

Notice of Request for Proposals (RFP)

SOLICITATION NUMBER: 2018-003-RFP

SERVICE: Property Broker

PROPOSAL DUE DATE & TIME: September 6, 2017 by 11:00 am (Arizona time)

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

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

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

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

A pre-proposal meeting is scheduled for August 21, 2017 at 1:00 pm (Arizona time). The meeting will be held at the Airport Administration Building located at 5835 S. Sossaman Road, Mesa, AZ. Attendance is not mandatory but Offerors are encouraged to attend this meeting. Any questions outside of the pre-proposal meeting will require a written inquiry by the Offeror and a written response posted on the PMGAA's website by the PMGAA.

Deadline for submitting questions to PMGAA is August 28, 2017 by 5:00 pm (Arizona time). Responses to questions received will be issued in an addendum to the Request for Proposals and posted at www.gatewayairport.com in the Business|Procurement|Public Notices section of the website. Offerors are responsible for checking the PMGAA website at www.gatewayairport.com for any addendums that may be created for this solicitation.

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

Issue Date: August 1, 2017

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Notice of Intent

Solicitation Number 2018-003-RFP, Property Broker

Please fax or email this page upon receipt of solicitation package

Fax: (480) 988-2315

Email: mwhilden@gatewayairport.com

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

Offeror Responsibilities:

- Offerors are responsible for checking the PMGAA website at www.gatewayairport.com for any addendums that may be created for this solicitation.
- Offerors shall submit responses in accordance with requirements stated in the solicitation.
- Offerors may not submit responses to a solicitation via email or fax.

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

.....
Date: _____

Name: _____

Company: _____

Telephone: _____

Email: _____

Yes, I intend to respond to this solicitation

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

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

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

Arizona Business Gazette

East Valley Tribune

PMGAA Web Site

Direct email

Industry Association: _____

Other: _____

Introduction

Purpose:

The Phoenix-Mesa Gateway Airport Authority (PMGAA) is requesting proposals from qualified, real estate brokers to assist with the leasing of selected PMGAA-owned properties. It is the intent of this Request for Proposals to have the successful broker enter a Professional Services Agreement with PMGAA to provide real estate services as outlined herein.

PMGAA is seeking brokers with experience in marketing and leasing properties for owners with diverse portfolios of properties to best position selected properties in its small inventory. The broker should have some familiarity with laws and practices applicable to Airport real estate matters, including relevant local land use and zoning controls for properties and the Federal Aviation Administration's involvement with land-use.

Airport Overview

Phoenix-Mesa Gateway Airport (Airport) is quickly establishing itself as an internationally recognized aerospace center. Located in Mesa, Arizona and within the Greater Phoenix metropolitan area, the Airport is home to over thirty aerospace businesses, including Cessna, Embraer, Able Aerospace Services, and Constant Aviation. The Airport is one of the most successful U.S. Air Force base conversions in the nation and offers aerospace companies a dynamic business location. The Airport provides a cost effective operating environment and facilities for a broad range of operations, including aircraft maintenance and refurbishing, manufacturing and assembly; research and development; and other aerospace related business activities.

Phoenix-Mesa Gateway Airport is comprised of approximately 3,000 acres and includes three (3) parallel runways, each approximately 10,000-feet in length. In addition, the Airport hosts various navigational aids including an Instrument Landing System (ILS), Remote Transmitter/Receiver (RTR), Very High Frequency Omnidirectional Range collocated with a Tactical Aircraft Control and Navigation (VORTAC), Air Traffic Control Tower and an Airport Surveillance Radar (ASR). The Airport is an FAA Part 139 commercial reliever airport to Phoenix Sky Harbor International Airport and served over 1.4 million passengers with a varied fleet mix supporting 220,000 operations in 2016. PMGAA also owns and operates the only Fixed Base Operator (FBO) fueling and ground handling operation at the Airport.

The Airport is at the center of a larger regional planning area called the Mesa Gateway Area. According to population and growth estimates from the Maricopa Association of Governments, the Gateway Area will be home to over 100,000 new jobs by 2035, making it one of the largest employment centers in Arizona and the Southwest United States. Within the last several years, the Airport has seen tremendous success in growing the aerospace job market by adding three OEM service centers. Cessna, Embraer, and Constant Aviation have all opened service locations at Gateway. They were attracted by the availability of high quality labor, ability to recruit new talent to an inexpensive location to live and work, and proximity to education and training services adjacent to the Airport.

The Airport is owned and operated by the PMGAA, with a Board of Directors comprised of elected officials from its member communities: the City of Mesa, Town of Gilbert, Town of Queen Creek, the Gila River Indian Community, City of Phoenix and the City of Apache Junction. The partnership allows for an effective and efficient operating environment that has fostered a spirit of regional cooperation with regards to all development in and around Phoenix-Mesa Gateway Airport.

Section One - Offeror Information and Instructions

A. GENERAL INFORMATION ON SOLICITATION PROCESS

1. **Availability of Solicitation.** The solicitation package is available via the Internet at www.gatewayairport.com under the Business | Procurement | Public Notices section.
2. **Addendums.** If the PMGAA deems it necessary to amend the solicitation, an Addendum will be prepared in writing and posted on the PMGAA website. Offerors are responsible for obtaining all addendums via the PMGAA website at www.gatewayairport.com or by other means. Any Addendums issued by the PMGAA are to be included in the response, and will become a part of the contract. Offeror shall acknowledge receipt of an amendment by signing and returning the document by the specified due time and date.
3. **Familiarization with Requirements.** It is the Offeror's responsibility to examine the entire solicitation package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a response. Negligence in preparing a submittal confers no right of withdrawal after due date and time. All submissions must comply with applicable PMGAA rules, regulations and policies.
4. **Cost of Submittal Preparation.** PMGAA shall not reimburse the cost of developing, presenting or providing any response to this solicitation.
5. **Inquiries.**
 - a. **Contact Person.** Any inquiry related to a solicitation, including any requests for or inquiries regarding standards referenced in the solicitation should be directed to the staff member listed on the cover page of the solicitation. The Offeror shall not contact or direct inquiries concerning this solicitation to any other PMGAA employee unless the solicitation specifically identifies additional person(s) as a contact.
 - b. **Submission of Inquiries.** All inquiries shall be submitted in writing and/or electronic mail and shall refer to the appropriate solicitation number, page and paragraph. PMGAA shall consider the relevancy of the inquiry but is not required to respond in writing.
 - c. **Timeliness.** Any inquiry or exception to the solicitation shall be submitted as soon as possible and should be submitted at least ten (10) days before the solicitation due date and time for review and determination by PMGAA. Failure to do so may result in the inquiry not being considered for an Addendum.
 - d. **Verbal Responses.** Oral interpretations or clarifications will be without legal effect. An Offeror shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the solicitation.
6. **Public Record.** All submittals in response to this solicitation shall become the property of PMGAA, shall not be returned to Offeror and shall become a matter of public record available for review subsequent to the contract award.
7. **Solicitation Results.** Results are not provided in response to telephone inquiries. A tabulation of responses received will remain on file at PMGAA, and a Notice of Intent to Award shall be posted to the web site.

8. Protest of Solicitation or Specifications (Before Bid Opening).

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

9. Protest of Award Recommendation.

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

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

- g. Notice of the Board's final decision must be furnished to the protesting party, in writing, by the Purchasing Director / Chief Financial Officer.
10. **Special Conditions.** Wherever special conditions are written into the Special Conditions and Specifications (Section Two), which are in conflict with conditions stated in these Instructions to Offerors, the conditions stated in Special Provisions and Specifications, shall take precedence.
11. **Title VI Solicitation Notice.** PMGAA, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all Offerors/Bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit proposals to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
12. **Disadvantaged Business Enterprise.** It is the policy of PMGAA to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The PMGAA encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

B. PROPOSAL PREPARATION AND SUBMITTAL

1. **Proposal Preparation.**
- a. Forms. All proposals shall include the required forms provided in this solicitation. It is permissible to copy these forms if required.
 - b. No Facsimile or Electronic Mail Responses. Proposals may not be submitted in facsimile or electronically and will not be considered.
 - c. Confidential Information. Requests for nondisclosure of data such as trade secrets and other proprietary data must be made known to the Procurement Coordinator in writing. PMGAA shall review all requests for confidentiality and provide a written determination.
2. **Proposal Submittal.**
- a. Submission Package. One (1) original and the specified number of copies of the submittal (see Section Two) should be contained in each submission package. Each submittal package/envelope should be firmly sealed and clearly marked on the outside with the solicitation number, "Request for Proposal" and the name and address of the Offeror.
 - b. Late Submittals. Late submittals will be rejected and returned to the Offeror.
 - c. No Modifications. Modifications are not permitted after proposals have been opened except as otherwise provided under applicable law.
 - d. Withdrawal of Proposal. RFP submittals may be withdrawn at any time prior to the specified due date and time. An Offeror (or authorized representative) may withdraw the response by notifying the designated contact for this solicitation in writing on company letterhead. Facsimiles, telegraphic or mailgram withdrawals shall not be considered.

3. RFP Evaluation.

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

4. Award of Contract.

- a. Rights of PMGAA. The PMGAA reserves the right to award to whichever Offeror(s) deemed most advantageous to the PMGAA. The PMGAA may reject any or all submittals, waive any minor informality in submittals received, reject any alternate submittals and reserves the right to reject the submittal(s) of any Offeror who has previously failed to perform competently in any contract with the PMGAA.
- b. Selection. The contract shall be awarded using the criteria outlined in Section Two.
- c. Notification. Prior to contract award, the selected successful Offeror(s) will be notified of their apparent selection for contract award, and (a) contract(s) will be drawn which will include by reference this solicitation and any other contractual language as may be required by the PMGAA or by law.

Section Two – Special Instructions and Specifications

A. PROJECT DESCRIPTION

Phoenix-Mesa Gateway Airport Authority (PMGAA) owns, manages, and maintains over 3,000 acres of land and over 600,000 square feet of existing facility space. The PMGAA is seeking proposals from licensed commercial real estate brokerage firms to assist in marketing, negotiations, advisory and leasing services. PMGAA's initial primary real estate focus is leasing the following available land and facilities:

1. Gateway Executive Park – Located on the north end of the airfield, the Gateway Executive Park is currently home to Textron Aviation's Cessna/Citation Service Center, Embraer, and Constant Aviation. The Gateway Executive Park has over 17 acres of land ready for development. Enhanced infrastructure is already established. The Gateway Aerospace Park also has direct airfield access from Taxilane Golf for aircraft with wingspans up to 118 feet.
2. 6229 South Sossaman Road – Located on the southern end of the airport ramp and consisting of 26,279 RSF, this facility is currently undergoing a \$550k renovation. This building has a 19,000-square foot hangar with direct airfield access, a 4,000-square foot shop, and 3,300 square feet of office/administrative space. This facility is expected to be completed and move-in ready in the fall of 2017.
3. 6253 South Sossaman Road – Located adjacent to the 6229 South Sossaman Road facility, this structure is an open-air hangar that can house aircraft with wingspans of up to 116 feet. The hangar portion of the building consists of 21,858 square feet, and the office/administrative space consists of approximately 768 square feet.
4. 6304 South Sossaman Road – Located on the southern end of the airport ramp, this facility consists of a total of 36,005 RSF. This industrial/warehouse features overhead cranes, seven oversize roll up doors, a self-contained storage yard, and direct access to the secure area of the airport.
5. Other – Other facilities/land as assigned by PMGAA.

For additional information/descriptions of these properties, please visit:

<http://www.gatewayairport.com/AvailableProperties.aspx>.

B. SCOPE OF WORK

Phoenix-Mesa Gateway Airport Authority is seeking proposals from licensed commercial real estate brokerage firms with experience in providing commercial real estate brokerage and advisory services in Maricopa County, Arizona. Specific services may include, but are not limited to, the following:

- Prepare a comprehensive market study of available facilities/land and provide a comparative analysis for PMGAA's available facilities/land to identify current leasing/listing rates;
- Provide Broker Price Opinions on specific facilities/land;
- Prepare a comprehensive marketing plan for PMGAA's available property;
- Assist in negotiating lease renewals;
- Assist in lease compliance issues;
- Prepare annual marketing strategy reports identifying anticipated market conditions;
- Provide responsive (i.e. same-day responses to PMGAA inquiries) service for day-to-day contact on commercial real estate related questions, concerns, and issues;

- Provide legislative updates as needed regarding commercial real estate;
- Provide monthly marketing reports and updates for PMGAA's property, including market comps, active prospects, call logs, showing logs, etc.;
- Exercise professionalism, due diligence, and commercial real estate best practices;
- Perform risk analysis' to filter perspective clients based on financial strength and history prior to submission to PMGAA;
- Notify PMGAA and provide available property tours to perspective tenants;
- Assist PMGAA and legal counsel with lease and/or sale agreements;
- Assist PMGAA in the valuation, listing, sale, and lease transactions of available PMGAA properties;
- Coordinate execution of all transaction documents, evidence of insurance, etc.;
- Provide insight on market trends for PMGAA to renovate/rehabilitate properties to maximize potential revenue;
- Provide all services defined in this solicitation, for the compensation the bidder has offered (Attachment D). PMGAA is prepared to pay commission-based compensation rather than a fixed fee for services rendered. The stated commission shall include all costs associated with performance of the services specified, including labor, material, transportation, etc. No other charges to PMGAA shall be allowed;
- Other services as requested;
- Broker understands that it will be representing and working on behalf of PMGAA for the term of this agreement.

Minimum Requirements

Phoenix-Mesa Gateway Airport Authority will accept and evaluate proposals only from licensed commercial real estate brokerages that meet ALL the following requirements:

1. Licensing: All real estate professionals who will be assigned to Phoenix-Mesa Gateway Airport Authority's account must be licensed commercial real estate brokers pursuant to Arizona Revised Statutes 32-2122 and in good standing with the Arizona Department of Real Estate as of August 1, 2017 and throughout the term of the contract. Broker shall maintain an active membership to a local real estate association of Broker's choice. Only one submittal will be accepted from each firm, organization or company.
2. Brokerage Profile: Brokerage must provide commercial real estate services in Maricopa County. In 2016, the total value of all leasing deals completed by the Brokerage in Maricopa County must have been at least \$50 million. The Brokerage must maintain an active office in Maricopa County with a minimum of 25 employees/contracted agents. Broker must have national marketing capabilities to maximize PMGAA's available property exposure.
3. Lead Broker/Agent Experience: The lead broker/agent who will be assigned to the account of Phoenix-Mesa Gateway Airport Authority must have a minimum of (10) years' experience in providing commercial real estate brokerage services to clients. Within the last two (2) years, the lead broker/agent must have represented clients in a minimum of five (5) completed commercial real estate leasing transactions of at least 10,000 RSF each for Class A office, Class B office, light/heavy industrial complexes, or flex/industrial real estate within Maricopa County. Within the last three (3) years, the lead broker/agent must have represented clients in a minimum of two (2) land lease or land sale transactions within Maricopa County, valued at a minimum of \$1.5 million each. The lead broker/agent must have experience working in an airport environment.

C. SUBMITTAL REQUIREMENTS

Firms interested in responding to this solicitation should submit a proposal which includes a one-page cover letter plus a maximum length of fifteen (15) pages to address the RFP criteria as specified and in the order listed in this Section II.

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

Submittals should not direct the PMGAA to general brochures, marketing materials or websites to obtain information related to the specific submission requirements; submittals that utilize references to external materials as an answer will be considered non-responsive.

1. **Cover Letter (maximum one page):**
 - a. Identify the full company name, mailing address, 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 proposal, and provide company organization information
 - b. Provide a brief introduction of the company, including history, organizational structure, market position, etc.

2. **General Company Information (maximum two pages)**
 - a. Description of brokerage firm
 - b. Legal company organization
 - c. Provide an organizational chart with names and titles of senior management, including the proposed lead broker/agent
 - d. List of business licenses, professional certifications or other credentials for the firm's account executive(s)/brokers/real estate professionals, together with evidence that the firm, if a corporation, is in good standing and qualified to conduct business in Arizona.
 - e. Disclosure of any known business or financial relationships between the firms and members of the PMGAA Board and any of the PMGAA Business Development staff – if none, state “none”

3. **Qualifications Criteria (maximum fifteen pages):**

Relevant Firm Experience (30 points)

- a. Describe the firm's overall service capability as it relates to this project
- b. Describe any unique tools or resources of the firm that would benefit the project
- c. Describe the firm's experience originating and working with clients in the following industries:
 - i. Aircraft Maintenance, Repair, and Overhaul (MRO)
 - ii. Aviation, Aerospace & Defense Advanced Manufacturing
 - iii. Aviation, Aerospace & Defense Research and Development
 - iv. Specialized Aviation Service Organizations (SASO)
- d. Provide a statement that this engagement will not result in a conflict of interest
- e. Describe the firm's knowledge and experience in the marketing airport property
- f. Describe the firm's international capabilities as it relates to this project
- g. Provide a statement of assurance that the firm **and** the lead broker / agent meet the minimum requirements as stated in Section II, subsection B, “Minimum Requirements”.

Lead Broker / Agent Experience & Qualifications (35 points)

- a. Provide the name(s) and qualifications of the project lead(s) proposed to be assigned to the PMGAA account who would be working directly with the PMGAA Business Development staff and potential tenants. Please include a description of their familiarity with the East Valley

- submarkets and Airport real estate. List and briefly describe each team member's role on this project.
- b. Provide resumes of each proposed team member.
 - c. Provide the details of at least two (2) completed commercial leasing transactions of on-airport facility or ground lease transactions that your Project Team negotiated in the last five (5) years. Include the address, the property owner, the tenant, square footage, initial lease rate, and date the transaction closed.
 - d. Provide the details of five (5) completed commercial real estate leasing transactions of at least 10,000 RSF each for Class A, Class B, light/heavy industrial complexes, flex, or office real estate within Maricopa County.
 - e. Complete Attachment F for at least three (3) references for deals completed by the lead brokers/agent, with an emphasis on aeronautical clients, if possible.

Project Understanding and Approach (25 points)

- a. Describe your understanding of the project
- b. Describe your proposed techniques and methodology for addressing the items listed in the Scope of Work
- c. Provide a detailed, annual marketing plan and budget for the Airport assets described in the "Project Description." Please include a brief description of proposed marketing tactics and the type and frequency of status update reports to PMGAA.
- d. Describe the firm's real estate transaction process from prospect introduction to close of the transaction. Please include details on the firm's approach to prospect vetting.
- e. Describe your approach to operating within an agreed budget and schedule
- f. Describe your planning, scheduling and project management tools

Cost of the Proposal Solution (10 points)

- a. Complete Attachment D, Proposed Fee Schedule

4. Appendices

- a. Attachment A: "Authorization for Release of Performance Information and Waiver" form shall be completed, signed and included in the submittal.
- b. Attachment B: "Offer Agreement" form shall be completed, signed and included in the submittal
- c. Attachment C: "Insurance Requirements & Certificate of Insurability" form shall be completed, signed and included in the submittal. Within ten days of execution of a contract with the Airport Authority, the successful Offeror shall furnish proof of insurance in the amounts listed in the forms of Agreement.
- d. Attachment D: "Proposed Fee Schedule" form shall be completed and included in the submittal
- e. Attachment E: "Real Estate Brokers Licenses" form shall be completed and included in the submittal
- f. Attachment F: "References" form shall be completed and included in the submittal
- g. Attachment G: "Agreement Review Statement" form shall be completed, signed and included in the submittal
- h. Resumes for proposed key team members, 2-page maximum for each resume.

D. SUBMITTAL INSTRUCTIONS

1. The proposal may not exceed fifteen (15) single-sided pages (maximum 8½" x 11") with a minimum of 11 pt. type. Submissions exceeding the page limit will be considered non-responsive and will be returned to the responder without further evaluation. Responders must submit one (1) original and four (4) copies of their proposal for a total of five (5) in addition to one (1) complete electronic copy of the proposal and all attachments on a flash drive or CD.

2. The following information is not included in the page limit:
 - a. Cover letter on company letterhead, maximum of 1 page
 - b. General Company Information as specified in Section C-2 above, maximum of 2 pages
 - c. Resumes for each key team member, maximum of 2 pages each
 - d. Attachment A, Authorization for Release of Performance Information and Waiver
 - e. Attachment B, Offer Agreement
 - f. Attachment C, Insurance Requirements & Certificate of Insurability
 - g. Attachment D, Proposed Fee Schedule
 - h. Attachment E, Real Estate Licenses
 - i. Attachment F, References
 - j. Attachment G, Agreement Review Statement
 - k. Any Addenda issued by PMGAA
3. Do not include a table of contents or tab dividers. Submittals should be bound by plastic or metal three ring binder only. Pages having photos, charts, and/or graphs that provide additional evaluation information will be counted towards the maximum number of pages.
4. Failure to include all information requested may cause such incomplete proposals to be rejected and not be evaluated or considered in the selection process.
5. Proposals must be submitted in a sealed envelope with the solicitation number and the responder's name and address clearly indicated on the envelope. Proposals must be submitted to the contact person indicated on the Notice of Request for Proposal (RFP) on or before the due date. **LATE SUBMITTALS WILL NOT BE ACCEPTED.**

E. SELECTION PROCESS

1. The Airport Authority will appoint an evaluation panel to evaluate each Offeror's proposal. Using the criteria and weighting listed herein, and in order of preference, the selection committee will rank the Offerors.
2. The Airport Authority may contact and interview references provided by each Offeror.
3. The evaluation panel may then make a selection solely based on their collective evaluations of the Offerors' proposal and references.
4. The evaluation panel may conduct interviews regarding the project with the short listed top-ranked Offerors.
5. The Airport Authority intends to enter into negotiations with the highest ranked Offeror to finalize a Professional Services Agreement for the project. If an agreement cannot be successfully negotiated with the highest ranked Offeror, then negotiations may be terminated with that Offeror and the Airport Authority may enter negotiations with the next highest ranked Offeror until an agreement is reached or an impasse is declared.
6. A notification will be posted on the Airport web site following a selection.
7. Offerors are evaluated on any combination of the following elements: 1) Proposals submitted in response to this RFP; 2) reference verification; 3) interview performance (if conducted); and 4) any information from any source about the Offeror, whether included in the proposal or not.

8. PMGAA may cancel this solicitation at any time for any reason or no reason, so long as such is legally permissible.

9. The following tentative schedule has been established for this solicitation:

Pre-Proposal Meeting	August 21, 2017
Deadline for Written Questions	August 28, 2017
RFP Closing Date/Proposals Due	September 6, 2017
Notification to Firms (for possible interviews and/or non-selection)	September 20, 2017
Interviews (optional)	Week of October 2, 2017
Notification to Firms (of final firm selection)	October 12, 2017
Contract Award Recommendation to PMGAA Board of Directors	November 21, 2017

Section Three – Standard Terms and 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 shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, or A.R.S. Section 31-1461, et. seq.
 - c. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; and Consultant hereby certifies that the individual signing this Contract is an authorized agent for Consultant and has the authority to bind the Consultant to the Contract.
2. **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. The audit shall be limited to this Contract and its scope of services.
3. **Arbitration.** At PMGAA's sole option, disputes between the parties may be resolved through arbitration as provided in A.R.S. Section 12-1501, *et seq.* Proposer shall continue to render the services required by this Contract without interruption, notwithstanding either party has filed suit against the other or PMGAA has expressly agreed to arbitration and either party has demanded arbitration.
4. **Independent Contractor.** At all times, each party acts in its individual capacity and not as agent, employee, partner, joint venturer, or associate of the other party. An employee or agent of one party may not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

Neither Consultant nor any of its employees are entitled to compensation from PMGAA in the form of salaries, paid vacation, or sick days.

PMGAA will not provide any insurance to Consultant, including *Workers' Compensation* coverage. PMGAA will not withhold FICA, taxes, or any similar deductions from PMGAA's payments under this Contract.

5. **Affirmative Action.** Proposer shall abide by all the federal and state of Arizona provisions for equal opportunity in the work place.
6. **Human Relations.** Proposer shall abide by all the federal and state of Arizona provisions against discrimination of disadvantaged business enterprises in applicable PMGAA contracts.
7. **Americans with Disabilities Act.** Proposer shall comply with all applicable provisions of the *Americans with Disabilities Act* (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the *Act*.
8. **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.
9. **Gratuities.** PMGAA may, by written notice to the Consultant, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Consultant or any agent or representative of Consultant, to any officer or employee of PMGAA involved in the amending, or the making of any determinations with respect to the performing of such Contract. If this Contract is canceled by

PMGAA under this provision, PMGAA shall, in addition to any other rights and remedies, repay to the Consultant the amount of the gratuity.

10. **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.
11. **Contract.** This Contract is based on and the result of a negotiated Scope of Services and Fee Proposal submitted by Consultant. The Contract contains the entire agreement between PMGAA and Consultant. No prior oral or written agreements, contracts, proposals, negotiations, purchase orders, or master agreements (in any form) are enforceable between the parties.
12. **Legal Remedies.** All claims and controversies shall be subject to the PMGAA Procurement Code.
13. **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 Proposer.
14. **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.
15. **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.
16. **Protection of Government Property.** Proposer shall use reasonable care to avoid damaging all PMGAA property, including buildings, equipment, and vegetation (such as trees, shrubs, and grass). If Proposer damages PMGAA's property in any way, Proposer shall immediately repair or replace the damage at no cost to PMGAA, as directed by the PMGAA Executive Director. If Proposer fails or refuses to repair or replace the damage, then PMGAA may terminate the Contract, and PMGAA shall deduct the repair or replacement cost from money due Proposer under the Contract.
17. **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.
18. **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.
19. **Subcontracts.** Proposer may not enter into a subcontract with any other party to furnish any of the material/service specified herein without PMGAA's advance written approval. All subcontracts shall comply with federal and state laws and regulations 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 Proposer referred to herein. Proposer is responsible for Contract performance whether or not subcontractors are used. PMGAA shall not unreasonably withhold approval and shall notify Proposer of PMGAA's position within fifteen (15) business days of receipt of written notice by Proposer.

20. **Rights and Remedies.** No provision in this Contract shall be construed, expressly or by implication, to waive either party's existing or future claim, right, or remedy available by law for breach of contract. The failure of either party to insist on strict performance of any Contract term or condition; to exercise or delay exercising any right or remedy provided in the Contract or by law; or to accept materials, services, or Proposer's services under this Contract or imposed by law, shall not be deemed a waiver of any right of either party to insist upon strict performance of the Contract.
21. **Indemnification.** To the fullest extent permitted by law, Consultant shall defend, save, indemnify, and hold harmless PMGAA, its agents, representatives, officers, directors, officials, and employees (collectively the "Indemnitees"), for, from and against all claims, damages, losses and expenses, including but not limited to attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the Consultant's acts, errors, omissions, or mistakes relating to Consultant's services under this Contract.
22. **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.
23. **Right to Assurance.** Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. If a demand is made and no written assurance is given within five (5) business days, the demanding party may treat this failure as an anticipatory repudiation with this Contract.
24. **Advertising.** Proposer shall not advertise or publish information concerning this Contract without prior written consent of PMGAA.
25. **Right to Inspect.** PMGAA may, at reasonable times, and at PMGAA's expense, inspect the place of a Proposer's or subcontractor's business, which is related to the performance of this Contract or related subcontract.
26. **Force Majeure**
- a. Neither party is liable to the other, and neither party may be 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 does not include late performance by a subcontractor unless the delay arises out of a specific Force Majeure 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, as soon as practical, of the delay and shall specify the causes of delay in the notice. The notice must be hand-delivered or mailed certified-return receipt and must specifically refer to this section. The delayed party shall cause the delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The date of completion will be extended by Contract modification or amendment for the period of time that the completion date is necessarily delayed. This time extension is the Consultant's exclusive remedy for delay.
27. **Inspection.** All material or service is subject to final inspection and acceptance by PMGAA. Material or service failing to conform to the specifications of this Contract will be held at Consultant's risk and may be returned to Consultant. If so returned, all costs are the responsibility of Consultant. Noncompliance shall conform to the cancellation clause set forth in this Contract.
28. **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 Proposer or any other person except with prior written permission by PMGAA.

29. **Title and Risk of Loss.** The title and risk of loss of materials or services shall not pass to PMGAA until PMGAA actually receives the material or service at the Airport, unless otherwise provided within this Contract.
30. **No Replacement of Defective Tender.** Every tender of materials must fully conform to all provisions of this Contract. If Consultant tenders a material or service that does not fully conform, PMGAA may terminate this Contract.
31. **Default in One Installment to Constitute Total Breach.** Consultant shall deliver conforming materials and services in each installment or lot of this Contract. Consultant may not substitute nonconforming materials or services. Delivery of nonconforming materials or a default of any nature, at the option of PMGAA, will constitute breach of the Contract as a whole.
32. **Liens.** All materials, services, and other deliverables supplied to PMGAA under this Contract must be free of all liens and other encumbrances. Upon request of PMGAA, Consultant shall provide a formal release of all liens.
33. **Licenses.** Proposer shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Proposer as applicable to this Contract.
34. **Cost Of Proposal Preparation.** The PMGAA shall not reimburse the cost of developing, presenting, or providing any response to this solicitation. Bids/proposals submitted for consideration should be prepared simply and economically providing adequate information in a straightforward and concise manner.
35. **Public Record.** All proposals submitted in response to this request shall become the property of the PMGAA and shall become a matter of public record available for review subsequent to the award notification.
36. **Subsequent Employment.** PMGAA may cancel this Contract without penalty or further obligation in accordance with A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract, on behalf of the PMGAA is or becomes, at any time while the Contract or any extension of the contract is in effect, an employee of, or a contractor to any other party to this Contract with respect to the subject matter of the Contract. Such cancellation shall be effective when the parties to this Contract receive written notice from PMGAA, unless the notice specifies a later time.
37. **Patents.** Proposer shall defend, indemnify, and hold harmless PMGAA, its officers and employees from all liabilities, claims, damages, costs, or expenses, including, but not limited to attorneys' fees, for any alleged infringement of any person's patent rights or copyrights in consequence of the use by PMGAA, its officers, employees, agents, and other duly authorized representatives of tangible or intellectual property supplied to PMGAA by Proposer under this Contract.
38. **Records and Audit Rights.** Consultant's and all of its approved subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract, including the papers of all Consultant and subcontractor employees that work on the Contract (all the foregoing collectively referred to as "Records"), must be open to inspection and subject to audit and/or reproduction during normal working hours by PMGAA. PMGAA is entitled to evaluate and verify all invoices, payments or claims based on Consultant's and its subcontractor's actual costs (including direct and indirect costs and overhead allocations) incurred or units expended directly in the performance of work under this Contract. For any audit under this Section, Consultant and its subcontractors hereby waive the right to keep such Records confidential. PMGAA is entitled to access to these Records from the effective date of this Contract for the duration of the work and until five years after the date of final payment by PMGAA to Consultant under the Contract. During normal working hours, PMGAA is entitled to access to all necessary Consultant and subcontractor facilities and shall be provided adequate and appropriate workspace, in order to conduct audits under this Section. PMGAA shall give Consultant or subcontractors reasonable advance notice of intended audits. Consultant shall require its subcontractors to comply with the provisions of this Section by including its requirements in all subcontracts related to this Contract.

39. **E-Verify Requirements.** To the extent applicable under A.R.S. § 41-4401, Offeror and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees, and compliance with the E-Verify requirements under A.R.S. §23-214(A). Offeror's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Contract and may result in the termination of this Contract by PMGAA.

Attachment A
Authorization for Release of Performance Information and Waiver

The purpose of this disclosure is to provide references to the Phoenix-Mesa Gateway Airport Authority. I hereby consent that as an Offeror to Phoenix-Mesa Gateway Airport Authority Solicitation 2018-003-RFP, Property Broker for Phoenix-Mesa Gateway Airport, I authorize those companies and government entities listed in my RFP submittal and any other government entity for whom this company has performed property brokerage 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.

_____ (Company) 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 (1) year.

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

Signature of Offeror

Date

Attachment B
Offer Agreement

OFFER TO PHOENIX-MESA GATEWAY AIRPORT AUTHORITY:

The Undersigned hereby offers and agrees to furnish the service in compliance with all terms, conditions, specifications, and amendments in the Request for Proposal, and any written exceptions in the proposal, as defined in Attachment D – Fee Schedule.

For clarification of this offer, contact:

Company Name

Name

Address

Telephone

City State Zip Code

Fax

Signature of Person Authorized to Sign

Federal Tax Identification Number

Printed Name

Sales Tax License Number

Title

Attachment C

Insurance Coverage & Certificate of Insurability

During the term of this Contract, Offeror shall maintain in full force at its own expense, each insurance noted below normally associated with the services covered by this Contract:

GENERAL LIABILITY Required by PMGAA Not required by PMGAA

General liability insurance with limits no less than **\$1,000,000** per occurrence and **\$2,000,000** general aggregate for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract. Any supplementary payments, including defense costs, shall be in addition to the policy limits. It shall provide that the Phoenix-Mesa Gateway Airport Authority, its agents, officials, officers and employees are Additional Insureds but only with respect to the Offeror's services to be provided under this Contract.

AUTOMOBILE LIABILITY Required by PMGAA Not required by PMGAA

Automobile liability insurance with a combined single limit, or the equivalent, of not less than
 \$200,000 \$500,000 \$1,000,000 \$5,000,000
 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable. Proof of coverage is required. All vehicles used by Offeror on PMGAA property shall carry appropriate proof of insurance.

PROFESSIONAL LIABILITY Required by PMGAA Not required by PMGAA

Professional liability insurance with limits no less than **\$1,000,000** for each claim, incident or occurrence and **\$2,000,000** general aggregate. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. Only a certificate is required.

WORKERS' COMPENSATION. Required by PMGAA

The Offeror shall maintain Workers' Compensation insurance with statutory limits as required by the State of Arizona and Employer's Liability insurance in the amount of *One Million Dollars (\$1,000,000)*. The policy shall contain a waiver of subrogation in favor of the PMGAA.

POLLUTION LEGAL LIABILITY Required by PMGAA Not required by PMGAA

Pollution Legal Liability insurance with a combined single limit, or the equivalent, of not less than
 \$200,000 \$500,000 \$1,000,000 \$2,000,000
 for each event. A certificate is required.

EXCESS LIABILITY (Umbrella). Required by PMGAA Not required by PMGAA

No less than \$5,000,000 per occurrence / \$5,000,000 policy aggregate extending coverage over the General Liability, Auto Liability and Employer's Liability policies.

CERTIFICATES OF INSURANCE AND ENDORSEMENTS.

Check one or both if insurance is required: Certificate Required
 Endorsement Required

As evidence of the insurance coverages required by this Contract, the Offeror shall furnish acceptable insurance certificates and endorsements to PMGAA prior to commencement of any work under this Contract. For work performed under this Contract, the insuring company's certificates and endorsements shall be endorsed to include the following additional insured language: "The Phoenix-Mesa Gateway Airport Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of Offeror." If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the PMGAA. The Offeror shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

NOTICE OF CANCELLATION OR CHANGE.

There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days' written notice from the Offeror or its insurer(s) to PMGAA.

I hereby certify that as an Offeror to Phoenix-Mesa Gateway Airport Authority Solicitation 2018-003-RFP, Property Broker Services for Phoenix-Mesa Gateway Airport, I am fully aware of Insurance Requirements as specified in this Attachment C as well as those contained in the sample Professional Services Agreement (Attachment H) and by the submission of this RFP submittal, I hereby assure the Phoenix-Mesa Gateway Airport Authority that I am able to produce the insurance coverage required should I be selected to be awarded the Professional Services Agreement.

Should I be awarded the Professional Services Agreement 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 this and future projects.

Signature of Offeror

Date

Attachment D
Proposed Fee Schedule

The stated commission shall include all costs associated with performance of the services specified, including labor, material, transportation, etc.

Commission Structure & Fee for Facility Lease: _____

Commission Structure & Fee for Land Lease: _____

Commission Structure & Fee for Property Sale: _____

List all other costs the PMGAA may anticipate relating to the real estate services to be provided.

Attachment F References

Provide a list of at least three (3) client references for deals completed by the lead broker/agent, with an emphasis on aeronautical clients, if possible. Include all relevant transaction details.

1. Company: _____ Contact Person: _____

City, State: _____ Telephone: _____

Email Address: _____ Lease / Purchase / Sale (Please circle all that apply)

Transaction Details: _____

2. Company: _____ Contact Person: _____

City, State: _____ Telephone: _____

Email Address: _____ Lease / Purchase / Sale (Please circle all that apply)

Transaction Details: _____

3. Company: _____ Contact Person: _____

City, State: _____ Telephone: _____

Email Address: _____ Lease / Purchase / Sale (Please circle all that apply)

Transaction Details: _____

Attachment G
AGREEMENT REVIEW STATEMENT

As an Offeror to Phoenix-Mesa Gateway Airport Authority Solicitation 2018-003-RFP, Property Broker Services, I hereby certify that I have reviewed the PMGAA standard form Professional Services Agreement (Attachment H) and have listed any objections to them below. The response shall clearly identify if the attached Professional Services Agreement is acceptable in all respects including warranty, insurance, and document ownership and retention requirements. If the Agreement is not acceptable, the response shall identify the unacceptable clauses and shall provide suggested alternate language. General or vague statements or invitations to discuss further are not adequate answers.

I am aware any objections to the standard form Professional Services Agreement will be considered and included in the Airport Authority's evaluation of my firm's qualifications. I am also aware, if I fail to list any objections to the Airport Authority's standard Professional Services Agreement, I will not be allowed to raise any objections later if selected as the most qualified Offeror.

Signature of Offeror

Date

Specific Objections:

Attachment H



SAMPLE
Professional Services Agreement

PHOENIX-MESA GATEWAY AIRPORT AUTHORITY

AND

[Real Estate Broker]

FOR

Property Brokerage Services

CONTRACT NUMBER C-2018003

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

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Phoenix-Mesa Gateway Airport Authority, a joint powers airport authority authorized by the State of Arizona (“PMGAA”) desires performance of the services more fully described in this **Contract Number C-2018003** (“Contract”) and the attached exhibits. **[Consultant]**, a(n) **<state> <type of company>** (“Consultant”), with its principal offices located at **[address]**, desires to perform these services.

Recitals

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

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

SECTION I – CONSULTANT SERVICES

The services to be performed by Consultant are specified in this Contract. PMGAA will not pay Consultant for any services that have not been authorized under the Contract.

The anticipated services to be provided by Consultant under this Contract shall generally include, but not be limited to, the following: marketing, negotiations, advisory and leasing services of PMGAA’s owned and managed property and land, as more specifically described in Consultant’s detailed scope of work attached as **EXHIBIT A**, “Scope of Services & Fee Schedule.”

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

All services provided by Consultant under this Contract must be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in Arizona. 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 this Contract:

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

SECTION III - PERIOD OF SERVICE

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 commences on January 1, 2018 and ends on December 31, 2019 (“Term”), unless terminated, canceled or extended as provided in this Contract. This Contract has two (2) optional one-year extensions. Prior to the expiration of the Term, PMGAA may, at its sole discretion, elect to extend the Contract term by exercising these options. Any extension shall require an Amendment signed by both parties.

If PMGAA exercises such right, all terms, conditions and provisions of the original Contract shall remain the same and apply during the extended period with the possible exception of price. All prices stated in the original Contract shall apply unless a percent of increase or decrease is agreed to by PMGAA.

SECTION IV – KEY PERSONNEL

The Consultant itself shall provide all services to be performed under this Contract.

If Sub-Consultants are required by Consultant to perform any services listed under this contract, Consultant shall notify PMGAA prior to authorizing work by said Sub-Consultants. PMGAA may, at its sole discretion, accept or reject proposed Sub-Consultants.

SECTION V - PAYMENTS TO THE CONSULTANT

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

All services to be rendered by Consultant are subject to the terms of **EXHIBIT B**, “Compensation” attached hereto.

SECTION VI - ALTERATION IN SCOPE OF SERVICES

For any alteration in the Scope of Services that would materially increase or decrease the Contract fee, the parties shall negotiate an amendment to the Contract to be executed by PMGAA and Consultant. No work shall commence on any amendment or change until the amendment has been approved by PMGAA and Consultant has been notified to proceed by PMGAA. 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 Contract unless the work is first authorized in writing by PMGAA and the change complies with PMGAA’s Procurement Policy. Any work or materials furnished by Consultant without advance, written authorization will be at Consultant’s own risk, cost, and expense. Without 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 Contract, situations arise which prevent work completion within the allotted time, PMGAA may grant an appropriate time extension.

SECTION VIII - OWNERSHIP OF DOCUMENTS

Items prepared by Consultant or its subcontractors or agents under or as a result of this Contract, including but not limited to, all documents, drawings, including design information, concepts, images, renderings, models, cost information, estimates, specifications and reports, including electronic copies thereof, (“Works”) are to be the property of the PMGAA.

Consultant hereby represents that it is the owner of and hereby assigns to PMGAA all rights, title and interest, including all copyrights, copyright registrations, copyright applications, renewals, extensions and all other proprietary or ownership rights, in all Works and things created by Consultant in whole or in part, or hereafter created by the Consultant in connection with this Agreement, including but not limited to, all works based upon, derived from, or incorporating any Works. Consultant shall execute any separate agreements or documents, if any, which may be necessary to implement the terms of this Section.

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

In the event of the termination of Consultant under the provisions of this Contract or the termination, suspension, abandonment or completion of the tasks outlined herein, the Consultant shall deliver to PMGAA, within thirty (30)

days, all Works created by the Consultant in connection with this Contract. PMGAA, as the holder of all rights, title and interest, including all copyrights, in all Works created by Consultant, shall have the right to use or reuse any and all such Works for any purpose at PMGAA's sole discretion and at no additional cost to PMGAA.

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 Contract 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 subconsultants employ to complete any work assignment.

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

SECTION X - GENERAL CONSIDERATIONS

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

SECTION XI - NO KICK-BACK CERTIFICATION

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

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

SECTION XII – SUSPENSION OF SERVICES

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

SECTION XIII – TIMES OF PAYMENTS

Consultant shall submit invoices for any services actually completed. PMGAA shall review, certify, and approve or reject each invoice in whole or in part. PMGAA shall pay each approved invoice within 30 calendar days of the date that PMGAA approves the invoice.

SECTION XIV – TIMELY REVIEW

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

SECTION XV – MEDIATION; ARBITRATION

All disputes between PMGAA and Consultant arising out of or relating to this Contract must first be submitted to nonbinding mediation unless the parties mutually agree otherwise in writing. In the event that the dispute(s) are not settled via nonbinding mediation, the parties shall proceed to and employ binding arbitration, as set forth in **EXHIBIT E**, "PMGAA Standard Terms and Conditions", attached hereto and incorporated herein by reference.

PMGAA and Consultant shall include a similar mediation/arbitration provision in all agreements with other consultants retained for the Project and shall require all other independent consultants to include a similar mediation provision in all agreements with subconsultants, suppliers or fabricators retained by them.

SECTION XVI - LIABILITY OF CONSULTANT

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

SECTION XVII - LAWS AND REGULATIONS

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

SECTION XVIII – ARCHAEOLOGICAL RESOURCE PROTECTION

While performing services under this Contract, Consultant may encounter a known or unknown archaeological site located at the Airport. If Consultant encounters what it believes to be an archaeological site, Consultant shall immediately notify PMGAA of the site's location and take all reasonable precautions to protect and preserve the site until PMGAA otherwise directs.

SECTION XIX – INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS

1. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.
2. Minimum Scope and Limits of Insurance. Coverage shall be at least as broad as:
 - a. Professional Liability (Errors and Omissions): Insurance appropriate to the Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
 - b. Commercial General Liability: Insurance Services Office Form CG 00 01 covering Bodily Injury and Property Damage on an "occurrence" basis, including personal & advertising injury with limits no less than \$1,000,000 per occurrence, \$2,000,000 General Aggregate.
 - c. Auto Liability: ISO Form CA 00 01 covering any auto (Symbol 1), or if Consultant has no owned autos, hired, (Symbol 8) and non-owned autos (Symbol 9), with limit no less than \$5,000,000 Combined Single limit per accident for bodily injury and property damage
 - d. Workers' Compensation: Statutory Limits as required by the state of Arizona, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
3. If the Consultant maintains higher limits than the minimums shown above, the PMGAA requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the PMGAA.
4. Additional insurance provisions. The insurance policies shall provide, or be endorsed to include, the following provisions:
 - a. Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the PMGAA.
 - b. Waiver of Subrogation: Consultant waives any right to subrogation. Consultant shall obtain an endorsement necessary to affect this waiver of subrogation from the insurer for all lines of coverage required by this Contract.
 - c. Primary Coverage: For all claims related to this Contract, all of Consultant's insurance policies will be primary and non-contributory. Any insurance or self-insurance maintained by PMGAA, its officers, officials, employees, or volunteers will be in excess of Consultant's insurance and will not contribute with it.

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

SECTION XX – SUSPENSION & TERMINATION

Suspension. In the event that either Party is unable to perform any of its obligations under this Contract, or to enjoy any of its benefits because of natural disasters, actions or decrees of government bodies, the Party who has been so affected shall immediately give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract are suspended. If the period of non-performance exceeds thirty (30) days from the receipt of notice, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

Termination.

- a. This Contract may be terminated at any time by mutual written consent or by PMGAA - with or without cause - provided the terminating party gives sixty (60) calendar days' advance written notice to the other party. PMGAA may terminate this Contract, in whole or in part, for PMGAA's convenience and on sixty (60) days' written notice. If this Contract is terminated, then PMGAA is liable only for services rendered and material received, certified, and approved by PMGAA under the Contract before the termination effective date.
- b. PMGAA reserves the right to cancel this Contract in whole or in part due to failure of Consultant to carry out any term, promise, or condition of the Contract. At least ten days before terminating the Contract, PMGAA will issue a written notice of default specifying one of the following reasons.
 - i. Consultant has provided personnel that do not meet the requirements of the Contract.
 - ii. Consultant has failed to perform adequately the stipulations, conditions or services/specifications required in this Contract.

- iii. Consultant has attempted to impose on PMGAA personnel or materials, products, or workmanship of unacceptable quality.
- iiii. Consultant has failed to furnish the required service(s) and/or product(s) within the time stipulated in the Contract.
- iv. Consultant has failed to make progress in the performance of the requirements of the Contract or Consultant fails to give PMGAA adequate assurance the Consultant will perform the Contract in full and on time.

SECTION XXI – NOTICES

All notices, demands, approvals, consents, elections or other communications permitted or required to be given hereunder shall be in writing and shall be deemed given on the date of actual receipt by the person or entity which is a party to this Contract. Notices shall be addressed as follows:

- a. If to PMGAA
Shea Joachim, Business Development Director
5835 S. Sossaman Rd.
Mesa, AZ 85212

- b. If to Consultant

Any name or address specified above may be changed by a notice given to the addressee by the other party in accordance with this Section. The inability to deliver because of a changed address of which no notice was given or rejection or other refusal to accept any notice shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by the counsel for such party.

SECTION XXII – PMGAA’S WARRANTIES

PMGAA warrants that it owns the subject property, has the authority to execute this Contract, and agrees to convey good and marketable leasehold rights to financially and legally qualified tenants submitted by Consultant to PMGAA that complies with PMGAA’s requirements, meets PMGAA’s business plan and is approved by PMGAA’s Board of Directors or Executive Director. PMGAA agrees that procurement by Consultant of a tenant who enters into a leasehold interest with PMGAA in accordance with the terms of this Contract and other PMGAA requirements listed hereinabove will entitle Consultant to a commission under this Contract. PMGAA agrees to cooperate with Consultant in bringing about a lease of the property. All negotiations are to be through PMGAA and PMGAA agrees to cooperate with Consultant in the offer and negotiation process of tenants proffered by Consultant. PMGAA and its counsel will be responsible for determining the legal sufficiency of a lease, and/or other documents relating to any transaction contemplated by this Contract. PMGAA hereby warrants and represents to Consultant that there are no delinquencies or defaults under any deed of trust, mortgage or other encumbrance on the property and that the property is not subject to the jurisdiction of any court in any bankruptcy, insolvency conservatorship or probate proceeding.

SECTION XXIII – DUAL AGENCY

Consultant may represent and serve as agent for any purchaser, tenant, prospective purchaser or prospective tenant the Consultant or its agents may bring to the subject property, provided that Consultant advises PMGAA in writing in advance and PMGAA consents to such dual agency relationship which might arise as a result thereof, and no other fees or consideration shall be due to Consultant by PMGAA, tenant, or related party. PMGAA acknowledges that Consultant, among other things, is required to disclose to all parties any information that materially or adversely affects the consideration to be paid by any party to the transaction.

OFFER AND ACCEPTANCE

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

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

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

ACCEPTED AND APPROVED:

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

Name/Clerk of the Board	Date
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EXHIBIT A – SCOPE OF SERVICES AND FEE SCHEDULE

SCOPE OF SERVICES

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

To provide commercial real estate brokerage and advisory services to PMGAA in both aeronautical and non-aeronautical facility leasing and sale transactions, and aeronautical and non-aeronautical land lease transactions. Specific services may include, but are not limited to, the following:

- Prepare a comprehensive market study of available facilities/land and provide a comparative analysis for PMGAA's available facilities/land to identify current leasing/listing rates;
- Provide Broker Price Opinions on specific facilities/land;
- Prepare a comprehensive marketing plan for PMGAA's available property;
- Assist in negotiating lease renewals;
- Assist in lease compliance issues;
- Prepare annual marketing strategy reports identifying anticipated market conditions;
- Provide responsive (i.e. same-day responses to PMGAA inquiries) service for day-to-day contact on commercial real estate related questions, concerns, and issues;
- Provide legislative updates as needed regarding commercial real estate;
- Provide monthly marketing reports and updates for PMGAA's property, including market comps, active prospects, call logs, showing logs, etc.;
- Exercise professionalism, due diligence, and commercial real estate best practices;
- Perform risk analysis' to filter perspective clients based on financial strength and history prior to submission to PMGAA;
- Notify PMGAA and provide available property tours to perspective tenants;
- Assist PMGAA and legal counsel with lease and/or sale agreements;
- Assist PMGAA in the valuation, listing, sale, and lease transactions of available PMGAA properties;
- Coordinate execution of all transaction documents, evidence of insurance, etc.;
- Provide insight on market trends for PMGAA to renovate/rehabilitate properties to maximize potential revenue;
- Provide all services defined in this solicitation, for the compensation the bidder has offered (Attachment D). PMGAA is prepared to pay commission-based compensation rather than a fixed fee for services rendered. The stated commission shall include all costs associated with performance of the services specified, including labor, material, transportation, etc. No other charges to PMGAA shall be allowed;
- Other services as requested;
- Broker understands that it will be representing and working on behalf of PMGAA for the term of this agreement.

FEE SCHEDULE

[INSERT]

EXHIBIT B - COMPENSATION

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

1. Fees to be Specified in Contract

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

2. Method of Payment

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

For services rendered in accordance with the Contract, Consultant shall submit to PMGAA an invoice detailing services completed. PMGAA must certify and approve each invoice as a condition to payment.

3. PMGAA Responsibilities for Compensation

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

4. Billing Address

All invoices submitted to PMGAA for payment shall be submitted to:
Phoenix-Mesa Gateway Airport Authority
Attn: Shea Joachim, Business Development Director
5835 S. Sossaman Road
Mesa, Arizona 85212

EXHIBIT C – BROKER(S)

[ENTER LIST OF BROKERS]

If Consultant removes any of the above Brokers or assigns additional Broker(s) to provide any of the Scope of Services outlined in this Contract, Consultant shall give prior notice to PMGAA. PMGAA shall confirm each Broker is licensed and in good standing with the Arizona Department of Real Estate. PMGAA may, at its sole discretion, accept or reject proposed agent(s).

EXHIBIT D – SPECIAL PROVISIONS

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

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

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

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

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

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

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

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

4. Prompt Payment

- a. 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.

5. Federal Fair Labor Standards Act

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

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

6. Occupational Safety and Health Act of 1970

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

7. 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.

8. 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.

9. 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 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.

10. 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.

11. Trade Restriction Clause

- a. Consultant or its subconsultants/subcontractors, by submission of an offer and/or execution of a contract, certifies that it:
 - i. Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

- ii. Has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on the list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on the list; and
 - iii. Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on the list.
- b. Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on the list for use on the project, the FAA may direct PMGAA cancellation of this Contract at no cost to the Government.
 - c. Further, Consultant shall 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.

12. 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 shall 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.

13. 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.gatewayairport.com.

- i. All fees must be paid to PMGAA by cash or check.
 - ii. Airport Security Badge Application forms and instructions are available via the Airport website at www.gatewayairport.com.
 - iii. An authorized representative of 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.gatewairport.com.
 - iv. A training class on aviation security must be successfully completed before individuals are issued a badge. Fees for the security badge include attendance for the necessary training classes. Attendance at the security classes and issuance of the security badge may take two hours per person.
 - v. Additional information, including a “Frequently Asked Questions” is available via the Airport website at www.gatewairport.com or by contacting the PMGAA Badging Office at (480) 988-7522. The Badging Office is located at 5803 S. Sossaman Road, Mesa AZ 85212.
 - vi. Consultant shall immediately notify the PMGAA Badging Office of any Consultant personnel whose employment status has changed.
 - vii. Consultant shall retrieve all security badges and keys and return them to the PMGAA Badging Office. A fee, as indicated on the most current *Airport Rates and Charges Schedule*, will be charged for each badge that is damaged, lost or not returned.
 - viii. The PMGAA Badging Office will require a completed Security Badge Application from each Consultant employee so certified by Consultant as requiring such before a Security Badge is issued.
 - ix. Under certain circumstances and out of control of PMGAA, security measures may change on short notice. No deviations from any security measure shall be allowed at any time.
 - x. At all times, aircraft shall have the right-of-way over all vehicle traffic.
- c. Fines – Due to both the safety and security precautions necessary at the Airport, any failure of the 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.

14. Standard Terms & Conditions

PMGAA’s Standard Terms & Conditions (in **EXHIBIT E** attached) 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.

15. Federal and State Guidelines and Regulations

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

Consultant shall perform the services as described in approved Contract in accordance with the applicable requirements imposed by PMGAA, ADOT, FAA and any other applicable sponsoring agencies. 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.

16. Right to Contract With Other Firms

PMGAA shall have the right to contract with other firms and/or persons and/or to self-perform additional services, which may be the subject of this Contract. Consultant shall conduct its operations and perform any services authorized under the Contract so as not to interfere with or hinder the progress of completion of the work being

performed by PMGAA and/or other firms and/or persons. Consultants working on the same project shall cooperate with each other in the performance, scheduling, and, if applicable, the integration of their respective services.

17. Independent Contractor Status

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

EXHIBIT E – PMGAA STANDARD TERMS AND 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 shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, or A.R.S. Section 31-1461, et. seq.
 - c. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; and Consultant hereby certifies that the individual signing this Contract is an authorized agent for Consultant and has the authority to bind the Consultant to the Contract.

2. **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. The audit shall be limited to this Contract and its scope of services.

3. **Arbitration.** At PMGAA's sole option, disputes between the parties may be resolved through arbitration as provided in A.R.S. Section 12-1501, *et seq.* Proposer shall continue to render the services required by this Contract without interruption, notwithstanding either party has filed suit against the other or PMGAA has expressly agreed to arbitration and either party has demanded arbitration.

4. **Independent Contractor.** At all times, each party acts in its individual capacity and not as agent, employee, partner, joint venturer, or associate of the other party. An employee or agent of one party may not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

Neither Consultant nor any of its employees are entitled to compensation from PMGAA in the form of salaries, paid vacation, or sick days.

PMGAA will not provide any insurance to Consultant, including *Workers' Compensation* coverage. PMGAA will not withhold FICA, taxes, or any similar deductions from PMGAA's payments under this Contract.

5. **Affirmative Action.** Proposer shall abide by all the federal and state of Arizona provisions for equal opportunity in the work place.

6. **Human Relations.** Proposer shall abide by all the federal and state of Arizona provisions against discrimination of disadvantaged business enterprises in applicable PMGAA contracts.

7. **Americans with Disabilities Act.** Proposer shall comply with all applicable provisions of the *Americans with Disabilities Act* (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the *Act*.

8. **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.

9. **Gratuities.** PMGAA may, by written notice to the Consultant, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Consultant or any agent or representative of Consultant, to any officer or employee of PMGAA involved in the amending, or the making of any determinations with respect to the performing of such Contract. If this Contract is canceled

by PMGAA under this provision, PMGAA shall, in addition to any other rights and remedies, repay to the Consultant the amount of the gratuity.

10. **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.
11. **Contract.** This Contract is based on and the result of a negotiated Scope of Services and Fee Proposal submitted by Consultant. The Contract contains the entire agreement between PMGAA and Consultant. No prior oral or written agreements, contracts, proposals, negotiations, purchase orders, or master agreements (in any form) are enforceable between the parties.
12. **Legal Remedies.** All claims and controversies shall be subject to the PMGAA Procurement Code.
13. **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 Proposer.
14. **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.
15. **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.
16. **Protection of Government Property.** Proposer shall use reasonable care to avoid damaging all PMGAA property, including buildings, equipment, and vegetation (such as trees, shrubs, and grass). If Proposer damages PMGAA's property in any way, Proposer shall immediately repair or replace the damage at no cost to PMGAA, as directed by the PMGAA Executive Director. If Proposer fails or refuses to repair or replace the damage, then PMGAA may terminate the Contract, and PMGAA shall deduct the repair or replacement cost from money due Proposer under the Contract.
17. **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.
18. **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.
19. **Subcontracts.** Proposer may not enter into a subcontract with any other party to furnish any of the material/service specified herein without PMGAA's advance written approval. All subcontracts shall comply with federal and state laws and regulations 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 Proposer referred to herein. Proposer is responsible for Contract performance whether or not subcontractors are used. PMGAA shall not unreasonably withhold approval and shall notify Proposer of PMGAA's position within fifteen (15) business days of receipt of written notice by Proposer.

20. **Rights and Remedies.** No provision in this Contract shall be construed, expressly or by implication, to waive either party's existing or future claim, right, or remedy available by law for breach of contract. The failure of either party to insist on strict performance of any Contract term or condition; to exercise or delay exercising any right or remedy provided in the Contract or by law; or to accept materials, services, or Proposer's services under this Contract or imposed by law, shall not be deemed a waiver of any right of either party to insist upon strict performance of the Contract.
21. **Indemnification.** To the fullest extent permitted by law, Consultant shall defend, save, indemnify, and hold harmless PMGAA, its agents, representatives, officers, directors, officials, and employees (collectively the "Indemnitees"), for, from and against all claims, damages, losses and expenses, including but not limited to attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the Consultant's acts, errors, omissions, or mistakes relating to Consultant's services under this Contract.
22. **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.
23. **Right to Assurance.** Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. If a demand is made and no written assurance is given within five (5) business days, the demanding party may treat this failure as an anticipatory repudiation with this Contract.
24. **Advertising.** Proposer shall not advertise or publish information concerning this Contract without prior written consent of PMGAA.
25. **Right to Inspect.** PMGAA may, at reasonable times, and at PMGAA's expense, inspect the place of a Proposer's or subcontractor's business, which is related to the performance of this Contract or related subcontract.
26. **Force Majeure**
- a. Neither party is liable to the other, and neither party may be 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 does not include late performance by a subcontractor unless the delay arises out of a specific Force Majeure 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, as soon as practical, of the delay and shall specify the causes of delay in the notice. The notice must be hand-delivered or mailed certified-return receipt and must specifically refer to this section. The delayed party shall cause the delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The date of completion will be extended by Contract modification or amendment for the period of time that the completion date is necessarily delayed. This time extension is the Consultant's exclusive remedy for delay.
27. **Inspection.** All material or service is subject to final inspection and acceptance by PMGAA. Material or service failing to conform to the specifications of this Contract will be held at Consultant's risk and may be returned to Consultant. If so returned, all costs are the responsibility of Consultant. Noncompliance shall conform to the cancellation clause set forth in this Contract.
28. **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 Proposer or any other person except with prior written permission by PMGAA.

29. **Title and Risk of Loss.** The title and risk of loss of materials or services shall not pass to PMGAA until PMGAA actually receives the material or service at the Airport, unless otherwise provided within this Contract.
30. **No Replacement of Defective Tender.** Every tender of materials must fully conform to all provisions of this Contract. If Consultant tenders a material or service that does not fully conform, PMGAA may terminate this Contract.
31. **Default in One Installment to Constitute Total Breach.** Consultant shall deliver conforming materials and services in each installment or lot of this Contract. Consultant may not substitute nonconforming materials or services. Delivery of nonconforming materials or a default of any nature, at the option of PMGAA, will constitute breach of the Contract as a whole.
32. **Liens.** All materials, services, and other deliverables supplied to PMGAA under this Contract must be free of all liens and other encumbrances. Upon request of PMGAA, Consultant shall provide a formal release of all liens.
33. **Licenses.** Proposer shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by Proposer as applicable to this Contract.
34. **Cost Of Proposal Preparation.** The PMGAA shall not reimburse the cost of developing, presenting, or providing any response to this solicitation. Bids/proposals submitted for consideration should be prepared simply and economically providing adequate information in a straightforward and concise manner.
35. **Public Record.** All proposals submitted in response to this request shall become the property of the PMGAA and shall become a matter of public record available for review subsequent to the award notification.
36. **Subsequent Employment.** PMGAA may cancel this Contract without penalty or further obligation in accordance with A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the contract, on behalf of the PMGAA is or becomes, at any time while the Contract or any extension of the contract is in effect, an employee of, or a contractor to any other party to this Contract with respect to the subject matter of the Contract. Such cancellation shall be effective when the parties to this Contract receive written notice from PMGAA, unless the notice specifies a later time.
37. **Patents.** Proposer shall defend, indemnify, and hold harmless PMGAA, its officers and employees from all liabilities, claims, damages, costs, or expenses, including, but not limited to attorneys' fees, for any alleged infringement of any person's patent rights or copyrights in consequence of the use by PMGAA, its officers, employees, agents, and other duly authorized representatives of tangible or intellectual property supplied to PMGAA by Proposer under this Contract.
38. **Records and Audit Rights.** Consultant's and all of its approved subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract, including the papers of all Consultant and subcontractor employees that work on the Contract (all the foregoing collectively referred to as "Records"), must be open to inspection and subject to audit and/or reproduction during normal working hours by PMGAA. PMGAA is entitled to evaluate and verify all invoices, payments or claims based on Consultant's and its subcontractor's actual costs (including direct and indirect costs and overhead allocations) incurred or units expended directly in the performance of work under this Contract. For any audit under this Section, Consultant and its subcontractors hereby waive the right to keep such Records confidential. PMGAA is entitled to access to these Records from the effective date of this Contract for the duration of the work and until five years after the date of final payment by PMGAA to Consultant under the Contract. During normal working hours, PMGAA is entitled to access to all necessary Consultant and subcontractor facilities and shall be provided adequate and appropriate workspace, in order to conduct audits under this Section. PMGAA shall give Consultant or subcontractors reasonable advance notice of intended audits. Consultant shall require its subcontractors to comply with the provisions of this Section by including its requirements in all subcontracts related to this Contract.

39. **E-Verify Requirements.** To the extent applicable under A.R.S. § 41-4401, Offeror and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees, and compliance with the E-Verify requirements under A.R.S. §23-214(A). Offeror's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Contract and may result in the termination of this Contract by PMGAA.