for may include, but are not limited to, the following:

- a. PMGAA Board of Directors-approved policies and procedures,
- b. PMGAA Board of Directors liability,
- c. Intergovernmental agreements,
- d. Real estate acquisition, lease, and disposal,
- e. Purchase and lease contracts,
- f. Construction contracts,
- g. Consultation and coordination with PMGAA member government legal representatives,
- h. Personnel matters, including civil rights issues,
- i. Management of Specialty Legal Services retained by PMGAA,
- j. Review and interpretation of state and federal laws and regulations, and
- k. Certain financial issues as required.

PMGAA requires the selected firm to appear in person or telephonically at PMGAA Board meetings and at monthly Senior Staff meetings of certain key PMGAA staff.

PMGAA may, at its sole discretion, accept or reject any law firm staff member proposed to conduct work on PMGAA's behalf during the course of the representation. If a staff member is rejected by PMGAA, the law firm shall provide alternative, qualified staff at the same hourly rate for PMGAA's approval.

PMGAA reserves the right to contract with other attorneys and legal firms for any specialized contract legal services (Specialty Legal Services) necessary for the successful operation of PMGAA.

Termination of Primary Legal Counsel prior to the term set forth in the executed Professional Services Agreement will require PMGAA Board approval.

B. MINIMUM QUALIFICATIONS

The requirements listed below are the minimum requirements and are intended to govern, in general, the requirements desired. PMGAA reserves the right to evaluate variations from these specifications. Minimum qualifications are as follows:

- a. All counsel providing legal representation for PMGAA shall be properly licensed and in good standing to practice in the state of State of Arizona or possess the ability to be admitted pro hac vice;
- b. Firm shall maintain a full-service law office in Maricopa County;
- c. Firm possess five or more years' experience representing local governments, including airports.

C. SUBMITTAL REQUIREMENTS

Firms interested in responding to this solicitation should submit Statements of Qualifications (SOQ) which includes a one-page cover letter plus a maximum length of twelve (12) pages to address the SOQ criteria as specified and in the order listed in this Section Two.

In responding to this RFQ, Offerors shall organize their SOQ submission in such a way as to follow the submittal requirements listed below. Information included within the SOQ may be used to evaluate your firm as part of any criteria regardless of where that information is found within the SOQ. Information obtained from the SOQ and from any other relevant source may be used in the evaluation and selection process.

1. Cover Letter (one page):

- a. Identify the full company name, mailing address, telephone number, and email address for the person who will serve as the firm's primary contact person for their SOQ, and provide company organization information.
- b. Provide a brief introduction of the firm as it relates to the requested services.

2. General Firm Information

- a. Description of firm/team, including length of time the firm has been in business, location of the office(s) from which the work is to be performed and the number of affiliated offices (if applicable).
- b. Legal firm organization.
- c. Provide an organizational chart with names and titles of senior management, including the proposed managing attorney for PMGAA.

- d. List of business licenses, professional membership(s) associations, societies and boards the firm or personnel may belong or other credentials for the firm's account executive(s)/primary attorneys, together with evidence that the firm, if a corporation, is in good standing and qualified to conduct business in Arizona.
- e. Provide any other relevant general information regarding the firm.
- f. Disclosure of any known business or financial relationships between the firm and members of the PMGAA Board – if none, state "none".
- g. Identify any current or potential conflicts of interest and indicate what procedures your firm would utilize to identify and resolve future conflicts of interest. It is of the utmost importance that no real or apparent conflict of interest exists between Offeror and PMGAA, PMGAA Board members or PMGAA employees. Therefore, Offeror shall disclose, in writing in its Statement of Qualifications, any real or possible conflicts of interest which exists or may exist. In addition, the firm shall be responsible to promptly disclose to PMGAA any situations which may create possible conflicts of interest during the term of the agreement so that appropriate action can be taken. If no conflicts of interest exist, state "none".
- h. Include a statement of assurance that the firm and all counsel representing PMGAA meet the Minimum Requirements as stated in Section 2(b) of this RFQ.

3. Firm Experience and Background

- a. Firm's overall service capability as it relates to the Scope of Services.
- b. Discuss the firm's current workload capacity and the effect this contract would have on it.
- c. List and describe:
 - i. Any termination from a client or project
 - ii. Offeror's capability and intent to proceed without delay if selected for this work
- d. Areas of specialty and resources of the firm (i.e. number of partners, associates, paralegals, clerical staff, etc.).
- e. Provide the number of complaints that have been filed against your firm or any partner or employee with the Arizona Bar Association in the last five (5) years.
- f. Include a copy of your most recent audited financial statement.

4. Proposed Team Experience & Qualifications

- a. Identify each person who will render professional services to PMGAA, including name and title.
- b. Specify any specialized legal training or skills that this team possesses related to the Scope of Services outlined above. Provide resumes for each team member. Only include resumes of attorneys to be assigned to the representation of PMGAA. Each resume should be in sufficient detail to analyze the proposed team member's qualifications and should include education, training and related experience. (Maximum 2 pages)
- c. Specify which attorney would be PMGAA's prime contact during the contract.
- d. PMGAA expects the selected firm to be present at Board meetings, and at monthly meetings of certain key staff. Identify the individual who will have the responsibility of attending these meetings.
- e. Specify which attorney will be responsible for each of the items listed in the Scope of Services section of this RFQ.

5. Public Sector / Aviation Experience

- a. Describe your firm's experience with airports and airport authorities. The description should demonstrate the firm's and team's familiarity with issues affecting airports such as Phoenix-Mesa Gateway Airport.
- b. Complete and submit Attachment C, References. Include names, addresses, and telephone numbers for at least six references presently or previously served by your firm in a capacity similar to that described in the above Scope of Services. PMGAA may contact any other known clients, whether offered as references or otherwise, to obtain information that will assist PMGAA in evaluating Offeror's Statement of Qualifications.

- c. For each of the references listed in Attachment C, provide a description of the services provided and the overall size of the airports and agencies.

6. Appendices

- a. Attachment A: “Authorization for Release of Performance Information and Waiver” form shall be completed, signed and included in the SOQ.
- b. Attachment B: “Certificate of Insurability” form shall be completed, signed and included in the SOQ. Within ten days of execution of a contract with PMGAA, the successful Offeror shall furnish proof of insurance meeting the requirements of, and in the amounts listed, in the sample Standard Form Professional Services Agreement (Attachment E).
- c. Attachment C: “References” form shall be completed and included in the SOQ.
- d. Attachment D: “Agreement Review Statement” form shall be completed, signed and included in the SOQ.
- e. Resumes for proposed key team members, 2-page maximum for each resume.
- f. Audited Financial Statement.

D. EVALUATION CRITERIA

Points	Category
10	General Firm Information
30	Firm Experience and Background
30	Proposed Team Experience and Qualifications
30	Public Sector / Aviation Experience
100	Total Score

E. SUBMITTAL INSTRUCTIONS

1. This SOQ may not exceed twelve (12) single-sided pages (maximum 8½” x 11”) with a minimum of 11 pt. type. Submissions exceeding the page limit will be considered non-responsive and will be returned to the responder without further evaluation. Responders must submit one (1) original and five (5) copies of their Statements of Qualifications for a total of six (6) in addition to one (1) electronic copy of the complete Statement of Qualifications and all attachments.
2. The following information is not included in the page limit:
 - a. Cover letter on company letterhead, maximum of 1 page
 - b. Resumes for each key team member, maximum of 2 pages each
 - c. Audited Financial Statement
 - d. Attachment A, Authorization for Release of Performance Information and Waiver
 - e. Attachment B, Certificate of Insurability
 - f. Attachment C, References
 - g. Attachment D, Agreement Review Statement
 - h. Any Addendum(s) issued by PMGAA
3. Do not include a table of contents or tab dividers. Submittals should be bound by plastic or metal three ring binder only. Pages having photos, charts, and/or graphs that provide additional evaluation information will be counted towards the maximum number of pages.

4. Failure to include all information requested shall cause such incomplete statement of qualifications to be rejected and not be evaluated or considered in the selection process.
5. SOQs must be submitted in a sealed envelope with the solicitation number and the responder's name and address clearly indicated on the envelope. Statements of Qualification must be submitted to Marian Whilden, Airport Administration Office at 5835 S. Sossaman Road, Mesa, Arizona 85212 on or before the designated due date and time specified in this RFQ. **LATE STATEMENTS OF QUALIFICATIONS WILL NOT BE ACCEPTED.**

F. SELECTION PROCESS

1. PMGAA will appoint an evaluation panel to evaluate each Offeror's qualifications. Using the criteria and weighting listed herein, and in order of preference, the selection committee will rank the Offerors.
2. PMGAA may contact and interview references provided by each Offeror.
3. The evaluation panel may then make a selection solely based on their collective evaluations of the Offerors' SOQs and references.
4. The evaluation panel may conduct interviews regarding the project with the short-listed top-ranked Offerors.
5. PMGAA intends to enter into negotiations with the highest ranked Offeror(s) to finalize a Professional Services Agreement for the project. If an agreement cannot be successfully negotiated with the highest ranked Offeror, then negotiations may be terminated with that Offeror and PMGAA may enter negotiations with the next highest ranked Offeror until an agreement is reached or an impasse is declared.
6. A notification will be posted on the Airport web site following a selection determination.
7. Offerors are evaluated on any combination of the following elements: 1) Statements of Qualifications (SOQs) submitted in response to this RFQ; 2) reference verification; 3) interview performance (if conducted); and 4) any information from any source about the Offeror, whether included in the SOQ or not.
8. PMGAA may cancel this solicitation at any time for any reason or no reason, so long as such is legally permissible.
9. The following tentative schedule has been established for this solicitation:

RFQ Closing Date/SOQ Due	February 5, 2019
Notification to Firms (for possible interviews and/or non-selection)	No Later Than 2/25/19
Interviews (optional)	Week of March 18, 2019
Notification to Firms (of final firm selection)	Week of March 25, 2019
Contract Award Recommendation to PMGAA Board of Directors	May 21, 2019

Section Three – Standard Terms and Conditions

1. **Certification.** Offeror certifies:
 - a. The award of this Contract did not involve collusion or other anti-competitive practices.
 - b. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, or A.R.S. Section 31-1461, et. seq.
 - c. It 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 this Contract; and Offeror hereby certifies that the individual signing this Contract is an authorized agent for Offeror and has the authority to bind the Offeror to the Contract.

2. **Termination of Contract.**
 - a. PMGAA reserves the right to cancel this Contract in whole or in part due to failure of Offeror to carry out any term, promise, or condition of the Contract. At least ten (10) business days before terminating the Contract, PMGAA will issue a written notice of default specifying one of the following reasons. PMGAA shall, at all times during the term of the Contract or any extension term thereto, have the sole authority to determine if the default has been cured to its satisfaction.
 - (1) Offeror has provided personnel that do not meet the requirements of the Contract.
 - (2) Offeror has failed to perform adequately the stipulations, conditions or services/specifications required in this Contract.
 - (3) Offeror has attempted to impose on PMGAA personnel or materials, products, or workmanship of unacceptable quality.
 - (4) Offeror has failed to furnish the required service(s) and/or product(s) within the time stipulated in the Contract or associated Authorization of Services.
 - (5) Offeror has failed to make progress in the performance of the requirements of the Contract or Authorization of Services, or Offeror fails to give PMGAA adequate assurance the Offeror will perform the Contract in full and on time.
 - (6) Each payment obligation of PMGAA created hereby is conditioned on the availability of PMGAA, state, or federal funds appropriated for payment of the obligation. If funds are not available or allocated by PMGAA for continuance of service under this Contract, then PMGAA may terminate the Contract. PMGAA shall promptly notify Offeror regarding the service that may be affected by a shortage of funds. No penalty accrues to PMGAA if this provision is exercised, and PMGAA shall not be liable for any future payments due or for any damages as a result of termination under this paragraph.
 - b. This Contract may be terminated at any time by mutual written consent or by PMGAA - with or without cause - provided the terminating party gives thirty (30) calendar days' advance written notice to the other party. PMGAA may terminate this Contract, in whole or in part, for PMGAA's convenience and with thirty (30) days' written notice. If this Contract is terminated, then PMGAA is liable only for services rendered and material received, certified, and approved by PMGAA under the Contract before the termination effective date.

3. **Dispute Resolution.**
 - a. Negotiations. If a dispute arises out of or relates to this Contract or its breach, the parties to this Contract shall endeavor to settle the dispute through direct discussions as a condition precedent to mediation or binding dispute resolution.
 - b. Mediation. Should the parties to this Contract be unable to resolve their dispute through direct negotiations, the parties to this Contract, upon the written request of either, shall engage in mediation, to be administered privately by a mediator and according to rules mutually agreed upon by the parties to this

Contract, or, the absence of such mutual agreement, by a mediator appointed by JAMS and administered by JAMS in accordance with its then-current mediation rules. The fees and costs of mediation shall be split equally by the parties to this Contract, but subject to reallocation following binding dispute resolution.

- c. **Binding Dispute Resolution.** Should the parties to this Contract be unable to resolve their dispute through direct negotiations or mediation, either party may, within the time limitations for bringing claims under Arizona law and this Contract, commence formal dispute resolution proceedings. Both parties to this Contract consent to binding arbitration administered by JAMS according to its then current arbitration rules, provided, however, that (i) in the event both parties agree, the arbitration may be administered privately by an arbitrator and according to rules mutually agreed upon by the parties to this Contract, and (ii) in the event any party seeks relief against the other party or against a non-party which cannot fully be granted in arbitration, by reason of non-joinder or otherwise, the parties to this Contract are excused from this arbitration requirement and the parties to this Contract shall proceed in the state or federal courts of competent jurisdiction and located in Maricopa County, Arizona. In any arbitration or litigation, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs as determined by the arbitrator or court as applicable.
4. **Independent Contractor.** At all times, each party acts in its individual capacity not as agent, employee, partner, joint venturer, or associate of the other party. An employee or agent of one party may not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. Neither Offeror nor any of its employees are entitled to compensation from PMGAA in the form of salaries, paid vacation, or sick days. PMGAA will not provide any insurance to Offeror, including *Workers' Compensation* coverage. PMGAA will not withhold FICA, taxes, or any similar deductions from PMGAA's payments under this Contract.
5. **Affirmative Action.** Offeror shall abide by all the federal and state of Arizona provisions for equal opportunity in the work place.
6. **Human Relations.** Offeror shall abide by all the federal and state of Arizona provisions against discrimination of disadvantaged business enterprises in applicable PMGAA contracts.
7. **Non-Exclusive Contract.** This Contract is for the sole convenience of PMGAA. PMGAA reserves the right in its discretion to obtain the same or similar goods or services from any other source.
8. **Americans with Disabilities Act.** Offeror shall comply with all applicable provisions of the *Americans with Disabilities Act* (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the *Act*.
9. **Confidentiality of Records.** Offeror shall establish and maintain procedures and controls that are acceptable to PMGAA for the purpose of assuring that no information contained in its records or obtained from PMGAA or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under this Contract. Persons requesting such information should be referred to PMGAA. Offeror also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Offeror as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by PMGAA.
10. **Shipment under Reservation Prohibited.** Offeror is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the cancellation clause set forth within this Contract.
11. **Gratuities.** PMGAA may, by written notice to the Offeror, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Offeror or any agent or representative of Offeror, to any officer or employee of PMGAA involved in the amending, or the making of any determinations with respect to the performing of such Contract. If this Contract is canceled by PMGAA under this provision, PMGAA shall, in addition to any other rights and remedies, repay to the Offeror the amount of the gratuity.
12. **Applicable Law.** This Contract shall be governed by, and PMGAA and Offeror shall have, all remedies afforded each by the *Uniform Commercial Code*, as adopted in the state of Arizona, except as otherwise provided in this Contract or in laws pertaining specifically to PMGAA. This Contract shall be governed by the laws of

the state of Arizona, and suits pertaining to this Contract shall be brought only in federal or state courts in the state of Arizona.

13. **Contract.** This Contract is based on and the result of a negotiated Scope of Services and Proposal, Bid or Statement of Qualifications submitted by Offeror under this RFP, IFB or RFQ. The Contract contains the entire agreement between PMGAA and Offeror. No prior oral or written agreements, contracts, proposals, negotiations, purchase orders, or master agreements (in any form) are enforceable between the parties.
14. **Contract Amendments.** This Contract shall be modified only by a written amendment signed by the PMGAA Executive Director or his/her designee, and persons duly authorized to enter into contracts on behalf of Offeror.
15. **Provisions Required by Law.** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.
16. **Severability.** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract, which may remain in effect without the valid provision, or application.
17. **Protection of Government Property.** Offeror shall use reasonable care to avoid damaging all PMGAA property, including buildings, equipment, and vegetation (such as trees, shrubs, and grass). If Offeror damages PMGAA's property in any way, Offeror shall immediately repair or replace the damage at no cost to PMGAA, as directed by the PMGAA Executive Director. If Offeror fails or refuses to repair or replace the damage, then PMGAA may terminate the Contract, and PMGAA shall deduct the repair or replacement cost from money due Offeror under the Contract.
18. **Interpretation – Parol Evidence.** This Contract 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 thereof. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.
19. **Assignment and Subcontracts.** Offeror shall not assign any rights or interest nor enter into any subcontract with any other party to furnish any of the materials, goods or services specified herein without the prior written permission of PMGAA. PMGAA may, at its sole discretion, accept or reject proposed subcontractors or assignment. PMGAA shall notify Offeror of its acceptance or rejection within forty-five (45) days or written request by Offeror. All subcontracts shall comply with federal and state laws and regulations applicable to the materials, goods or services covered by the subcontract and shall include all the terms and conditions set forth herein, which shall apply with equal force to the subcontract, as if the subcontractor were the Offeror referred to herein. Offeror is responsible for Contract performance whether subcontractors are used.
20. **No Waiver.** No provision in this Contract shall be construed, expressly or by implication, to waive either party's existing or future claim, right, or remedy available by law for breach of contract. The failure of either party to insist on strict performance of any Contract term or condition; to exercise or delay exercising any right or remedy provided in the Contract or by law; or to accept materials, services, or Offeror's services under this Contract or imposed by law, shall not be deemed a waiver of any right of either party to insist upon strict performance of the Contract.
21. **Warranties.** Offeror warrants that all materials and services delivered under this Contract shall conform to the specifications thereof. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by PMGAA, shall not alter or affect the obligations of Offeror or the rights of PMGAA under the foregoing warranties. Additional warranty requirements may be set forth in this Contract.

22. **Indemnification.** To the fullest extent permitted by law, Offeror shall defend, save, indemnify, and hold harmless PMGAA, its agents, representatives, officers, directors, officials, and employees (collectively the “Indemnitees”), for, from and against all claims, damages, losses and expenses, including but not limited to attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the Offeror’s acts, errors, omissions, or mistakes relating to Offeror’s services under this Contract.
23. **Overcharges by Antitrust Violations.** PMGAA maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, Offeror hereby assigns to PMGAA any and all claims for such overcharges as to the materials or services used to fulfill the Contract.
24. **Right to Assurance.** Whenever one party to this Contract 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. If a demand is made and no written assurance is given within five (5) business days, the demanding party may treat this failure as an anticipatory repudiation with this Contract.
25. **Advertising.** Offeror shall not advertise or publish information concerning this Contract without prior written consent of PMGAA.
26. **Right to Inspect.** PMGAA may, at reasonable times, and at PMGAA’s expense, inspect the place of Offeror’s or any of Offeror’s subcontractor’s business, which is related to the performance of this Contract or related subcontract.
27. **Force Majeure.** In the event either party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Contract to be performed by such party (“Required Act”), and such delay or hindrance is due to causes entirely beyond its control such as riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God (“Force Majeure Event”), then the performance of such Required Act shall be excused for the period of delay and the time period for performance of the Required Act shall be extended by the same number of days in the period of delay. For purposes of this Contract, the financial inability of Offeror to perform any Required Act, including, without limitation, failure to obtain adequate or other financing shall not be deemed to constitute a Force Majeure Event. A Force Majeure Event shall not be deemed to commence until ten (10) days before the date on which the party who asserts some right, defense, or remedy arising from or based upon such Force Majeure Event gives written notice thereof to the other party. If abnormal adverse weather conditions are the basis for a claim for an extension of time due to a Force Majeure Event, the written notice shall be accompanied by data substantiating (a) that the weather conditions were abnormal for the time and could not have been reasonably anticipated and (b) that the weather conditions complained of had a significant adverse effect on the performance of a Required Act. To establish the extent of any delay to the performance of a Required Act due to abnormal adverse weather, a comparison will be made of the weather for the time of performance of the Required Act with the average of the preceding ten (10) years’ climatic range based on the National Weather Service statistics for the nearest weather reporting station to the Premises. No extension of time for or excuse for a delay in the performance of a Required Act will be granted for rain, snow, wind, cold temperatures, flood, or other natural phenomena of normal intensity for the locality where the Premises are located.
28. **Inspection.** All material or service is subject to final inspection and acceptance by PMGAA. Material or service failing to conform to the specifications of this Contract will be held at Offeror’s risk and may be returned to Offeror. If so returned, all costs are the responsibility of Offeror. Noncompliance shall conform to the cancellation clause set forth in this Contract.
29. **Exclusive Possession.** All services, information, computer program elements, reports, and other deliverables, which may be created under this Contract, are the sole property of PMGAA and shall not be used or released by Offeror or any other person except with prior written permission by PMGAA.
30. **Title and Risk of Loss.** The title and risk of loss of materials or services shall not pass to PMGAA until PMGAA actually receives the material or service at the Airport, unless otherwise provided within this Contract.

31. **No Replacement of Defective Tender.** Every tender of materials must fully conform to all provisions of this Contract. If Offeror tenders a material or service that does not fully conform, PMGAA may terminate this Contract.
32. **Default in One Installment to Constitute Total Breach.** Offeror shall deliver conforming materials and services in each installment or lot of this Contract. Offeror may not substitute nonconforming materials or services. Delivery of nonconforming materials or a default of any nature, at the option of PMGAA, will constitute breach of the Contract as a whole.
33. **Liens.** All materials, services, and other deliverables supplied to PMGAA under this Contract must be free of all liens and other encumbrances. Upon request of PMGAA, Offeror shall provide a formal release of all liens.
34. **Licenses.** Offeror shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Offeror as applicable to this Contract.
35. **Subsequent Employment.** PMGAA may cancel this Contract without penalty or further obligation in accordance with A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract, on behalf of the PMGAA is or becomes, at any time while the Contract or any extension of the contract is in effect, an employee of, or a contractor to any other party to this Contract with respect to the subject matter of the Contract. Such cancellation shall be effective when the parties to this Contract receive written notice from PMGAA, unless the notice specifies a later time.
36. **Clean Up.** Offeror shall at all times keep Contract performance areas, including storage areas used by the Offeror, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of PMGAA. Upon completion of any repair, Offeror shall leave the work and premises in clean, neat, and workmanlike condition.
37. **Patents.** Offeror shall defend, indemnify, and hold harmless PMGAA, its officers and employees from all liabilities, claims, damages, costs, or expenses, including, but not limited to attorneys' fees, for any alleged infringement of any person's patent rights or copyrights in consequence of the use by PMGAA, its officers, employees, agents, and other duly authorized representatives of tangible or intellectual property supplied to PMGAA by Offeror under this Contract.
38. **Records and Audit Rights.** Offeror's and all of its approved subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract, including the papers of all Offeror and subcontractor employees that work on the Contract (all the foregoing collectively referred to as "Records"), must be open to inspection and subject to audit and/or reproduction during normal working hours by PMGAA. PMGAA is entitled to evaluate and verify all invoices, payments or claims based on Offeror's and its subcontractor's actual costs (including direct and indirect costs and overhead allocations) incurred or units expended directly in the performance of work under this Contract. For any audit under this Section, Offeror and its subcontractors hereby waive the right to keep such Records confidential. PMGAA is entitled to access to these Records from the effective date of this Contract for the duration of the work and until five years after the date of final payment by PMGAA to Offeror under the Contract. During normal working hours, PMGAA is entitled to access to all necessary Offeror and subcontractor facilities and shall be provided adequate and appropriate workspace, in order to conduct audits under this Section. PMGAA shall give Offeror or subcontractors reasonable advance notice of intended audits. Offeror shall require its subcontractors to comply with the provisions of this Section by including its requirements in all subcontracts related to this Contract.
39. **E-Verify Requirements.** To the extent applicable under A.R.S. § 41-4401, Offeror and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees, and compliance with the E-Verify requirements under A.R.S. §23-214(A). Offeror's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Contract and may result in the termination of this Contract by PMGAA. PMGAA shall have the right to inspect the papers of Offeror's and any of Offeror's subcontractor's employee who works on this Contract to ensure the Offeror is complying with this paragraph.

ATTACHMENT A

AUTHORIZATION FOR RELEASE OF PERFORMANCE INFORMATION AND WAIVER

The purpose of this disclosure is to provide references to PMGAA. Offeror hereby consents that as an Offeror to PMGAA's Solicitation 2019-013-RFQ, Primary Legal Counsel Services for Phoenix-Mesa Gateway Airport, Offeror authorizes those companies and government entities listed in Offeror's RFQ submittal and any other government entity for whom this company has performed legal services, to disclose and release to PMGAA, or their representatives, information, records and opinions concerning this company's past performance.

_____ (Offeror) hereby waives any claim it may have against PMGAA or any company or entity providing information to PMGAA by reason of any information being disclosed or opinions provided regarding the actions or performance of this company.

This authorization for disclosure of information is effective for one (1) year.

This consent or copy of this authorization shall be as valid and effective as the original.

Signature of Offeror

Date

ATTACHMENT B

CERTIFICATE OF INSURABILITY

Offeror hereby certifies that as an Offeror to PMGAA's Solicitation 2019-013-RFQ, Primary Legal Counsel Services for Phoenix-Mesa Gateway Airport, Offeror is fully aware of Insurance Requirements contained in the sample Standard Form Professional Services Agreement (Attachment E) and by the submission of this RFQ submittal, Offeror hereby assures PMGAA that Offeror is able to produce the insurance coverage required should Offeror be selected to be awarded the Professional Services Agreement.

Should Offeror be awarded the Professional Services Agreement by PMGAA, and then become unable to produce the insurance coverage specified within ten working days, Offeror is fully aware and understand that PMGAA may not consider Offeror for this and future projects.

Signature of Offeror

Date

ATTACHMENT C

REFERENCES

AIRPORT REFERENCES

Company Name: _____ Contact Person: _____
City, State: _____ Telephone: _____
Date(s) of Contract: _____

Company Name: _____ Contact Person: _____
City, State: _____ Telephone: _____
Date(s) of Contract: _____

Company Name: _____ Contact Person: _____
City, State: _____ Telephone: _____
Date(s) of Contract: _____

GOVERNMENT REFERENCES

Company Name: _____ Contact Person: _____
City, State: _____ Telephone: _____
Date(s) of Contract: _____

Company Name: _____ Contact Person: _____
City, State: _____ Telephone: _____
Date(s) of Contract: _____

Company Name: _____ Contact Person: _____
City, State: _____ Telephone: _____
Date(s) of Contract: _____

ATTACHMENT D

AGREEMENT REVIEW STATEMENT

As an Offeror to PMGAA’s Solicitation 2019-013-RFQ, Primary Legal Counsel Services, Offeror hereby certifies that Offeror has reviewed the PMGAA sample Standard Form Professional Services Agreement (Attachment E) and have listed any objections to it below. The response shall clearly identify if the attached sample Standard Form Professional Services Agreement is acceptable in all respects. If the Agreement is not acceptable, the response shall identify the unacceptable clauses and shall provide suggested alternate language. General or vague statements or invitations to discuss further are not adequate answers.

Offeror is aware any objections to the sample Standard Form Professional Services Agreement will be considered and included in PMGAA’s evaluation of Offeror’s qualifications. Offeror is also aware, if Offeror fails to list any objections to PMGAA’s sample Standard Form Professional Services Agreement, Offeror will not be allowed to raise any objections later if selected as the most qualified Offeror.

Signature of Offeror

Date

Specific Objections:

ATTACHMENT E

SAMPLE STANDARD FORM PROFESSIONAL SERVICES AGREEMENT



PHOENIX-MESA GATEWAY AIRPORT AUTHORITY

AND

[FIRM]

FOR

PRIMARY LEGAL COUNSEL SERVICES

CONTRACT NUMBER C-2019013

The Phoenix-Mesa Gateway Airport is owned and operated by the Phoenix-Mesa Gateway Airport Authority (PMGAA), a joint powers airport authority authorized by the State of Arizona and consisting of the City of Mesa, City of Phoenix, City of Apache Junction, Town of Gilbert, Town of Queen Creek and the Gila River Indian Community.

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Phoenix-Mesa Gateway Airport Authority, a joint powers airport authority authorized by the State of Arizona (“PMGAA”) desires performance of the services more fully described in this **Contract Number C-2019013** (“Contract”) and the attached exhibits. **[Firm]**, a(n) **<state>** **<type of company>** (“Firm”), with its principal offices located at **[address]**, desires to perform these services.

Recitals

- A. PMGAA requires the services as described in this Contract, including any and all exhibits and amendments, and Firm is willing to provide these and other services under this Contract; and
- B. PMGAA desires to contract with Firm to provide services as noted herein.

Now therefore, in consideration of the recitals and the mutual covenants set forth below, PMGAA and Firm agree as follows.

SECTION I – FIRM SERVICES

The services to be performed by Firm are specified in this Contract. PMGAA will not pay Firm for any services that have not been authorized under the Contract. There is no guarantee of a minimum purchase of services.

The anticipated services to be provided by Firm under this Contract shall generally include, but not be limited to, the following: Primary Legal Counsel Services, as more specifically described in the detailed scope of services attached as **EXHIBIT A**, “Scope of Services & Fee Schedule.”

PMGAA’s authorized representative shall be the PMGAA Executive Director/CEO, or his/her duly authorized representative, and that he/she shall be the sole contact for administering this Contract.

All services provided by Firm under this Contract must be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in Arizona. Firm makes no other warranty, expressed or implied.

SECTION II – PMGAA RESPONSIBILITIES

PMGAA shall furnish Firm, at no cost to Firm, the following information or services for this Contract:

- A. Access to copies of readily available maps, records, as-built drawings, benchmarks or other data pertinent to work assignments affiliated with this Contract. This does not, however, relieve Firm of the responsibility of searching records for additional information, for requesting specific information or for verification of that information provided. PMGAA does not warrant the accuracy or comprehensiveness of any information or documents provided to Firm.
- B. In PMGAA’s discretion and upon Firm’s reasonable request, access to staff for consultation with Firm during the performance of this contract in order to identify the problems, needs, and other functional aspects of the work.
- C. Prompt review of and feedback on Firm’s deliverables. PMGAA will advise Firm concerning progress of PMGAA’s review of the work, as needed.

SECTION III - PERIOD OF SERVICE

Firm shall complete all work in accordance with the provisions of this Contract as amended.

All work initiated under this Contract must be completed on or before the expiration date of the Contract as amended.

The term of this Contract shall commence on **[date]** and ends on **[date]** (“Base Term”), unless terminated, canceled or extended as provided in this Contract. This Contract has two (2) optional one-year extensions that PMGAA may exercise as its sole discretion. Prior to the expiration of the Contract Base Term, PMGAA may elect to extend the Contract. If PMGAA exercises such right, all terms, conditions and provisions of the original Contract shall remain the same and apply during the extended period with the possible exception of price. All fees for the optional renewal

terms are provided for in **EXHIBIT A**, "Scope of Services & Fee Schedule.". Any extension of this Contract shall require an Amendment signed by both parties.

Firm shall perform its services in a diligent manner and in accordance with this Contract.

SECTION IV – KEY PERSONNEL

The Firm itself shall provide all services to be performed under this Contract. If Subcontractors are required by Firm to perform any services listed under this contract, Firm shall notify PMGAA prior to authorizing work by said Subcontractors. PMGAA may, at its sole discretion, accept or reject proposed Subcontractors.

PMGAA may, at its sole discretion, accept or reject any staff the Firm chooses to conduct work on PMGAA's behalf during the course of the Contract. If Firm's staff is rejected by PMGAA, Firm shall provide alternative, qualified staff at the same hourly rate for PMGAA's approval.

SECTION V - PAYMENTS TO THE FIRM

Firm will be paid for work performed under this Contract plus any adjustments that have been approved in writing by PMGAA in accordance with the Phoenix-Mesa Gateway Airport Authority Procurement Policy. Payments will be made in accordance with **EXHIBIT B**, "Compensation."

All services to be rendered by Firm are subject to the terms of **EXHIBIT B**, "Compensation" attached hereto.

PMGAA does not guarantee any minimum or maximum fee during the Term of this Contract, and Firm, in executing this Contract, shall not anticipate or require any minimum or maximum fee.

SECTION VI - ALTERATION IN SCOPE OF SERVICES

For any alteration in the Scope of Services that would materially increase or decrease the Contract fee, the parties shall negotiate an amendment to the Contract to be executed by PMGAA and Firm. No work shall commence on any amendment or change until the amendment has been approved by PMGAA and Firm has been notified to proceed by PMGAA. No claim for extra work done or materials furnished by Firm will be allowed by PMGAA, except as provided herein, nor shall Firm do any work or furnish any materials not covered by this Contract unless the work is first authorized in writing by PMGAA and the change complies with PMGAA's Procurement Policy. Any work or materials furnished by Firm without advance, written authorization will be at Firm's own risk, cost, and expense. Without written authorization, Firm shall make no claim for compensation for such work or materials furnished.

SECTION VII - WORK ASSIGNMENT COMPLETION

If, during the Term of this Contract, situations arise which prevent work completion within the allotted time, PMGAA may grant an appropriate time extension.

SECTION VIII - OWNERSHIP OF DOCUMENTS

Any documents, including all electronic copies thereof, prepared under or as a result of this Contract, shall be the property of PMGAA. To the extent necessary to effectuate such ownership, Firm hereby assigns all right, title and interests to such documents to PMGAA. Firm shall execute any separate agreements or documents, if any, which may be necessary to implement the terms of this Section.

All of Firm's documents prepared under this Contract, including electronic files, are instruments of service. All of these documents become the property of PMGAA upon completion of the services and payment in full to Firm. PMGAA may reuse or modify the documents, as it deems necessary, without Firm's prior written authorization. PMGAA shall indemnify and hold harmless Firm, its officers, directors, employees and Subcontractors (collectively, the "Firm") against any and all damages, liabilities or costs arising from PMGAA's modification of documents produced by Firm under this Contract unless Firm authorizes the modification in writing.

SECTION IX - COMPLIANCE WITH LAWS

Firm shall comply with all federal, state and local laws, local ordinances and regulations throughout the Term.

Firm's signature on this Contract certifies compliance with the provisions of the I-9 requirements of the *Immigration Reform and Control Act of 1986* for all personnel that Firm and any Subcontractors employ to complete any work assignment.

PMGAA shall administer this Contract in accordance with PMGAA's Procurement Policy.

SECTION X - GENERAL CONSIDERATIONS

- A. The failure of either party to enforce any of the provisions of this Contract or require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of the provisions, nor shall it affect the validity of this Contract or the right of either party to enforce each and every provision.
- B. The fact that PMGAA has accepted or approved Firm's work shall in no way relieve Firm of responsibility for the work under this Contract.
- C. This Contract shall be governed by the laws of the state of Arizona, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Contract, or any provision thereof, shall be instituted only in the courts of the state of Arizona.
- D. All exhibits to this Contract and any amendments to the Contract are incorporated into it.

SECTION XI - NO KICK-BACK CERTIFICATION

Firm warrants that no person has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee and that no member of the PMGAA Board of Directors or any employee of PMGAA has any interest, financially or otherwise, in Firm's firm.

For breach or violation of this warranty, PMGAA may annul this Contract without liability.

SECTION XII – SUSPENSION OF SERVICES

Firm shall, within five (5) business days upon receiving written notice from PMGAA, suspend, delay, or interrupt all or a part of the Scope of Services. Firm shall resume the Scope of Services within five (5) business days of receiving written notice from PMGAA.

SECTION XIII – TIMES OF PAYMENTS

Firm shall submit monthly invoices for services actually completed. PMGAA shall review, certify, and approve or reject each invoice in whole or in part. PMGAA shall pay each approved invoice within 30 calendar days of the date that PMGAA approves the invoice. PMGAA may, at its sole discretion, apply any payment discounts offered by Firm, if any (as shown in **EXHIBIT A**, "Scope of Services and Fee Schedule").

SECTION XIV – TIMELY REVIEW

PMGAA will review Firm's studies, reports, proposals, and other related documents and render any decisions required by Firm in a timely manner. Notwithstanding these reviews, Firm remains solely responsible for all of its deliverables and services under this Contract. By PMGAA's reviews, PMGAA does not assume any liability for or retained control over Firm's work or Firm's responsibility for the safety of its employees.

SECTION XV – DISPUTE RESOLUTION

All disputes between PMGAA and Firm arising out of or relating to this Contract will be subject to the Dispute Resolution provisions as set forth in **EXHIBIT D**, "PMGAA Standard Terms and Conditions", attached hereto and incorporated herein by reference.

PMGAA and Firm shall include a similar dispute resolution provision in all agreements with other contractors and firms retained for the Project and shall require all other independent contractors and firms to include a similar dispute resolution provision in all agreements with subcontractors, suppliers or fabricators retained by them.

SECTION XVI - LIABILITY OF FIRM

To the fullest extent permitted by law, Firm shall defend, save, indemnify, and hold harmless PMGAA, its member governments, departments, officers, employees, and agents from and against damages arising out of any act, error, or omission of Firm relating to its services under this Contract.

SECTION XVII - LAWS AND REGULATIONS

All federal, state, and local laws and regulations that relate to Firm's services apply to Firm's performance of this Contract throughout. These laws and regulations are deemed included in this Contract the same as though written out in full, especially the current applicable Federal Aviation Administration (FAA) rules and regulations associated with airport projects; pertinent Airport engineering standards; and local rules, regulations, and industry standards.

SECTION XVIII INSURANCE REQUIREMENTS

1. Firm shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Firm, its agents, representatives, or employees.
2. All insurance policies required by this Contract, except *Workers Compensation and Professional Liability*, shall name PMGAA, its agents, representative, officers, directors, officials, employees, and successors and assigns as Additional Insured.
3. Minimum Scope and Limits of Insurance. Coverage shall be at least as broad as:
 - a. Professional Liability (Errors and Omissions): Insurance appropriate to the Firm's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
 - b. Commercial General Liability: Insurance Services Office Form CG 00 01 covering Bodily Injury and Property Damage on an "occurrence" basis, including personal & advertising injury with limits no less than \$1,000,000 per occurrence, \$2,000,000 General Aggregate.
 - c. Workers' Compensation: Statutory Limits as required by the state of Arizona, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
 - d. Cyber Liability: \$2,000,000 per occurrence and \$2,000,000 per aggregate for each type listed below.
 - Privacy Liability: Liability arising out of the breach of personally identifiable information whether the disclosure is committed intentionally, negligently, electronically or non-electronically (i.e. laptop, dumpster diving, etc.). Also required for breach of confidential corporate information.
 - Network Security Liability: Liability arising from the interruption of PMGAA systems caused by damage to PMGAA computer programs or data that results from virus, hacking, a denial of service attack, a denial of access or a simple mistake by Firm's authorized personnel in the administration of your computer system or handling of your e-Business information assets (administrative error). This also includes liability for transmission of a computer virus to a third party via a covered computer system or the failure to prevent the use of your computer system in a denial of service attack.
4. If the Firm maintains higher limits than the minimums shown above, the PMGAA requires and shall be entitled to coverage for the higher limits maintained by the Firm. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the PMGAA.
5. Additional provisions. The insurance policies shall provide, or be endorsed to include, the following provisions:

- a. Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the PMGAA.
- b. Waiver of Subrogation: Firm waives any right to subrogation. Firm shall obtain an endorsement necessary to affect this waiver of subrogation from the insurer for all lines of coverage required by this Contract.
- c. Primary Coverage: For all claims related to this Contract, all of Firm's insurance policies will be primary and non-contributory. Any insurance or self-insurance maintained by PMGAA, its officers, officials, employees, or volunteers will be in excess of Firm's insurance and will not contribute with it.
- d. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the PMGAA. The PMGAA may require the Firm to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- e. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A, VII, unless otherwise acceptable to the PMGAA.
- f. Claims Made Policies: No Claims Made policies (other than Professional Liability) will be accepted. For policies that provide claims-made coverage:
- 1) The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
 - 2) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - 3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Firm must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
- g. Verification of Coverage: Firm shall furnish the PMGAA with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the PMGAA before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Firm's obligation to provide the required insurance. The PMGAA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- h. Subcontractors: Firm shall require and verify that all Subcontractors maintain insurance meeting all the requirements stated herein, and Firm shall ensure that PMGAA is an additional insured on insurance required from Subcontractors.
- i. Special Risks or Circumstances: PMGAA reserves the right to modify these requirements, including limits, based on the nature of the risk, scope of services, prior experience, insurer, coverage, or other special circumstances.

OFFER AND ACCEPTANCE

IN WITNESS WHEREOF, the parties herein have executed this Contract.

(Firm Name)	Address
Principal (Signature)	City State Zip
Printed Name	Phone
Federal Tax Identification Number	Fax

PHOENIX-MESA GATEWAY AIRPORT AUTHORITY, a joint powers airport authority authorized by the State of Arizona

ACCEPTED AND APPROVED:

J. Brian O'Neill, A.A.E. Executive Director/CEO	Date
----------------------------------------------------	------

ATTEST:

Name/Clerk of the Board	Date
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EXHIBIT A - SCOPE OF SERVICES & FEE SCHEDULE

The services to be performed by Firm and the completion of related efforts are specified in the following Scope of Services & Fee Schedule agreed to by the parties.

SCOPE OF SERVICES

PMGAA reserves the right to contract with other legal firms for specialty issues such as, but not limited to; litigation, FAA and ADOT issues (e.g. rules and regulations, grant assurances, and passenger facility charges), financing issues, and workers' compensation.

PMGAA requires the Firm to be present at Board meetings and at monthly meetings of certain key staff.

FEE SCHEDULE

[Insert]

EXHIBIT B - COMPENSATION

All compensation for services rendered by Firm shall be based upon criteria established below. All services must be billed through the Firm.

1. Fees to be Specified in Contract

Any and all services to be performed under this Contract require approval. All compensation for services shall be identified in writing. The Contract shall describe the scope of services to be performed (by tasks and subtasks, where appropriate), the fees associated with that performance, and any applicable special provisions. Firm's compensation for services included in this Contract is set forth in **EXHIBIT A**, "Scope of Services and Fee Schedule".

2. Method of Payment

Subject to the terms of this Contract, PMGAA shall pay Firm the appropriate rate or fixed price amount for services rendered as described in the Contract only after Firm has submitted an invoice for services performed and PMGAA has certified and approved each invoice.

For services rendered in accordance with the Contract, Firm shall submit to PMGAA a monthly invoice depicting tasks performed and/or hours spent for services performed. Invoices must be based on the actual hours and/or expenses incurred for the services completed during the billing period. Firm's invoices must specify that Firm has performed the services, and PMGAA must certify and approve each invoice as a condition to payment.

3. Firm Responsibilities for Compensation

Firm shall prepare monthly invoices in accordance with terms specified in the Contract. All invoices for payment shall be for work completed unless otherwise agreed to by PMGAA.

4. PMGAA Responsibilities for Compensation

PMGAA agrees to pay Firm's invoices for payment within 30 calendar days after the invoice is approved. PMGAA may withhold payment on any invoice if it believes that Firm has not performed the work in a satisfactory manner. If PMGAA withholds payment to Firm, PMGAA shall promptly notify Firm and explain the reasons for the decision to withhold payment.

5. Billing Address

All invoices submitted to PMGAA for payment shall be submitted to:

Phoenix-Mesa Gateway Airport Authority
Attn: Clerk of the Board
5835 S. Sossaman Road
Mesa, Arizona 85212

EXHIBIT C - SPECIAL PROVISIONS

1. Civil Rights Act of 1964, Title VI – General

The contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color or national origin, sex, age or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

2. Civil Rights Act of 1964, Title VI – Assurances

During the performance of this Contract, the contractor, for itself, its assignees and successors in interest agrees as follows:

- a. Compliance with Regulations – Compliance with Regulations: The contractor (hereinafter includes Firms) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- b. Nondiscrimination – The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- c. Solicitations for Subcontracts, including Procurements of Materials and Equipment – In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential Subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
- d. Information and Reports – The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by PMGAA or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to PMGAA or the FAA as appropriate, and will set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance – In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - i) Withholding of payments to the contractor under the contract until the contractor complies, and/or;
 - ii) Cancellation, termination, or suspension of the Contract, in whole or in part.
- f. Incorporation of Provisions – The contractor will include the provisions of paragraphs one through six of this **EXHIBIT C** in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as PMGAA or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a Subcontractor, or supplier because of such direction, the contractor may request PMGAA to enter into any litigation to protect the interests of PMGAA. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

3. Civil Rights – Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The FAA’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

4. Federal Fair Labor Standards Act

This contract and all subcontracts that result from this contract incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text.

The Firm has full responsibility to monitor compliance to the referenced statute or regulation. The Firm must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

5. Occupational Safety and Health Act of 1970

This contract and all subcontracts that result from this contract incorporate by reference the provisions of 29 CFR part 1910 with the same force and effect as if given in full text. Firm must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Firm retains full responsibility to monitor its compliance and their Subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20CFR Part 1910). Firm must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

6. Lobbying and Influencing Federal Employees

a. No federal appropriated funds shall be paid, by or on behalf of Firm, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant and the amendment or modification of any federal grant.

b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

7. Access to Records and Reports

Firm shall maintain an acceptable cost accounting system. Firm further agrees to provide PMGAA, the FAA and the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of Firm which are directly pertinent to this specific Contract for the purpose of making audit, examination, excerpts and transcriptions. Firm agrees to maintain all books, records and reports required under this Contract for a period of not less than three (3) years after final payment is made and all pending matters are closed.

8. Breach of Contract Terms

Any violation or breach of terms of this Contract on the part of Firm or its Subcontractors may result in suspension or termination of this Contract, or such other action that may be necessary to enforce the rights of the parties with respect thereto. The duties and obligations imposed by the Contract and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

9. Rights to Inventions

All rights to inventions and materials generated under this Contract are subject to regulations issued by the FAA and PMGAA of the federal grant under which this Contract is executed.

10. Trade Restriction Clause

a. Firm or its Subcontractors, by submission of an offer and/or execution of a contract, certifies that it:

- i. Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- ii. Has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on the list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on the list; and
- iii. Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on the list.

b. Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a Firm, Contractor or Subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on the list for use on the project, the FAA may direct PMGAA cancellation of this Contract at no cost to the Government.

c. Further, Firm shall incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. Firm may rely on the certification of a prospective Subcontractor unless it has knowledge that the certification is erroneous.

d. Firm shall provide immediate written notice to PMGAA if Firm learns that its certification or that of a Subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Subcontractor shall agree to provide written notice to Firm if at any time it learns that its certification was erroneously by reason of changed circumstances.

e. This certification is a material representation of fact upon which reliance was placed when the Contract was awarded. If it is later determined that Firm or its Subcontractor knowingly rendered an erroneous

certification, the FAA may direct PMGAA cancellation of this Contract or any subcontract for default at no cost to the Government.

- f. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of Firm is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- g. This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

11. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Firm, by accepting this Contract, certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Firm shall include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Firm or any lower tier participant is unable to certify to this statement, it shall provide a written explanation to PMGAA.

12. Project Security

As some or all portions of work possible during the Term of this Contract may be located inside the secured area of the Airport, adherence to and familiarity with federal security regulations is essential. For these projects, Firm shall be responsible for fulfilling the security requirements described herein.

- a. Secured Area Access – All Firm personnel who require unescorted access to the secured area of the Airport, prior to the issuance of an Airport Identification badge, must successfully complete the Security Badge Application and Security Badge Authorization forms.
- b. Employee Security Badges – If deemed necessary by PMGAA, all Consultant and/or Subcontractor personnel performing work functions in accordance with this Contract shall obtain and properly display an Airport security badge. Firm shall submit a Security Badge Application form to the PMGAA security office for each employee requiring unescorted access, along with the current fee for each badge. Badge fees are identified on the current *Airport Fees, Services and Rental Rates* available via the Airport website at www.gatewayairport.com and are subject to change.
 - i. All fees must be paid to PMGAA by cash or check.
 - ii. Airport Security Badge Application forms and instructions are available via the Airport website at www.gatewayairport.com.
 - iii. An authorized representative of Firm must also obtain and submit a Security Media Authorization form, which is to be submitted to the PMGAA badging office. The Security Media Authorization form and instructions are available via the Airport website at www.gatewayairport.com.
 - iv. A training class on aviation security must be successfully completed before individuals are issued a badge. Fees for the security badge include attendance for the necessary training classes. Attendance at the security classes and issuance of the security badge may take two hours per person.
 - v. Additional information, including a “Frequently Asked Questions” is available via the Airport website at www.gatewayairport.com or by contacting the PMGAA Badging Office at (480) 988-7522. The Badging Office is located at 5803 S. Sossaman Road, Mesa AZ 85212.
 - vi. Firm shall immediately notify the PMGAA Badging Office of any Firm personnel whose employment status has changed.
 - vii. Firm shall retrieve all security badges and keys and return them to the PMGAA Badging Office. A fee, as indicated on the most current *Airport Rates and Charges Schedule*, will be charged for each badge that is damaged, lost or not returned.
 - viii. The PMGAA Badging Office will require a completed Security Badge Application from each Firm employee so certified by Firm as requiring such before a Security Badge is issued.
 - ix. Under certain circumstances and out of control of PMGAA, security measures may change on short notice. No deviations from any security measure shall be allowed at any time.
 - x. At all times, aircraft shall have the right-of-way over all vehicle traffic.

- c. Fines – Due to both the safety and security precautions necessary at the Airport, any failure of the Firm to adhere to prescribed Airport requirements/regulations has consequences that may jeopardize the health, welfare and lives of Airport customers and employees, as well as the Firm’s own employees. Therefore, if Firm is found to be in non-compliance with any security, airfield badging/licensing and airfield safety requirement, a Notice of Violations (NOV) may be issued. A current listing of fines is available by contacting the PMGAA Badging Office.

13. Standard Terms & Conditions

PMGAA’s Standard Terms & Conditions (in **EXHIBIT D** attached) include clauses that pertain to both construction and professional services. For such, the term “contractor” is to be considered the same as “Firm.” If a clause implies construction service then it is waived for a professional services contract. PMGAA reserves the right to make that determination if there is a conflict.

14. Federal and State Guidelines and Regulations

All work performed under this Contract must satisfy FAA and applicable agency standards, and be accomplished in accordance with applicable federal, state and local guidelines and regulations, including FAA Advisory Circulars, NEPA and Arizona environmental statutes.

Firm shall perform the services as described in approved Contract in accordance with the applicable requirements imposed by PMGAA, ADOT, FAA and any other applicable sponsoring agencies. Firm and its Subcontractors, if any, shall comply with any and all applicable laws, regulations, executive orders, policies, guidelines, and any other requirements for FAA Airport Improvement Program (AIP) projects. Firm shall provide PMGAA all information, reports, documents, and/or certifications requested by PMGAA for the satisfaction of any grant requirements for the reimbursement of services, including, without limitation, identifying the specific services provided by Firm and the billing period(s) during which services were or are to be provided. Nothing herein shall be construed as making the FAA or ADOT a party to this Contract.

15. Right to Contract With Other Firms

PMGAA shall have the right to contract with other firms and/or persons and/or to self-perform additional services, which may be the subject of this Contract. Firm shall conduct its operations and perform any services authorized under the Contract so as not to interfere with or hinder the progress of completion of the work being performed by PMGAA and/or other firms and/or persons. Firms working on the same project shall cooperate with each other in the performance, scheduling, and, if applicable, the integration of their respective services.

16. Independent Contractor Status

At all relevant times, Firm is - and shall remain - an independent contractor with regard to performance of its services. PMGAA retains no control over Firm, the performance of its work or services, or the safety of its employees. Firm is not authorized to enter into any contract or commitment, authorize any payment, or accept any document, services, goods or materials for, in the name of, or on behalf of PMGAA.

EXHIBIT D – PMGAA STANDARD TERMS & CONDITIONS

1. **Certification.** Consultant certifies:
 - a. The award of this Contract did not involve collusion or other anti-competitive practices.
 - b. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, or A.R.S. Section 31-1461, et. seq.
 - c. It 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 this Contract; and Consultant hereby certifies that the individual signing this Contract is an authorized agent for Consultant and has the authority to bind the Consultant to the Contract.

2. **Termination of Contract.**
 - a. PMGAA reserves the right to cancel this Contract in whole or in part due to failure of Consultant to carry out any term, promise, or condition of the Contract. At least ten (10) business days before terminating the Contract, PMGAA will issue a written notice of default specifying one of the following reasons. PMGAA shall, at all times during the term of the Contract or any extension term thereto, have the sole authority to determine if the default has been cured to its satisfaction.
 - (1) Consultant has provided personnel that do not meet the requirements of the Contract.
 - (2) Consultant has failed to perform adequately the stipulations, conditions or services/specifications required in this Contract.
 - (3) Consultant has attempted to impose on PMGAA personnel or materials, products, or workmanship of unacceptable quality.
 - (4) Consultant has failed to furnish the required service(s) and/or product(s) within the time stipulated in the Contract or associated Authorization of Services.
 - (5) Consultant has failed to make progress in the performance of the requirements of the Contract or Authorization of Services, or Consultant fails to give PMGAA adequate assurance the Consultant will perform the Contract in full and on time.
 - (6) Each payment obligation of PMGAA created hereby is conditioned on the availability of PMGAA, state, or federal funds appropriated for payment of the obligation. If funds are not available or allocated by PMGAA for continuance of service under this Contract, then PMGAA may terminate the Contract. PMGAA shall promptly notify Consultant regarding the service that may be affected by a shortage of funds. No penalty accrues to PMGAA if this provision is exercised, and PMGAA shall not be liable for any future payments due or for any damages as a result of termination under this paragraph.
 - b. This Contract may be terminated at any time by mutual written consent or by PMGAA - with or without cause - provided the terminating party gives thirty (30) calendar days' advance written notice to the other party. PMGAA may terminate this Contract, in whole or in part, for PMGAA's convenience and with thirty (30) calendar days' written notice. If this Contract is terminated, then PMGAA is liable only for services rendered and material received, certified, and approved by PMGAA under the Contract before the termination effective date.

3. **Dispute Resolution.**
 - a. Negotiations. If a dispute arises out of or relates to this Contract or its breach, the parties to this Contract shall endeavor to settle the dispute through direct discussions as a condition precedent to mediation or binding dispute resolution.
 - b. Mediation. Should the parties to this Contract be unable to resolve their dispute through direct negotiations, the parties to this Contract, upon the written request of either, shall engage in mediation, to be administered privately by a mediator and according to rules mutually agreed upon by the parties to this Contract, or, the absence of such mutual agreement, by a mediator appointed by JAMS and administered by JAMS in accordance with its then-current mediation rules. The fees and costs of mediation shall be split equally by the parties to this Contract, but subject to reallocation following binding dispute resolution.

- c. **Binding Dispute Resolution.** Should the parties to this Contract be unable to resolve their dispute through direct negotiations or mediation, either party may, within the time limitations for bringing claims under Arizona law and this Contract, commence formal dispute resolution proceedings. Both parties to this Contract consent to binding arbitration administered by JAMS according to its then current arbitration rules, provided, however, that (i) in the event both parties agree, the arbitration may be administered privately by an arbitrator and according to rules mutually agreed upon by the parties to this Contract, and (ii) in the event any party seeks relief against the other party or against a non-party which cannot fully be granted in arbitration, by reason of non-joinder or otherwise, the parties to this Contract are excused from this arbitration requirement and the parties to this Contract shall proceed in the state or federal courts of competent jurisdiction and located in Maricopa County, Arizona. In any arbitration or litigation, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs as determined by the arbitrator or court as applicable.
4. **Independent Contractor.** At all times, each party acts in its individual capacity not as agent, employee, partner, joint venturer, or associate of the other party. An employee or agent of one party may not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. Neither Consultant nor any of its employees are entitled to compensation from PMGAA in the form of salaries, paid vacation, or sick days. PMGAA will not provide any insurance to Consultant, including *Workers' Compensation* coverage. PMGAA will not withhold FICA, taxes, or any similar deductions from PMGAA's payments under this Contract.
5. **Affirmative Action.** Consultant shall abide by all the federal and state of Arizona provisions for equal opportunity in the work place.
6. **Human Relations.** Consultant shall abide by all the federal and state of Arizona provisions against discrimination of disadvantaged business enterprises in applicable PMGAA contracts.
7. **Non-Exclusive Contract.** This Contract is for the sole convenience of PMGAA. PMGAA reserves the right in its discretion to obtain the same or similar goods or services from any other source.
8. **Americans with Disabilities Act.** Consultant shall comply with all applicable provisions of the *Americans with Disabilities Act* (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the *Act*.
9. **Confidentiality of Records.** Consultant shall establish and maintain procedures and controls that are acceptable to PMGAA for the purpose of assuring that no information contained in its records or obtained from PMGAA or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under this Contract. Persons requesting such information should be referred to PMGAA. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by PMGAA.
10. **Shipment under Reservation Prohibited.** Consultant is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the cancellation clause set forth within this Contract.
11. **Gratuities.** PMGAA may, by written notice to the Consultant, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Consultant or any agent or representative of Consultant, to any officer or employee of PMGAA involved in the amending, or the making of any determinations with respect to the performing of such Contract. If this Contract is canceled by PMGAA under this provision, PMGAA shall, in addition to any other rights and remedies, repay to the Consultant the amount of the gratuity.
12. **Applicable Law.** This Contract shall be governed by, and PMGAA and Consultant shall have, all remedies afforded each by the *Uniform Commercial Code*, as adopted in the state of Arizona, except as otherwise provided in this Contract or in laws pertaining specifically to PMGAA. This Contract shall be governed by the laws of the state of Arizona, and suits pertaining to this Contract shall be brought only in federal or state courts in the state of Arizona.
13. **Contract.** This Contract is based on and the result of a negotiated Scope of Services and Fee Schedule submitted by Consultant. The Contract contains the entire agreement between PMGAA and Consultant. No

prior oral or written agreements, contracts, proposals, negotiations, purchase orders, or master agreements (in any form) are enforceable between the parties.

14. **Contract Amendments.** This Contract shall be modified only by a written amendment signed by the PMGAA Executive Director or his/her designee, and persons duly authorized to enter into contracts on behalf of Consultant.
15. **Provisions Required by Law.** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.
16. **Severability.** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract, which may remain in effect without the valid provision, or application.
17. **Protection of Government Property.** Consultant shall use reasonable care to avoid damaging all PMGAA property, including buildings, equipment, and vegetation (such as trees, shrubs, and grass). If Consultant damages PMGAA's property in any way, Consultant shall immediately repair or replace the damage at no cost to PMGAA, as directed by the PMGAA Executive Director. If Consultant fails or refuses to repair or replace the damage, then PMGAA may terminate the Contract, and PMGAA shall deduct the repair or replacement cost from money due Consultant under the Contract.
18. **Interpretation – Parol Evidence.** This Contract 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 thereof. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.
19. **Assignment and Subcontracts.** Consultant shall not assign any rights or interest nor enter into any subcontract with any other party to furnish any of the materials, goods or services specified herein without the prior written permission of PMGAA. PMGAA may, at its sole discretion, accept or reject proposed subcontractors or assignment. PMGAA shall notify Consultant of its acceptance or rejection within forty-five (45) days or written request by Consultant. All subcontracts shall comply with federal and state laws and regulations applicable to the materials, goods or services covered by the subcontract and shall include all the terms and conditions set forth herein, which shall apply with equal force to the subcontract, as if the subcontractor were the Consultant referred to herein. Consultant is responsible for Contract performance whether subcontractors are used.
20. **No Waiver.** No provision in this Contract shall be construed, expressly or by implication, to waive either party's existing or future claim, right, or remedy available by law for breach of contract. The failure of either party to insist on strict performance of any Contract term or condition; to exercise or delay exercising any right or remedy provided in the Contract or by law; or to accept materials, services, or Consultant's services under this Contract or imposed by law, shall not be deemed a waiver of any right of either party to insist upon strict performance of the Contract.
21. **Warranties.** Consultant warrants that all materials and services delivered under this Contract shall conform to the specifications thereof. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by PMGAA, shall not alter or affect the obligations of Consultant or the rights of PMGAA under the foregoing warranties. Additional warranty requirements may be set forth in this Contract.
22. **Indemnification.** To the fullest extent permitted by law, Consultant shall defend, save, indemnify, and hold harmless PMGAA, its agents, representatives, officers, directors, officials, and employees (collectively the "Indemnitees"), for, from and against all claims, damages, losses and expenses, including but not limited to attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the Consultant's acts, errors, omissions, or mistakes relating to Consultant's services under this Contract.
23. **Overcharges by Antitrust Violations.** PMGAA maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, Consultant hereby

assigns to PMGAA any and all claims for such overcharges as to the materials or services used to fulfill the Contract.

24. **Right to Assurance.** Whenever one party to this Contract 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. If a demand is made and no written assurance is given within five (5) business days, the demanding party may treat this failure as an anticipatory repudiation with this Contract.
25. **Advertising.** Consultant shall not advertise or publish information concerning this Contract without prior written consent of PMGAA.
26. **Right to Inspect.** PMGAA may, at reasonable times, and at PMGAA's expense, inspect the place of Consultant's or any of Consultant's subcontractor's business, which is related to the performance of this Contract or related subcontract.
27. **Force Majeure.** In the event either party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Contract to be performed by such party ("Required Act"), and such delay or hindrance is due to causes entirely beyond its control such as riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God ("Force Majeure Event"), then the performance of such Required Act shall be excused for the period of delay and the time period for performance of the Required Act shall be extended by the same number of days in the period of delay. For purposes of this Contract, the financial inability of Consultant to perform any Required Act, including, without limitation, failure to obtain adequate or other financing shall not be deemed to constitute a Force Majeure Event. A Force Majeure Event shall not be deemed to commence until ten (10) days before the date on which the party who asserts some right, defense, or remedy arising from or based upon such Force Majeure Event gives written notice thereof to the other party. If abnormal adverse weather conditions are the basis for a claim for an extension of time due to a Force Majeure Event, the written notice shall be accompanied by data substantiating (a) that the weather conditions were abnormal for the time and could not have been reasonably anticipated and (b) that the weather conditions complained of had a significant adverse effect on the performance of a Required Act. To establish the extent of any delay to the performance of a Required Act due to abnormal adverse weather, a comparison will be made of the weather for the time of performance of the Required Act with the average of the preceding ten (10) years' climatic range based on the National Weather Service statistics for the nearest weather reporting station to the Premises. No extension of time for or excuse for a delay in the performance of a Required Act will be granted for rain, snow, wind, cold temperatures, flood, or other natural phenomena of normal intensity for the locality where the Premises are located.
28. **Inspection.** All material or service is subject to final inspection and acceptance by PMGAA. Material or service failing to conform to the specifications of this Contract will be held at Consultant's risk and may be returned to Consultant. If so returned, all costs are the responsibility of Consultant. Noncompliance shall conform to the cancellation clause set forth in this Contract.
29. **Exclusive Possession.** All services, information, computer program elements, reports, and other deliverables, which may be created under this Contract, are the sole property of PMGAA and shall not be used or released by Consultant or any other person except with prior written permission by PMGAA.
30. **Title and Risk of Loss.** The title and risk of loss of materials or services shall not pass to PMGAA until PMGAA actually receives the material or service at the Airport, unless otherwise provided within this Contract.
31. **No Replacement of Defective Tender.** Every tender of materials must fully conform to all provisions of this Contract. If Consultant tenders a material or service that does not fully conform, PMGAA may terminate this Contract.
32. **Default in One Installment to Constitute Total Breach.** Consultant shall deliver conforming materials and services in each installment or lot of this Contract. Consultant may not substitute nonconforming materials or services. Delivery of nonconforming materials or a default of any nature, at the option of PMGAA, will constitute breach of the Contract as a whole.

33. **Liens.** All materials, services, and other deliverables supplied to PMGAA under this Contract must be free of all liens and other encumbrances. Upon request of PMGAA, Consultant shall provide a formal release of all liens.
34. **Licenses.** Consultant shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Consultant as applicable to this Contract.
35. **Subsequent Employment.** PMGAA may cancel this Contract without penalty or further obligation in accordance with A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract, on behalf of the PMGAA is or becomes, at any time while the Contract or any extension of the contract is in effect, an employee of, or a contractor to any other party to this Contract with respect to the subject matter of the Contract. Such cancellation shall be effective when the parties to this Contract receive written notice from PMGAA, unless the notice specifies a later time.
36. **Clean Up.** Consultant shall at all times keep Contract performance areas, including storage areas used by the Consultant, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of PMGAA. Upon completion of any repair, Consultant shall leave the work and premises in clean, neat, and workmanlike condition.
37. **Patents.** Consultant shall defend, indemnify, and hold harmless PMGAA, its officers and employees from all liabilities, claims, damages, costs, or expenses, including, but not limited to attorneys' fees, for any alleged infringement of any person's patent rights or copyrights in consequence of the use by PMGAA, its officers, employees, agents, and other duly authorized representatives of tangible or intellectual property supplied to PMGAA by Consultant under this Contract.
38. **Records and Audit Rights.** Consultant's and all of its approved subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract, including the papers of all Consultant and subcontractor employees that work on the Contract (all the foregoing collectively referred to as "Records"), must be open to inspection and subject to audit and/or reproduction during normal working hours by PMGAA. PMGAA is entitled to evaluate and verify all invoices, payments or claims based on Consultant's and its subcontractor's actual costs (including direct and indirect costs and overhead allocations) incurred or units expended directly in the performance of work under this Contract. For any audit under this Section, Consultant and its subcontractors hereby waive the right to keep such Records confidential. PMGAA is entitled to access to these Records from the effective date of this Contract for the duration of the work and until five years after the date of final payment by PMGAA to Consultant under the Contract. During normal working hours, PMGAA is entitled to access to all necessary Consultant and subcontractor facilities and shall be provided adequate and appropriate workspace, in order to conduct audits under this Section. PMGAA shall give Consultant or subcontractors reasonable advance notice of intended audits. Consultant shall require its subcontractors to comply with the provisions of this Section by including its requirements in all subcontracts related to this Contract.
39. **E-Verify Requirements.** To the extent applicable under A.R.S. § 41-4401, Consultant and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees, and compliance with the E-Verify requirements under A.R.S. §23-214(A). Consultant's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Contract and may result in the termination of this Contract by PMGAA. PMGAA shall have the right to inspect the papers of Consultant's and any of Consultant's subcontractor's employee who works on this Contract to ensure the Consultant is complying with this paragraph.