



**NOTICE AND REQUEST FOR QUALIFICATIONS
FOR
AIRPORT ENVIRONMENTAL ASSESSMENT SERVICES
FOR THE PHOENIX-MESA GATEWAY AIRPORT AUTHORITY
SOLICITATION 2013-003 RFQ**

The Phoenix-Mesa Gateway Airport Authority (PMGAA), owner and operator of the Phoenix-Mesa Gateway Airport, Mesa, Arizona, is soliciting Statements of Qualification (SOQ) from experienced environmental consultant firms interested in completing an **AIRPORT ENVIRONMENTAL ASSESSMENT** of an approximate 700 acre land parcel located within the northeast quadrant of the airport in strict accordance with National Environmental Policy Act and Federal Aviation Administration guidelines and orders. This effort is being undertaken in pursuit of an FAA *Finding of No Significant Impact* that will enable PMGAA to begin the multi-phased development of a new, **GATEWAY 2030** airline passenger terminal and commercial service complex considered essential to accommodating forecasted airline passenger growth within the Phoenix Metropolitan Area, and future economic development of neighboring East Valley communities.

Interested parties may download this Request for Qualifications (RFQ) and related standard contract from the PMGAA website. Go to www.phxmesagateway.org and click on Business, then click on Procurement/Public Notices to see a current listing of solicitations being conducted by PMGAA. The Request for Qualifications (RFQ) may also be obtained (1 free copy) from the PMGAA Administrative Office, 5835 S. Sossaman Road, Mesa, Arizona 85212.

A **Pre-Submittal Conference** is scheduled for **October 16, 2012** at **10:00 A.M.** local Arizona time at the PMGAA Administrative Office located at 5835 S. Sossaman Road, Mesa, AZ 85212. During this conference, PMGAA staff will discuss project requirements, explain the selection process and answer questions.

Statements of Qualifications (SOQ) must be received at the PMGAA Administrative Office, 5835 S. Sossaman Road, Mesa, Arizona 85212, on or before **5:00 P.M.** local Arizona time on **November 5, 2012**. **LATE STATEMENTS OF QUALIFICATIONS WILL NOT BE ACCEPTED.**

DIRECT CONTACT WITH SELECTION COMMITTEE MEMBERS OR ANY AIRPORT AUTHORITY EMPLOYEE (OTHER THAN THE DESIGNATED CONTACT LISTED BELOW) CONCERNING THIS RFQ AT ANY TIME IS STRICTLY PROHIBITED.

If you have questions about the RFQ, please contact Marian Russey at (480) 988-7630 or e-mail at mrussey@phxmesagateway.org. Final questions must be submitted no later than October 25, 2012.

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ISSUE DATE: **September 26, 2012**



INFORMATION AND INSTRUCTIONS TO RESPONDENTS

TITLE: AIRPORT ENVIRONMENTAL ASSESSMENT SERVICES – Solicitation Number 2013-003-RFQ

The Phoenix-Mesa Gateway Airport Authority (PMGAA), owner and operator of the Phoenix-Mesa Gateway Airport, Mesa, Arizona (the “Airport”), hereby provides notice that it is actively soliciting Statements of Qualification (SOQ) from experienced environmental consultant firms interested in completing an **AIRPORT ENVIRONMENTAL ASSESSMENT (EA)** of an approximate 700 acre parcel located on the northeast side of the Airport in strict accordance with National Environmental Policy Act (NEPA) and Federal Aviation Administration (FAA) guidelines. This effort is being undertaken in pursuit of an FAA *Finding of No Significant Impact* (FONSI) that will enable PMGAA to begin the multi-phased development of a new, **GATEWAY 2030** airline passenger terminal and commercial service complex considered essential to accommodating forecasted airline passenger growth within the Phoenix Metropolitan Area, and to future economic development of neighboring East Valley communities.

This solicitation is intended to facilitate PMGAA’s selection of three or more of the most responsive, experienced and qualified firms to participate in a competitive interview for award of a single Professional Services Contract with PMGAA and subsequent execution of one or more Authorization of Services, as necessary, for any/all tasks associated with the service requirements specified herein.

SECTION I – SCOPE OF WORK

The Phoenix-Mesa Gateway Airport is among the fastest growing airports in the United States. By calendar 2017, passenger enplanements are forecast to approach 900,000 and, by calendar 2030, grow to more than 2.4 million. In order for the Airport to accommodate these future passenger demands, PMGAA has committed to pursuing development of a multi-phased airline terminal and commercial development project known as **GATEWAY 2030** on approximately 700 generally undeveloped acres in the northeast portion of the Airport (see Figure 1). This solicitation pertains to the completion of an EA for that development parcel, as a prelude to receipt of the FAA FONSI determination that will permit the project to proceed.

This EA will require updating and validating information from previous Baseline Phase 1 environmental evaluations performed by the U.S. Air Force and PMGAA, and implications of a recent, 2010 EA performed on adjacent non-Airport property. In addition, the competitively selected firm will be expected to detail all environmental considerations



Figure 1 – Assessment Area Aerial

pertinent to the entire assessment area and prepare the EA in full compliance with requirements specified by *National Environmental Policy Act* (NEPA) and FAA Orders 5050.4B and 1050.1E and the FAA Environmental Desk Reference for Airport Actions (the “Airport Desk Reference”), and be completed within a period of three hundred sixty (360) calendar days, exclusive of periods for draft document coordination with FAA officials and PMGAA (the “Term”), unless terminated, canceled or extended as provided herein. PMGAA reserves the right, at its sole option, to extend the Term for such additional time as may be warranted and/or appropriate to conclude preparation of the required EA.

The EA content must address the proposed action (e.g., development of the new terminal complex), purpose and need, alternatives (including no action), the affected environment, environmental consequences and mitigation, cumulative impact analysis, list of agencies and people consulted and relevant appendices. In addition, findings will have to be coordinated with the general public and all affected Federal, State and local government agencies.

SECTION II – PRE-SUBMITTAL CONFERENCE

A pre-submittal conference for this solicitation will be held on **October 16, 2012 at 10:00 A.M.** local Arizona time in the PMGAA Board Room located within the Airport Administrative Office at 5835 S. Sossaman Road, Mesa, Arizona 85212. At this meeting, PMGAA staff will discuss the scope of work, general contract parameters and respond to questions from attendees. Interested firms are strongly encouraged to send a representative to this conference. Please advise the RFQ contact listed on page 1 of this solicitation of any representatives who will attend.

SECTION III – STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA

In responding to this RFQ, each Statement of Qualification (SOQ) must address the following evaluation criteria:

A. Firm Experience. (25 points)

Discuss the firm’s experience and qualifications regarding research, analysis and preparation of EAs for similar airport projects. For each project listed, please provide:

1. Description of the project
2. Role of the firm
3. Project’s original contracted price and final price
4. Project dates
5. Project owner and location
6. Reference information (two current names with telephone numbers for each project)

B. Experience of Key Personnel and Subconsultants. (30 points)

Describe the experience and professional qualifications of the key team members that might be expected to be assigned to this EA production effort. Identify each key member’s role and provide an organization chart.

For each key person identified, list their length of time with the firm and at least two comparable projects in which they played a primary role. For those comparable projects, please provide the following information:

1. Description of the projects
2. Role of the person in each project
3. Project’s original contracted price and final price
4. Project dates
5. Project owners and locations
6. Reference information (two current names and telephone numbers per project)

C. Project Understanding and Approach. (25 points)

Describe your understanding of what will be required to complete the EA. Include a discussion of important considerations and the proposed project management approach.

D. Responsiveness. (10 points)

Describe your planned approach to managing all services on PMGAA's behalf, being particularly specific in discussing how you would ensure complete, informative and timely responses to scheduled and unscheduled tasks and PMGAA needs. Also, please comment on your ability to locate personnel on-site at the Airport for interim and lengthier periods, should work requirements dictate such.

E. Overall Evaluation of the Firm and Its Perceived Ability to Provide the Required Services. (10 points)

Overall evaluation of the firm's capability to produce a quality EA within the time prescribed. This is to be determined by PMGAA selection panel members. No submittal response is required.

SECTION IV – SUBMITTAL REQUIREMENTS

Firms interested in responding to this solicitation should submit Statements of Qualification (SOQ) which **include a one-page cover letter plus a maximum length of ten (10) pages to address the SOQ criteria** (as specified and in the order listed in SECTION III hereinabove – excluding resumes, but including the organization chart). Resumes for each team member expected to be assigned to the project shall be limited to two (2) pages and incorporated as an appendix at the end of the SOQ. *(Note: Resumes should contain employee information only, not additional company information.)* Please provide **five (5) copies** of each SOQ to the PMGAA contact listed on page 1 **no later than 5:00 P.M.** local Arizona time **on November 5, 2012**.

Within the one-page cover letter, include the firm's full company name, mailing address and the telephone number, and email address for the person (preferably the designated or proposed project manager) who will serve as the firm's primary contact person for their SOQ, and provide company organization information (e.g., type company and where/when organized). Submitting firms also shall certify that if not organized and validly operating within the State of Arizona, that they are otherwise qualified to do business therein. Also ensure the words, "**Statement of Qualification – Solicitation Number 2013-003-RFQ,**" are printed clearly at the top of the cover page.

Adherence to the maximum page criteria noted above is critical, and each page side (maximum 8 1/2-inches by 11-inches) with criteria information contained therein will be counted. Pages that have project photos, charts and/or graphs will be counted toward the required number of pages; however, if included as appendices, they will not. Also, front and back covers, table of content pages and divider tab pages will not be counted unless they include qualifications-related information that could be considered by the selection panel as being related to the SOQ itself. Resumes should provide information for key staff expected to be involved in the project (no company profiles) and should not include general project pictures or firm information. Any additional company information or non-key staff information included in the resume section will be counted against the maximum page requirement. Please do NOT submit any additional information not listed herein. Font size may not be less than 10-point.

PMGAA shall not reimburse the cost of developing, presenting, or providing any response to the solicitation upon which the resulting Contract will be based. SOQs submitted for consideration should be prepared simply and economically providing adequate information in a straightforward and concise manner.

All materials submitted in response to this solicitation shall become the property of PMGAA and shall become a matter of public record available for review subsequent to the award notification.

All submittals should be addressed to the following PMGAA contact person by the date and time hereinabove listed:

Ms. Marian Russey
Phoenix-Mesa Gateway Airport Authority
5835 S. Sossaman Road
Mesa, Arizona 85212

SECTION V – SELECTION PROCESS AND SCHEDULE

Depending upon the number of SOQs received and the demonstrated experience and capabilities of submitting firms, three (3) or more firms may be preliminarily selected and invited to make a 45-minute presentation to the PMGAA selection panel to further demonstrate why their firm should be selected for contract award.

The following tentative schedule has been established for this solicitation:

Pre-Submittal Meeting.....	October 15, 2012
SOQ Due Date.....	November 5, 2012
Notification to Firms (for presentations and/or non-selection).....	November 28, 2012
Conduct of Oral Presentations (for preliminarily selected firms).....	December 11, 2012
Notification to Firms (of final firm selected).....	December 12, 2012
Contract Negotiation Period (commencement date).....	December 13, 2012
Contract Recommendation to PMGAA Board of Directors.....	January 21, 2013
Contract Commencement.....	January 28, 2013

If PMGAA is unsuccessful in negotiating a contract with the best-qualified firm, PMGAA may then negotiate with the next most qualified firm until contract consensus is achieved and the PMGAA Board of Directors approves, or PMGAA may elect to terminate this selection process altogether.

Firm(s) invited to make presentations to the selection panel and any selected for final contract award will be notified directly, in writing, by PMGAA. Notification to all other firms on the status of a selection regarding this solicitation will be posted on Airport web site.

SECTION VI – GENERAL INFORMATION

Any changes to this RFQ will be in the form of a published Addendum to Solicitation Number 2013-003-RFQ that shall be posted on the Airport web site (as described on the cover instructions hereinabove). PMGAA shall not be held responsible for any oral instructions or information provided otherwise.

It is the responsibility of each firm submitting an RFQ in response to this solicitation to determine, prior to actual SOQ submittal, if any Addendum has been issued by PMGAA prior to the SOQ due date, and for compliance therewith.

Alternate Format. PMGAA will provide reasonable accommodations for alternate formats of this RFQ. Please refer any such requests to the solicitation contact listed on page 1 hereinabove. Requests will only be honored if made within the first week of the RFQ advertising period. Please allow a minimum of seven (7) calendar days for production.

PMGAA Rights. PMGAA reserves the right to reject any or all SOQs, waive any informality or irregularity in any SOQ received and be the sole judge of the merits of all SOQs received.

Release of Solicitation Information. PMGAA shall provide for the release of all public information concerning this RFQ, including selection announcements and contract awards. Firms desiring to release information to the public themselves must receive prior written approval from PMGAA to do so.

Contact with PMGAA Employees. All firms interested in participating in this solicitation (including a firm's employees, representatives, agents, lobbyists, attorneys and subconsultants) shall refrain, under penalty of disqualification, from direct or indirect contact with any person who may play a part in the selection process, including the selection panel, PMGAA staff, members of the PMGAA Board of Directors and other PMGAA member government staff. This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public and protect the integrity of the selection process. All contact on this selection process should be addressed only to the authorized PMGAA contact person identified hereinabove.

Data Confidentiality. Except as specifically provided in the final contract, neither a selected firm nor its subconsultants shall divulge solicitation data to any third party without PMGAA's prior written consent.

Lawful Presence Requirement. Pursuant to A.R.S. §§ 1-501 and 1-502, PMGAA is prohibited from awarding an agreement/contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a PMGAA-provided affidavit affirming the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations, such as corporations, partnerships or limited liability companies.

Protest Procedures. Firms desiring to contest a disqualification or the selection outcome must do so within seven (7) calendar days of such notice of disqualification or posting of the selection outcome on the Airport website. Protests shall be in writing, filed with the Airport Executive Director and include all of the following information: i-name, address and telephone number of protestor; ii-the original signature of the protestor or his/her designated representative; iii-identification of the solicitation challenged; iv-a description of the reason for the protest; v-a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and vi-the form of relief requested.

The Airport Executive Director (or his/her designee) may submit the information to anyone necessary to receive their comments and may choose to meet with the protestor at his/her discretion. The decision of the Airport Executive Director (or his/her designee) shall be final in all circumstances.

Execution of Agreement/Contract. Within thirty (30) calendar days of written notice from PMGAA that a contract has been finalized and prior to PMGAA Board of Directors' consideration thereof, the successful firm shall fully execute and deliver such contract to PMGAA. Should a successful firm fail to deliver a fully executed contract within said thirty (30) days, the proposed award thereof may be cancelled by PMGAA. In the event the successful proposer defaults, or refuses or fails to timely execute the formal contract or provide required documents, PMGAA shall consider award to the next highest qualified firm who is ready and willing to provide required services.

Attachments Included with this RFQ. Three attachments comprise this RFQ, as follows:

- Attachment 1: Authorization for Release of Performance Information and Waiver. Respondents are to complete this attachment and submit it with its SOQ. This attachment does not count against the SOQ content limitation specified in SECTION IV above.
- Attachment 2: Certificate of Insurability. Respondents are to complete this attachment and submit it with its SOQ. This attachment does not count against the SOQ content limitation specified in SECTION IV above.
- Attachment 3: Contract Review Statement. This attachment includes this Statement and a sample contract. Respondents are to complete the Statement and submit it with its SOQ. The Statement will not be counted against the SOQ content limitation specified in SECTION IV above. The sample contract itself should not be returned.

ATTACHMENT 1

AUTHORIZATION FOR RELEASE OF PERFORMANCE INFORMATION AND WAIVER

I, _____, the undersigned, on behalf of _____ (this company), do hereby consent and authorize all those companies and government entities listed in my Statement of Qualifications and any other government entity for whom this company has performed airport environmental assessment services, to disclose and release to the Phoenix-Mesa Gateway Airport Authority, or their representatives, information, records and opinions concerning this company's past performance. The purpose of this disclosure is to provide references to the Phoenix-Mesa Gateway Airport Authority.

_____ hereby waives any claim it may have against the Phoenix-Mesa Gateway Airport Authority or any company or entity providing information to the Phoenix-Mesa Gateway Airport Authority 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 year.

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

Dated: _____

Signature: _____

By: _____
Print or type name and title

ATTACHMENT 2

CERTIFICATE OF INSURABILITY

I hereby certify that as a respondent to the Phoenix-Mesa Gateway Airport Authority's RFQ for Airport Environmental Assessment Services, Solicitation 2013-003-RFQ, I am fully aware of Insurance Requirements contained in the sample contract attached to this RFQ and, by the submission of my Statement of Qualifications, I hereby assure the Phoenix-Mesa Gateway Airport Authority that I am able to produce the insurance coverage required should I be selected to for contract award.

Should I be awarded a contract by the Phoenix-Mesa Gateway Airport Authority, and then become unable to produce the insurance coverage specified within ten working days, I am fully aware and understand that the Phoenix-Mesa Gateway Airport Authority may not consider me for further projects.

Signature of Applicant

Date

ATTACHMENT 3

CONTRACT REVIEW STATEMENT

As a respondent to the Phoenix-Mesa Gateway Airport Authority's RFQ for Airport Environmental Assessment Services, Solicitation 2013-003-RFQ, I hereby certify that I have reviewed the included sample PMGAA *Standard Form Professional Services Contract* and have listed any objections to them below and/or on an attached page. In stating my objections, I have identified the unacceptable contract clause and provided suggested alternative language. I am aware that statements that are only general in nature or are vague may not be considered or accepted.

By my signature below, I hereby certify that *(please check the appropriate block)*:

- The sample contract terms are acceptable in all respects, including warranty, insurance and document ownership and retention requirements.
- The sample contract terms are considered in all respects, except as modified by the objections stated below and/or on an attached page.

I acknowledge that any objections to the sample *Standard Form Professional Services Contract* will be considered and included in PMGAA's evaluation of my firm's qualifications. I also acknowledge that if I fail to list any objections to any provision of the sample *Standard Form Professional Services Contract*, I will not be allowed to raise any objections later if selected as the most qualified respondent.

Signature of Applicant

Date

Specific Objections *(please list below or on an attached page, referencing the specific contract clause or provision causing the objection, and provide suggested alternative language)*



PhxMesa **Gateway** Airport

Standard Form Professional Services Contract (Sample)

Between the

PHOENIX-MESA GATEWAY AIRPORT AUTHORITY

AND

< NAME OF FIRM >

FOR

AIRPORT ENVIRONMENTAL ASSESSMENT SERVICES

CONTRACT NUMBER C-2013003

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

Table of Contents

SECTION I – Consultant Services.....	A-3-2- 33
SECTION II – PMGAA Responsibilities	A-3-2- 33
SECTION III - Period of Service.....	A-3-2- 44
SECTION IV – Key Personnel.....	A-3-2- 44
SECTION V - Payments to the Consultant.....	A-3-2- 55
SECTION VI - Alteration in Scope of Work.....	A-3-2- 55
SECTION VII - Work Assignment Completion	A-3-2- 55
SECTION VIII - Ownership of Documents	A-3-2- 55
SECTION IX - Compliance with Laws.....	A-3-2- 66
SECTION X - General Considerations	A-3-2- 66
SECTION XI - No Kick-back Certification.....	A-3-2- 66
SECTION XII – Suspension of Services	A-3-2- 66
SECTION XIII – Times of Payments	A-3-2- 77
SECTION XIV – New Taxes	A-3-2- 77
SECTION XV – Advertisements, Permits, Access and Consents	A-3-2- 77
SECTION XVI – Timely Review	A-3-2- 77
SECTION XVII – PMGAA Personnel.....	A-3-2- 77
SECTION XVIII - Litigation Assistance	A-3-2- 77
SECTION XIX – Mediation	A-3-2- 77
SECTION XX - Liability Of The Consultant	A-3-2- 77
SECTION XXI - Liability of Subcontractors.....	A-3-2- 88
SECTION XXII - Laws and Regulations.....	A-3-2- 88
SECTION XXIII - Archaeological Resource Protection	A-3-2- 88
SECTION XXIV - Insurance.....	A-3-2- 88
OFFER ACCEPTANCE.....	A-3-2-10
EXHIBIT A – Certificate of Performance and Payment of All Claims.....	A-3-11
EXHIBIT B – Scope of Work.....	A-3-12
EXHIBIT C – Compensation.....	A-3-14
EXHIBIT D – Special Provisions.....	A-3-16
EXHIBIT E – Standard Terms and Conditions.....	A-3-21

Pursuant to the provisions of Arizona Revised Statutes (A.R.S.) §28-8521 et. seq. and the Phoenix-Mesa Gateway Airport Authority's Procurement Policy, the Phoenix-Mesa Gateway Airport Authority has the authority to enter into contracts and agreements.

Phoenix-Mesa Gateway Airport Authority, hereinafter called "PMGAA" is desirous of having **Airport Environmental Assessment Services** performed when requested by PMGAA through a specific Authorization of Services in connection with Contract Number C-2013003, hereinafter called the "Contract," and as more fully described herein, including attached exhibits. **<Name of Firm>**, hereinafter called "Consultant," with its principal offices located at **<Firm Address>** is desirous of performing said services.

RECITALS

- A. PMGAA requires the services as described in this Contract, including any and all attachments, exhibits and/or Authorization of Services, as amended, and Consultant is willing to provide stated services and other services under this Contract, as may be required by PMGAA; and
- B. PMGAA desires to contract with Consultant to provide services as noted herein;
- C. NOW THEREFORE, in consideration of the foregoing and the mutual promises herein contained, PMGAA and Consultant agree as follows:

SECTION I – Consultant Services

This Contract is for **Airport Environmental Assessment Services** to be performed by Consultant. The services to be performed by Consultant will be specified in one or more written "Authorization of Services" to be issued and agreed to by the parties during the Contract term. Any such Authorization of Services shall be subject to negotiation and agreement in accordance with the terms of this Contract; however, neither party shall be required to approve or agree to any specific Authorization of Services. PMGAA shall not be responsible for the payment of any services that have not been authorized pursuant to a written Authorization of Services.

It is anticipated that the services to be provided by Consultant pursuant to this Contract and resulting Authorizations of Services shall be under the general supervision of the PMGAA Project Coordinator – Business Services, and may generally include, but not be limited to, the following: labor, equipment, supplies and materials to produce and deliver documents and specifications related to activities in support of the planned **GATEWAY 2030** airline terminal and commercial service development project (the "Project") at the Phoenix-Mesa Gateway Airport (the "Airport").

It is understood and agreed that PMGAA's authorized representative shall be the Project Coordinator – Business Services, or his/her duly authorized representative, hereinafter called the "Agent," and that he/she shall be the sole contact for administering this contract and any Authorization of Services agreed to by the parties.

All services to be rendered by Consultant shall be subject to the terms of **EXHIBIT A**, "Certificate of Performance and Payment of All Claims," as applicable.

All services provided by Consultant under this Contract will 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. Consultant makes no other warranty, expressed or implied.

SECTION II – PMGAA Responsibilities

PMGAA shall furnish Consultant, at no cost to Consultant, the following information or services for each Work Assignment:

- A. One copy of on-hand maps, records, survey ties, as-built drawings, bench marks or other data pertinent to work assignments. This does not, however, relieve Consultant 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 such information.
- B. All available information, previous studies and data relative to policies, standards, criteria, and studies, etc. impacting work assignments, as identified/required by Consultant.
 - C. Availability of staff for consultation with Consultant during the performance of studies and plan development in order to identify the problems, needs, and other functional aspects of each work assignment.
 - D. Examination of documents submitted by Consultant and rendering of decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the work by Consultant. PMGAA will keep Consultant advised concerning the progress of PMGAA's review of work.
 - E. Prompt written notice to Consultant whenever PMGAA observes or becomes aware of any development that will or could affect the scope or timing of any work assignment, or of any defect in Consultant's work.
 - F. Prompt notice to Consultant if PMGAA becomes aware of or is notified of:
 - 1) A violation of any law, regulation, permit or license that relates to the Project or any work assignment;
 - 2) Proceedings that are commenced that could lead to revocation of permits or licenses that relate to the Project or any work assignment;
 - 3) Permits, licenses, or other governmental authorizations relating to the Project that are revoked;
 - 4) Litigation being commenced against PMGAA that could affect Consultant, the Project or a work assignment; or
 - 5) Equipment or facilities related to the Project or any work assignment that are not in compliance with applicable laws, regulations, permits, or licenses.

SECTION III - Period of Service

Upon approval of the PMGAA Board of Directors and issuance of a Notice to Proceed, Consultant 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 seven (7) calendar days after PMGAA issues a written Notice to Proceed and shall remain in effect for a period of three hundred sixty (360) calendar days, exclusive of periods for draft document coordination with FAA officials and PMGAA (the "Term"), unless terminated, canceled or extended as provided herein. PMGAA reserves the right, at its sole option, to extend the Term for such additional time as may be warranted and/or appropriate to conclude preparation of the required EA. In the event that 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. Consultant shall agree that all prices stated in the original Contract shall apply unless a percent of increase or decrease is quoted.

Consultant shall commence its services within seven (7) calendar days of receipt of an Authorization of Services. Consultant shall perform its services in a diligent manner and in accordance with the task schedule, as identified in the specific Authorization of Services.

SECTION IV – Key Personnel

It is essential that Consultant provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. Consultant must assign specific

individuals to key positions. Once assigned to work under this Contract, such key personnel shall not be removed or replaced without prior written approval of the Agent.

SECTION V - Payments to the Consultant

Consultant shall be paid for work performed under this Contract as specified in each specific Authorization of Services, 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 for the actual hours worked and/or other costs incurred or provided for in accordance with **EXHIBIT C**, "Compensation."

All services to be rendered by Consultant shall be subject to the terms of **EXHIBIT C**, "Compensation" attached hereto.

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

PMGAA shall pay Consultant in full for each Authorization of Services authorized under this Contract at the completion of each work assignment, provided Consultant has satisfactorily completed the requested work as outlined in this Contract or any specific Authorization of Services. Should any such work require time in excess of thirty (30) calendar days to complete, progress payment(s) may be made upon an invoice being submitted by Consultant to and approved by PMGAA.

SECTION VI - Alteration in Scope of Work

Any alteration in the Scope of Work that will result in a substantial change in the nature of this Contract or any Authorization of Services so as to materially increase or decrease the Contract fee will require negotiation of an amendment to the Contract to be executed by PMGAA and Consultant. No work shall commence on such amendment or change until said amendment has been approved by PMGAA and Consultant has been notified to proceed by the Agent. It is distinctly understood and agreed that no claim for extra work done or materials furnished by Consultant will be allowed by PMGAA, except as provided herein, nor shall Consultant do any work or furnish any materials not covered by this Agreement unless such work is first authorized in writing by PMGAA and is in compliance with PMGAA's Procurement Policy. Any such work or materials furnished by Consultant without such advance, written authorization shall be at Consultant's own risk, cost, and expense, and Consultant does hereby agree that without such written authorization Consultant shall make no claim for compensation for such work or materials furnished.

SECTION VII - Work Assignment Completion

If, during the Term of this Agreement, situations arise which prevent work completion within the allotted time, the Agent 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 or any Authorization of Services, shall be the property of PMGAA. To the extent necessary to effectuate such ownership, Consultant hereby assigns all right, title and interests to such documents to PMGAA. Consultant further agrees to execute any separate agreements or documents, if any, which may be necessary to implement the terms of this Section. PMGAA and Consultant further agree that any and all documents prepared under this Contract are subject to the "Ownership of Documents and Other Data" terms set forth in **EXHIBIT D**, "Special Provisions," attached hereto.

PMGAA acknowledges Consultant's documents prepared pursuant to this Contract, including electronic files, as instruments of professional service. Nevertheless, all such documents prepared under this Contract shall become the property of PMGAA upon completion of the services and payments in full of all monies due to Consultant. PMGAA shall be allowed to reuse or make any modification such documents, as it deems necessary, without prior written authorization of Consultant. PMGAA agrees, to the fullest extent permitted

by law, to indemnify and hold harmless Consultant, its officers, directors, employees and subconsultants (collectively, the "Consultant") against any and all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of documents produced by Consultant pursuant to this Contract by PMGAA or any person or entity that acquires or obtains said documents from or through PMGAA without written authorization of Consultant.

SECTION IX - Compliance with Laws

Consultant shall comply with all Federal, state and local laws, local ordinances and regulations throughout the Term.

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

It is understood that PMGAA shall conduct itself and administer this Contract in accordance with the provisions of 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 such provisions, nor shall it affect the validity of this Contract or any part thereof, or the right of either party to thereafter enforce each and every provision.
- B. The fact that PMGAA has accepted or approved Consultant's work shall in no way relieve any Consultant responsibility pursuant thereto or to this Contract.
- C. It is mutually understood and agreed that 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 Agreement, or any provision thereof, shall be instituted only in the courts of the State of Arizona.
- D. All exhibits and/or attachments referenced by this Contract or any amendments thereto shall be deemed to be incorporated into the Contract as if fully set forth therein.

SECTION XI - No Kick-back Certification

Consultant 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/supervisors or any employee of PMGAA has any interest, financially or otherwise, in Consultant's firm.

For breach or violation of this warranty, PMGAA shall have the right to annul this Contract without liability, or, at its discretion, to deduct from the Contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

SECTION XII – Suspension of Services

Consultant shall, within five (5) business days upon receiving written notice from the Agent suspend, delay, or interrupt all or a part of a work assignment pursuant to this Contract. In such event, Consultant will resume such work assignment within five (5) business days of receiving written notice from the Agent to resume services. Said written notice shall contain an extension of time and an adjustment in compensation, both of which will be mutually agreed upon.

SECTION XIII – Times of Payments

Consultant shall periodically submit invoices for any unbilled portion of services actually completed. PMGAA agrees to pay such invoiced amounts within thirty (30) calendar days of said invoice receipt. PMGAA shall retain ten percent (10%) of the total Authorization of Services fee pending total work assignment completion, until final approval by the Agent and receipt of any and all work products prepared pursuant to an Authorization of Services and this Contract.

SECTION XIV – New Taxes

In the event any new taxes or governmentally imposed fees or surcharges applying to the services, cost of services, or fee for services under this Contract are enacted or become effective during the Term thereof, PMGAA agrees to pay said new taxes in addition to any and all other fee amounts payable to Consultant under this Contract. This provision does not apply to increases in rates or amounts for taxes, fees, or surcharges that exist at the time this Contract is executed.

SECTION XV – Advertisements, Permits, Access and Consents

Unless otherwise agreed to in the Scope of Services or an Authorization for Services, PMGAA will obtain, arrange for, furnish, and pay for advertisements for bids, permits and licenses required by governmental authorities, land easements, rights-of-way, and access, and such approvals and consents from others necessary to enable Consultant to perform work and satisfy its responsibilities under this Contract.

SECTION XVI – Timely Review

PMGAA will examine Consultant's studies, reports, proposals, and other related documents and render decisions required by Consultant in a timely manner.

SECTION XVII – PMGAA Personnel

PMGAA will be responsible for all acts of PMGAA personnel.

SECTION XVIII - Litigation Assistance

The Scope of Services specified in this Contract does not include the services of Consultant for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by PMGAA.

SECTION XIX – Mediation

PMGAA and Consultant agree that all disputes between them arising out of or relating to this Contract shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

PMGAA and Consultant further agree to include a similar mediation provision in all agreements and contracts with other contractors and consultants retained for the Project, and to require all other independent contractors and consultants also to include a similar mediation provision in all agreements/contracts with subcontractors, sub-consultants, suppliers or fabricators retained by them, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements/contracts.

SECTION XX - Liability of Consultant

Consultant hereby agrees to save, defend and hold harmless PMGAA, its member governments, departments, officers, employees or agents who may be obligated to pay for damages arising out of any error, negligent omission or act of Consultant resulting from the failure of Consultant to act under the authority and approval of the Agent to provide the services under this Contract, and any Consultant failure to obtain all necessary information for the timely completion of the services.

SECTION XXI - Liability of Subcontractors

It shall be Contractor's responsibility to ensure, through contractual agreement in which Contractor uses or employs any independent contractors, subcontractors, or sub-consultants pursuant to this Contract, that said independent contractors, subcontractors, or sub-consultants shall save, defend and hold harmless Consultant and PMGAA, including its member governments, departments, officers, employees or agents who may be obligated to pay for damages arising out of any negligent error or omission or act of such independent contractor, subcontractor or sub-consultant.

SECTION XXII - Laws and Regulations

Consultant's attention is directed to the fact that all applicable Federal and state laws, municipal ordinances, and the rules and regulations of all having jurisdiction that relate to the nature of the services and over the services performed for the Project or any work assignment pursuant to this Contract shall apply to this Contract throughout, and such will be deemed to be included in this Contract the same as though herein written out in full, especially the current applicable FAA rules and regulations associated with airport projects; pertinent airport engineering standards; and local rules, regulations and industry standards.

SECTION XXIII - Archaeological Resource Protection

Consultant recognizes that there are archaeological sites located throughout the Airport. Consultant agrees that if, during the performance of services, it encounters what it believes to be an archaeological site, it shall immediately cease performance of services in the area of the suspect archaeological site and promptly notify the Agent of the location of such.

SECTION XXIV - Insurance

Prior to commencing work or services under this Contract, Consultant shall furnish PMGAA with Certificates of Insurance, or formal endorsements as required by said Contract, issued by Consultant's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract Number and Title.

In the event any insurance policy or policies required by this Contract is or are written on a "claims made" basis, coverage shall extend for two (2) calendar years past completion and acceptance of Consultant's work or services, and be evidenced by annual Certificates of Insurance.

If any policy does expire during the Term of this Contract, a renewal certificate must be sent to the PMGAA fifteen (15) calendar days prior to the expiration date of such expiring policy.

Consultant shall submit to PMGAA certificates of insurance with assurances that PMGAA will be notified at least thirty (30) calendar days prior to cancellation or any policy changes. Such certificate(s) of insurance shall name PMGAA as additionally insured.

Consultant, at Consultant's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed in the State of Arizona, possessing a current A.M. Best Company, Inc. rating of at least A- or a Financial Performance Rating (FPR) of at least 6, or such other companies acceptable to PMGAA, in a form deemed satisfactory to PMGAA.

All insurance policies shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision that would serve to limit third party action over claims.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of this Contract is or are satisfactorily completed and formally accepted by PMGAA.

The policies required hereunder, except *Workers' Compensation* and *Professional Liability*, shall contain a waiver of transfer of rights of recovery (subrogation) against PMGAA, its agents, representatives, officers, directors, officials and employees for any claims arising out of the Consultant's work or service.

Any failure to comply with the claim reporting provisions of the insurance policies maintained pursuant to this Contract, or any breach of an insurance policy warranty, shall not affect coverage afforded under the insurance policies to protect the PMGAA.

Any failure to comply with the claim reporting provisions of the insurance policies, or any breach of an insurance policy warranty, shall not affect coverage afforded under the insurance policies to protect the PMGAA.

Insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to PMGAA under such policies. Consultant shall be solely responsible for the deductible and/or self-insured retention and PMGAA, at its option, may require Consultant to secure payment of such deductibles or self-insured retentions by a surety bond or irrevocable and unconditional letter of credit.

The insurance policies required by this Agreement, except *Workers' Compensation* and *Professional Liability*, shall name PMGAA, its agents, representatives, officers, directors, officials and employees as Additional Insured.

Consultant and/or any sub-consultant, if specified, shall maintain during the Term of this Contract, the following minimum public liability and property damage insurance which shall protect Consultant from claims for injuries including accidental death, as well as from claims for property damages which may arise from the performance of work under this Contract and the limit of liability for such insurance shall be as follows:

- A. Commercial General Liability. Consultant shall maintain *Commercial General Liability* insurance with a limit of not less than \$1,000,000 for each occurrence, with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. Such policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract, which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00 01 10 93 or any replacements thereof.

This policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision that would serve to limit third party action over claims.

The *Commercial General Liability* additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form CG 20 10 11 85, and shall include coverage for Consultant's operations and products and completed operations.

- B. Workers' Compensation. Consultant shall carry *Workers' Compensation* insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of work or services performed under this Contract, as well as *Employer's Liability* insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, Consultant will require the subconsultant or subcontractor to provide *Workers' Compensation* and *Employer's Liability* insurance to at least the same extent as required of Consultant.

- C. Professional Liability. Consultant shall maintain *Professional Liability* insurance covering negligent acts, errors, or omissions arising out of the work or services performed by the Consultant, or any person employed by Consultant, with a limit of not less than \$2,000,000 each claim.

OFFER ACCEPTANCE

IN WITNESS WHEREOF, the parties herein have accepted and executed this Contract as of the date approved by the PMGAA Board of Directors.

The requirement to submit a *Certificate of Performance and Payment of all Claims* as part of this agreement is hereby waived.

EXHIBIT B

SCOPE OF WORK

This Contract is for **Airport Environmental Assessment Services** to be performed by Consultant in support of PMGAA's **GATEWAY 2030** Project. The objective is to produce an Environmental Assessment (EA) for the Project area (comprising approximately 700 acres of marginally developed and undeveloped land along the Airport's northeast border) and facilitate PMGAA's receipt of the requisite FAA *Finding of No Significant Impact* (FONSI) that will enable the Project to proceed. Consultant shall prepare said EA in full compliance with *National Environmental Policy Act* (NEPA) requirements specified by FAA Orders 5050.4B and 1050.1E and the FAA *Environmental Desk Reference for Airport Actions*.

The services to be performed by Consultant pursuant to preparation of the EA preparation and the completion of related efforts shall be specified in one or more written Authorization of Services to be issued and agreed to by the parties during the Contract Term. Such services generally will consist of labor and materials attendant to researching, analyzing, producing and delivering documents pertinent to EA preparation and gaining its acceptance by the FAA.

The EA shall consist of five major sections, addressing: 1-Purpose and Need (for the **GATEWAY 2030** Project – including the specific proposed actions incident thereto); 2-Alternatives; 3-Affected Environment; 4-Environmental Consequences & Mitigation; and 5-Cumulative Impact Analysis. The completed EA shall also include a cover sheet, table of contents and appropriate appendices, including (at least) listings for the Preparer and Qualifications, Agencies Consulted, People Consulted (including public hearing information), Sponsor Land Use Letter and Aviation Forecast Data.

In the course of researching, analyzing, preparing and coordinating the EA, Consultant shall review available area environmental reports and assessments, and address and/or consider the following areas, as applicable:

- ◆ Topography;
- ◆ Surface waters;
- ◆ Floodplains and wetlands;
- ◆ Storm water;
- ◆ Geology and soils;
- ◆ Groundwater;
- ◆ Water supply and drinking water;
- ◆ Regional air quality and air emission sources;
- ◆ Solid waste;
- ◆ Hazardous materials and waste;
- ◆ Toxic materials;
- ◆ Noise environment;
- ◆ Land Use;
- ◆ Biological environment, including flora, fauna, endangered, threatened and sensitive species, if any;
- ◆ Cultural resources, including historic buildings, archeological sites, native American resources, etc.;
- ◆ Socioeconomic environment; and
- ◆ Transportation and safety.

Consultant's efforts also shall include detailed consultation and coordination with officials from the FAA, PMGAA, local city governments and a wide variety of other Federal, state, local and environmental agencies. In doing so, Consultant shall:

1. Provide monthly progress reports throughout the Contract Term;
2. Attend and/or conduct meetings regarding all aspects of the EA preparation and finalization processes;

3. Provide written documentation of all Contract-related meetings and conferences;
4. Compose, print (in both print and electronic form) and coordinate drafts of the EA with interested parties;
5. Compose, print (in both print and electronic form) and coordinate approval of the final EA document with interested parties.

Consultant shall ensure that all work performed pursuant to this Contract will 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.

Consultant shall be experienced in all pertinent disciplines, equipment, materials, specialist studies and labor to provide the all services necessary and pursuant to this Contract.

Consultant shall render professional services as PMGAA's environmental assessment planning consultant for all related activities pursuant to this Contract as assigned to it by PMGAA, giving consultation and advice, as needed, subject to the terms of the Contract. Consultant accepts the relationship of trust and confidence established with PMGAA by this Contract and covenants with PMGAA to furnish any services agreed to under this Contract using Consultant's best skill and judgment in furtherance of the interests of PMGAA. Consultant shall furnish such professional services and use its best efforts to perform any services agreed to in an expeditious and economical manner consistent with the interests of PMGAA.

Any and all services to be performed pursuant to this Contract require an approved Authorization of Services. Such Authorizations of Services shall be used to describe the scope of work to be performed, the amount of time required for performance, fees associated with that performance and any other applicable terms or conditions. Either party may elect not to perform any services before mutual execution of such an Authorization of Services.

Consultant shall perform the services as described in an approved Authorization of Services in accordance with the applicable requirements imposed by PMGAA, ADOT Aeronautics Group, the FAA and any other applicable sponsoring agencies. Consultant and its subconsultants/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. Consultant 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 Consultant 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.

Consultant's fee(s) for travel reimbursement shall be in accordance with the State of Arizona Travel Policy for any project that involves State funds.

Consultant is authorized to use the services of independent contractors, consultants, and subcontractors, when such services are warranted and agreed upon in advance in writing by PMGAA.

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. Consultant shall conduct its operations and perform any services authorized pursuant to 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. Consultants working on the same project shall cooperate with each other in the performance, scheduling, and, if applicable, the integration of their respective services.

Consultant will, at all times, be an independent contractor with regard to performance of any services. Consultant will not be authorized to enter into any contract or commitment, or authorize any payment, or accept any document, services, goods or materials for, in the name of, or on behalf of PMGAA, except as expressly authorized in writing by PMGAA in advance.

EXHIBIT C
COMPENSATION

All compensation for services rendered by Consultant shall be based upon criteria established below and in accordance with each Authorization of Services initiated under this Contract. All services must be billed through the Consultant.

1. Fees to be Specified in an Authorization of Services – Any and all services to be performed pursuant to this Contract require an approved Authorization of Services. All compensation for services to be paid to Consultant shall be identified in writing in an approved Authorization of Services. The Authorization of Services shall describe the scope of work to be performed, the amount of time required for performance, the fees associated with that performance, and any applicable special provisions. Consultant's compensation for any Authorization of Services shall be developed utilizing the "Fee Schedule" set forth below.

2. Method of Payment – Subject to the terms of this Contract, PMGAA shall pay Consultant the appropriate rate or fixed price amount for services rendered as described in the applicable Authorization of Service only after Consultant has certified in writing that it has performed the services and is entitled to the amount requisitioned under the terms of this Contract.

For services rendered in accordance with an approved Authorization of Services, Consultant shall submit to PMGAA an invoice or requisition for payment outlining hours utilized and expenses incurred for services performed. Invoices/requisitions for payment will be based upon the actual hours required and expenses incurred for the services completed during the billing period. Payments shall be subject to receipt of requisitions for payment from the Consultant specifying that Consultant has performed the services and is entitled to payment of the requested amount.

3. Consultant Responsibilities for Compensation – Consultant shall prepare monthly invoices and progress reports in accordance with terms specified in an approved Authorization of Services, which clearly indicate the progress to date and the amount of compensation due by virtue of that progress. All invoices/requisitions for payment shall be for work completed unless otherwise agreed to by PMGAA. Invoices/requisitions for payment for Authorization of Services subject to funding by the FAA and/or ADOT shall include the documentation requirements of the FAA and/or ADOT, which are outlined in the *Airport Improvement Program (AIP) Handbook* dated June 28, 2005, Chapter 13, Section 1.

4. PMGAA Responsibilities for Compensation – PMGAA agrees to pay Consultant's invoices/requisitions for payment within thirty (30) calendar days from the date of invoice. Subject to the terms of this Contract, at no time will payment of requisitions exceed thirty (30) calendar days from the date of the invoice without notification to Consultant. It is expressly understood that PMGAA has the right to withhold payment on any invoice if it feels that Consultant has not performed the requisitioned work efforts in a satisfactory manner. If PMGAA does decide to withhold payments to Consultant for any reason, PMGAA must provide written notification thereof, including an explanation to Consultant within ten (10) business days of the date of the invoice. If any payments are not made when due, then, Consultant may suspend services under this Contract until payment has been made in full or other satisfactory arrangements have been made.

5. Billing Address – All invoices submitted to PMGAA for payment shall be submitted to:

Phoenix-Mesa Gateway Airport Authority
Attn.: Carmen Williams, Design and Construction Manager
5835 S. Sossaman Road
Mesa, Arizona 85212

Appendix 1 to EXHIBIT C

FEE SCHEDULE

Employee Category

TO BE PUBLISHED

Hourly Rate

EXHIBIT D

SPECIAL PROVISIONS

“PMGAA” refers to the Phoenix-Mesa Gateway Airport Authority.

1. ***Civil Rights Act of 1964, Title VI – Contractor Contractual Requirements***

During the performance of this Contract, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as "Consultant") agrees as follows:

a. Compliance with Regulations – Consultant shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the “Regulations”), which are herein incorporated by reference and made a part of this Contract.

b. Nondiscrimination – Consultant, with regard to the work performed by it during the Contract Term, shall 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. Consultant shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of said Regulations.

c. Solicitations for Subcontracts, including Procurements of Materials and Equipment – In all solicitations, either by competitive bidding or negotiation made by Consultant, for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of the its obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

d. Information and Reports – Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall 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 Regulations, orders, and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to PMGAA or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance – In the event of Consultant’s noncompliance with the nondiscrimination provisions of this Contract, PMGAA shall 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 – Consultant shall include the provisions of paragraphs 1 through 5 of this **EXHIBIT D** in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Consultant shall take such 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, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Consultant may request PMGAA to enter into such litigation to protect the interests of PMGAA and, in

addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

2. ***Airport and Airways Improvement Act of 1982, Section 520 – General Civil Rights Provisions***

Consultant assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefitting from Federal assistance. This provision obligates Consultant or its transferee for the period during which Federal assistance is extended to the Airport, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the *Civil Rights Act of 1964*.

3. **Disadvantaged Business Enterprises (DBE)**

a. **Contract Assurance** (§26.13) – Consultant and/or subcontractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination thereof or such other remedy, as the recipient deems appropriate.

b. **Prompt Payment** (§26.29) – Consultant agrees to pay each subcontractor under this Contract for satisfactory performance of its contract obligations no later than thirty (30) calendar days from the receipt of each payment Consultant receives from PMGAA. Consultant agrees further to return retainage payments to each subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of PMGAA. This clause applies to both DBE and non-DBE subcontractors.

4. **Lobbying and Influencing Federal Employees**

a. No Federal appropriated funds shall be paid, by or on behalf of Consultant, 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.

5. **Access to Records and Reports**

Consultant shall maintain an acceptable cost accounting system. Consultant 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 Consultant which are directly pertinent to this specific Contract for the purpose of making audit, examination, excerpts and transcriptions.

Consultant 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.

6. Breach of Contract Terms

Any violation or breach of terms of this Contract on the part of Consultant or its subconsultants or subcontractors may result in the 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.

7. 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.

8. Trade Restriction Clause

a. Consultant or its subconsultants/subcontractors, by submission of an offer and/or execution of a contract, certifies that it:

- (1) 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);
- (2) 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 said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list; and
- (3) 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 said 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 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 said list for use on the project, the FAA may direct PMGAA cancellation of this Contract at no cost to the Government.

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

d. Consultant shall provide immediate written notice to PMGAA if Consultant 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 Consultant if at any time it learns that its certification was erroneous 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 Consultant 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 Consultant 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.

9. Termination of Contract

a. PMGAA may, by written notice, terminate this Contract in whole or in part at any time, either for PMGAA's convenience or because of Consultant's failure to fulfill the Contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Contract, whether completed or in progress, delivered to PMGAA.

b. If the termination is for the convenience of PMGAA, an equitable adjustment in the Contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

c. If the termination is due to Consultant's failure to fulfill its obligations under the Contract, PMGAA may take over the work and prosecute the same to completion by contract or otherwise. In such case, Consultant shall be liable to PMGAA for any additional cost occasioned to PMGAA thereby.

d. If, after notice of termination for failure to fulfill Contract obligations, it is determined that Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of PMGAA. In such event, adjustment in the Contract price shall be made as provided in paragraph b. of this Section.

e. The rights and remedies of PMGAA provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

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

Consultant, 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. Consultant further agrees that by accepting this Contract it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Consultant or any lower tier participant is unable to certify to this statement, it shall provide a written explanation to PMGAA.

11. 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, Consultant shall be responsible for fulfilling the security requirements described herein.

a. Secured Area Access – All Consultant 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 – All Contractor and/or subcontractor personnel performing work functions in accordance with this Contract shall obtain and properly display an Airport security badge. Consultant 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 Rates and Charges Schedule* listing available via the Airport website at www.phxmesagateway.org.

- (1) All fees must be paid to PMGAA by cash or check.
- (2) Airport Security Badge Application forms and instructions are available via the Airport website at www.phxmesagateway.org.

- (3) An authorized representative of Consultant 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.phxmesagateway.org.
- (4) 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.
- (5) Additional information, including a “Frequently Asked Questions” is available via the Airport website at www.phxmesagateway.org or by contacting the PMGAA Badging Office at (480) 988-7722. The Badging Office is located at 6263 S. Taxiway Circle, Mesa AZ 85212.
- (6) Consultant shall immediately notify the PMGAA Badging Office of any Consultant personnel whose employment status has changed.
- (7) Consultant shall be responsible for retrieving all security badges and keys and returning 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.
- (8) The PMGAA Badging Office will require a completed Security Badge Application from each Consultant employee so certified by Consultant as requiring such before a Security Badge is issued.
- (9) 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.
- (10) 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 Consultant 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 Consultant’s own employees. Therefore, if Consultant 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.

12. **Standard Contract Terms & Conditions**

PMGAA’s Standard Contract Terms & Conditions (**EXHIBIT E** attached hereto) include clauses that pertain to both construction and professional services. For such, the term “contractor” is to be considered same as “consultant.” 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.

13. **Travel Reimbursement Policy – ADOT**

Any time that state funds are involved in a project, the State of Arizona travel policy must be used. The travel policy can be accessed at <http://www.gpo.state.az.us/travel>.

14. **Procurement of Professional Services**

A.R.S. § 34-603 applies to this solicitation.

EXHIBIT E

STANDARD TERMS & CONDITIONS

1. Certification

By signature in the offer section of the Offer and Acceptance page, Consultant certifies:

- a. The award of this Contract did not involve collusion or other anti-competitive practices.
- b. It will 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.
- d. Pursuant to A.R.S. Sections 35-391.06 and 35-393.06, Consultant certifies that it does not have a scrutinized business operation in either Sudan or Iran. For the purpose of this Section, the term “scrutinized business operations” shall have the meanings set forth in A.R.S. Sections 35-391 and 35-393, as applicable. If PMGAA determines that Consultant submitted a false certification, PMGAA may impose remedies as provided by law including terminating the Contract pursuant to A.R.S. Sections 35-391.06 and 35-393.06 above.

2. Termination of Contract

a. This Contract may be terminated at any time by mutual written consent, or by the PMGAA, with or without cause, upon giving thirty (30) calendar days advance written notice to the non-terminating party. PMGAA, at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is so terminated, PMGAA shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted and material received by PMGAA before the effective date of termination.

b. PMGAA reserves the right to cancel the whole or any part of this Contract due to failure of Consultant to carry out any term, promise, or condition of the Contract. PMGAA will issue a written notice of default ten (10) business days in advance should Consultant default by acting or failing to act as in any of the following:

- (1) In the opinion of PMGAA, Consultant provides personnel that do not meet the requirements of the Contract.
- (2) In the opinion of PMGAA, Consultant fails to perform adequately the stipulations, conditions or services/specifications required in this Contract.
- (3) In the opinion of PMGAA, Consultant attempts to impose on PMGAA personnel or materials, products or workmanship which is of an unacceptable quality.
- (4) Consultant fails to furnish the required service(s) and/or product(s) within the time stipulated in the Contract or associated Authorization of Services.
- (5) In the opinion of PMGAA, Consultant fails to make progress in the performance of the requirements of the Contract or Authorization of Services, and/or give PMGAA a positive indication that Consultant will not or cannot perform to the requirements incident thereto.
- (6) Each payment obligation of PMGAA created hereby is conditioned upon the availability of PMGAA, state and/or federal funds which are appropriated or allocated for the payment of such an obligation. If funds are not allocated by PMGAA and available for the continuance

of service herein contemplated, the Contract period for the service may be terminated by the PMGAA at the end of the period for which funds are available. PMGAA shall notify Consultant at the earliest possible time which service will or may be affected by a shortage of funds. No penalty shall accrue to PMGAA in the event this provision is exercised, and PMGAA shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

3. Records

Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. PMGAA may, at reasonable times and places, audit the books and records of Consultant or any and all of Consultant's subconsultants or subcontractors. Said audit shall be limited to this Contract and its scope of services.

4. Arbitration

It is understood and agreed that no provision of this Contract relating to arbitration or requiring arbitration shall apply to or be binding upon PMGAA, except by the PMGAA's express written consent given subsequent to the execution of the Contract. However, at PMGAA's sole option or by other means expressly approved by PMGAA, disputes may be resolved through arbitration. Such dispute(s) shall be resolved as provided in A.R.S. Section 12-1501, et seq. Consultant shall continue to render the services required by this Contract without interruption, notwithstanding the provisions of this Section.

5. Independent Contractor

It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

Consultant shall not be entitled to compensation in the form of salaries, or paid vacation or sick days by PMGAA, and those days do not accumulate for the use of same at a later date.

PMGAA will not provide any insurance coverage to Consultant, including *Workers' Compensation* coverage. Consultant is advised that taxes or social security payments shall not be withheld from a PMGAA payment issued hereunder, and that Consultant should make arrangements to directly pay such expenses, if any.

6. Affirmative Action

Consultant agrees to abide by all the Federal and State of Arizona provisions for equal opportunity in the work place.

7. Human Relations

Consultant agrees to abide by all the Federal and State of Arizona provisions against discrimination of disadvantaged business enterprises in applicable PMGAA contracts.

8. Non-Exclusive Contract

This Contract is awarded with the understanding and agreement that it is for the sole convenience of PMGAA. PMGAA reserves the rights to obtain like goods or services from another source when necessary.

9. Patent Infringement

The procuring agency should advise Consultant of any impending patent suit and provide all information available. Consultant shall defend any suit or proceeding brought against the procurement agency based on a claim that any equipment, or any part thereof, furnished under this contract constitutes an

infringement of any patent, and the Contract shall pay all damages and costs awarded therein, excluding incidental and consequential damages, against the procuring agency. In case said equipment, or any part thereof, is in such suit held to constitute infringement and use of said equipment or part is enjoined, Consultant shall, at its own expense and at its option, either procure for the procuring agency the right to continue using said equipment or part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

10. 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 said *Act*.

11. 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.

12. 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.

13. 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 amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is canceled by PMGAA pursuant to this provision, PMGAA shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Consultant the amount of the gratuity.

14. 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.

15. Contract

This Contract is based upon and the result of a prior solicitation issued by PMGAA and the statement of qualification/proposal submitted by Consultant in response thereto. PMGAA reserves the right to clarify any contractual terms with the concurrence of the Consultant; however, any substantial non-conformity in the statement of qualification/proposal, as determined by PMGAA, shall be grounds for Contract termination. The Contract contains the entire agreement between PMGAA and Consultant relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.

16. **Legal Remedies**

All claims and controversies shall be subject to the PMGAA Procurement Code.

17. **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.

18. **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.

19. **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.

20. **Protection of Government Buildings**

Consultant shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on PMGAA property. If Consultant fails to do so and damages such buildings, equipment and vegetation, Consultant shall replace or repair the damage at no expense to PMGAA, as directed by the PMGAA Executive Director. If Consultant fails or refuses to make such repair or replacement, then, Consultant shall be liable for the cost thereof, which may be deducted from the Contract price.

21. **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.

22. **Assignment – Delegation**

No right or interest in this Contract shall be assigned by Consultant without prior written permission of PMGAA, and no delegation of any duty of Consultant shall be made without prior written permission of PMGAA's Executive Director or his/her designee. PMGAA shall not unreasonably withhold approval and shall notify Consultant of PMGAA's position within fifteen (15) business days of receipt of written notice by Consultant.

23. **Subcontracts**

No subcontract shall be entered into by Consultant with any other party to furnish any of the material/service specified herein without the advance written approval of the PMGAA's Executive Director or his/her designee. All subcontracts shall comply with Federal and state laws and regulations that are applicable to the 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 or not subcontractors are

used. PMGAA shall not unreasonably withhold approval and shall notify Consultant of PMGAA's position within fifteen (15) business days of receipt of written notice by Consultant.

24. Rights and Remedies

No provision in this Contract shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim or default or breach of Contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract, or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

25. Warranties

Consultant warrants that all material or service 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.

26. Indemnification

To the fullest extent permitted by law, Consultant shall indemnify and hold harmless PMGAA, its agents, representatives, officers, directors, officials, and employees 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 negligent acts, errors, omissions or mistakes relating to professional services in the performance of this Contract. Consultant's duty to indemnify and hold harmless PMGAA, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by any negligent acts, errors, omissions or mistakes, related to professional services in the performance of this Contract, including any person for whose negligent acts, errors, omissions or mistakes, the Consultant may be legally liable.

27. 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.

28. 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. In the event that 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.

29. Advertising

Consultant shall not advertise or publish information concerning this Contract without prior written consent of PMGAA.

30. Right to Inspect

PMGAA may, at reasonable times, and at PMGAA's expense, inspect the place of a Consultant's or subcontractor's business, which is related to the performance of this Contract or related subcontract.

31. Force Majeure

a. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

b. If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this section, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract modification or amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

32. 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 shall 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.

33. 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.

34. Title and Risk of Loss

The title and risk of loss of material or service shall not pass to PMGAA until PMGAA actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

35. No Replacement of Defective Tender

Every tender of materials must comply fully with all provisions of this Contract. If a tender is made which does not fully conform, this shall conform to the cancellation clause set forth within this Contract.

36. Default in One Installment to Constitute Total Breach

Consultant shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials or a default of any nature, at the option of PMGAA, shall constitute breach of the Contract as a whole. Noncompliance shall conform to the cancellation clause set forth within this Contract.

37. Liens

All materials, services, and other deliverables supplied to PMGAA under this Contract shall be free of all liens other than the security interest held by Consultant until payment in full is made by PMGAA. Upon request of PMGAA, Consultant shall provide a formal release of all liens.

38. **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.

39. **Subsequent Employment**

PMGAA may cancel this Contract without penalty or further obligation pursuant to 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.

40. **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.

41. **Patents**

Consultant shall indemnify, defend, and hold free and harmless PMGAA, its officers and employees from all liabilities, claims, damages, costs, or expenses, including, but not limited to attorney's fees imposed upon them or any of them, for any alleged infringement of patent rights or copyrights of any person or persons in consequence of the use by PMGAA, its officers, employees, agents, and other duly authorized representatives of articles or processes supplied to PMGAA by Consultant under this Contract.

42. **Availability of Project Funding**

The approval and continuation of this Contract is subject to the availability of funds, either provided to, made available to, or appropriated by PMGAA for this purpose. In the event funds are not available or appropriated for PMGAA's payment requirements under this Contract for the goods and/or services to be provided hereunder, PMGAA may terminate this Contract by providing notice to Consultant of the lack of the availability of funds. Consultant acknowledges and agrees that one source of funding for this Contract may be funds made available from the FAA and/or ADOT, and that this Contract, its approval and continuation is contingent on the availability of those funds being made to PMGAA.

43. **Records and Audit Rights**

Consultant's and all Consultant subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract, including the papers of any Consultant and subcontractor employee who works on the Contract, to ensure that Consultant and its subcontractor(s) are complying with the warranty under Section 48 below (all the foregoing hereinafter referred to as the "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by PMGAA, to the extent necessary to adequately permit: (1) evaluation and verification of any 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; and (2) evaluation of the Consultant's and subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 48 below. To the extent necessary for PMGAA to audit Records as set forth in this Section, Consultant and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, PMGAA shall have access to said 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 pursuant to this Contract. PMGAA shall have access, during normal working hours, to all necessary Consultant and subcontractor facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of 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 insertion of the requirements hereof in any subcontract pursuant to this Contract.

44. **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.