

## **NOTICE TO AIRPORT CONSULTANTS**

City of Holbrook, AZ is soliciting Statements of Qualifications and Experience from consulting firms to provide professional airport planning, engineering and airport construction management services for the City airport, Holbrook Municipal Airport (P14).

A complete copy of the Request for Statements of Qualifications and Experience may be obtained from:

**Ray Alley, City Manager**  
**465 N. 1st Avenue (P. O. Box 970)**  
**Holbrook, AZ 86025**  
**(928) 524-6225 office, (928) 524-2159 FAX, (email) rayalley@ci.holbrook.az.us**

DBE firms are encouraged to apply. All proposals received will be evaluated based on FAA Advisory Circular 150/5100-14D and on compliance with the request.

Fees for individual projects will be negotiated as funding is obtained and will be subject to third-party review. Projects funded through FAA grants will be subject to the provisions of Executive Order 11246 (Affirmative Action to Ensure Equal Employment Opportunity) and to the provisions of the Department of Transportation Regulations 49 CFR Part 26 (Disadvantaged Business Enterprise Participation) and to foreign trade restrictions. Selected projects must also obtain an Authorization of Services from the City prior to beginning work.

The Consultant must supply all information required by the Request for Statements of Qualifications and Experience. The City reserves the right to waive any informality and minor irregularities in the submittals and select the Consultant deemed, in the opinion of the City to be in the best interest of the City and the airport or may also reject all submittals.

Interested consultants are to submit (1) one original and four (4) complete copies of the Statements of Qualifications and Experience by 5:00 pm Arizona Time on Wednesday, April 16, 2014 to the above address.

**CITY OF HOLBROOK**

**REQUEST FOR QUALIFICATIONS**

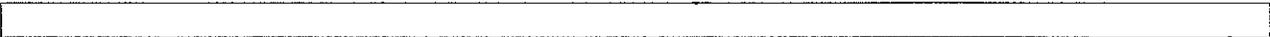
**Project: Airport Engineer**

**AIRPORT PLANNING AND ENGINEERING SERVICES**

**Submittal Deadline:**

**04-16-2014**

**5 p.m.**



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## 1.0 INTRODUCTION

The City of Holbrook is seeking a qualified aviation consultant to provide airport consultant services to include: planning, operations and operations planning, engineering design, and airport construction project management services for both AIP and non-federally funded projects for the Holbrook Municipal Airport.

All work will be required to meet Federal Aviation Administration (FAA) Standards and Arizona Department of Transportation Multimodal Planning Division Aeronautics Group (ADOT) Standards. The City of Holbrook anticipates entering into a contract for professional services with the selected firm/team for a five year contract.

## 2.0 BACKGROUND

### Holbrook Municipal Airport

This is a City of Holbrook owned public-use airport included in the FAA's National Plan of Integrated Airport Systems which categorizes it as a Primary System General Aviation, Public, Community Airport facility.

Holbrook Municipal Airport is located in Navajo County, Arizona within limits of the City of Holbrook about three miles northeast of the downtown area. Holbrook Municipal Airport is located on approximately 434 acres of land owned in fee simple. There are no easements. The Airport consists of two runways 3/21 which is a 6700 x 75 foot paved and lighted runway with a matching parallel taxiway. As well a runway 3/21 there is runway 11/29 which is a 3200 x 120 foot dirt runway in fair condition. Holbrook municipal airport has an AWOS System with an upgraded wind indicator. Holbrook Municipal Airport consists of a 13,200 square foot hangar/terminal building built in the 1940s. As well as the main hangar terminal building there is T hangar facility that houses another 10 aircraft as well as a small 30x30 residence building used for a caretaker house. The airport is managed by the City of Holbrook and provides a self serve fuel card lock system which dispenses 100LL.

Direct all inquiries regarding the RFQ to:

Ray Alley      email [rayalley@ci.holbrook.az.us](mailto:rayalley@ci.holbrook.az.us)  
PO Box 970 Holbrook, AZ 86025  
928-524-6225

Do not contact City of Holbrook staff directly. Information provided by other than the above contact may be invalid and statement of qualifications which are submitted in accordance with such information may be declared non-responsive.

In the event that it becomes necessary to revise any part of this RFQ, a written addendum will be issued. Any amendment to this RFQ is valid only if in writing and issued by the City of Holbrook. All addenda for this RFQ will be distributed **via publication in the local newspaper (Holbrook Tribune News)**.

It is the Consultant's sole responsibility to monitor this website for possible addenda to this RFQ. Failure of Consultant to retrieve addenda from this site shall not relieve him/her of the requirements contained therein. Additionally, failure of Consultant to return signed addenda, when required, may be cause for rejection of his/her proposal.

The Consultant acknowledges that this solicitation is subject to Federal laws and regulations, including Federal Aviation Administration (FAA) regulations, rules, policies and Grant Assurances, specifically but not exclusively, 49 CFR 18 as outlined in FAA *Advisory Circular (AC) 150/5100-14D*, all relating to procurement of planning, architectural/engineering and consultant services. This RFQ will be conducted in accordance with Arizona Revised Statutes 34, Chapters 1, 2, and 6. The Consultant, with the submission of the Statement of Qualifications and Experience, accepts the responsibility for knowledge of, and compliance with, the guidelines and procedures stated within this noted documentation.

### **3.0 SCOPE OF WORK (CONSULTANT SERVICES)**

The airport consultant services required for typical planning and engineering of airport development projects involves planning type services including airport system, master planning, and environmental inter-related studies. Engineering type services include architectural, civil, geotechnical, structural, mechanical and electrical engineering. Construction type services include oversight and project management. All work produced by the consultant (including but not limited to hard copies and electronic files) will be the property of the City of Holbrook. Copyrights by the consultant will not be allowed. The solicited scope of services includes, but is not limited to the following tasks:

1. Preliminary Phase: This phase involves those activities required for defining the scope of a project and establishing preliminary requirements. Some examples of activities within this phase of a project include:
  - a. Conferring with the City of Holbrook on project planning, requirements, finances, schedules, early phase of the project, and other pertinent matters and meeting with the ADOT, FAA, and other concerned agencies and parties on matters affecting the project.
  - b. Planning, procuring and/or preparing necessary surveys, geotechnical engineering investigations, field investigations and architectural and engineering studies required for preliminary design considerations.
  - c. Developing design schematics, sketches, environmental and aesthetic considerations, project recommendations and preliminary layouts and cost estimates.
  - d. Participation in annual Airport Capital Improvement Program (ACIP) meetings and preparation and submittal of all ACIP documents to ADOT and FAA including related pre-application and application documents.
2. Design Phase: This phase includes all activities required to undertake and accomplish a full and complete project design. Examples include:
  - a. Conducting and attending meetings and design conferences to obtain information and to coordinate or resolve design matters.
  - b. Collecting engineering data and undertaking field investigations; performing geotechnical engineering studies; and architectural, engineering, and special environmental studies.

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- c. Preparing necessary engineering reports and recommendations.
  - d. Preparing detailed plans, specifications, and cost estimates
  - e. Printing and providing necessary copies of engineering drawings, contract documents, and specifications.
3. Construction Phase: This phase includes all activities to construct the project. Examples include:
- a. Assisting the City of Holbrook in advertising and securing bids, negotiating for services, analyzing bid results, furnishing recommendations on the award of contracts, and preparing contract documents.
  - b. Onsite construction inspection and/or management involving the services of a part time or full-time resident engineer(s), inspectors(s), or managers(s), during the construction or installation phase of a project.
  - c. Providing consultation and advice to the City of Holbrook during all phases of construction.
  - d. Representing the City of Holbrook at preconstruction conferences.
  - e. Inspecting work in progress periodically and providing appropriate reports to the City of Holbrook.
  - f. Reviewing and approving shop and erection drawings submitted by contractors for compliance and design concept.
  - g. Reviewing, analyzing, and approving laboratory and mill test reports of materials and equipment.
  - h. Preparing and negotiating change orders and supplemental agreements.
  - i. Observing and reviewing performance tests required by specifications.
  - j. Preparation of record drawings.
  - k. Determining amounts owed to contractors and assisting the City of Holbrook in the preparation of payment requests for amounts reimbursable from grant projects.
  - l. Making final inspection and submitting a report of the completed project to the City of Holbrook, FAA, ADOT, and/or other required parties.
4. Special Services: The development of planning projects may involve special activities or studies. Some examples of special services that may be employed for any part of airport projects includes:
- a. Soils investigations, including core sampling, laboratory tests, related analyses and reports.
  - b. Detailed mill, shop, and or/laboratory inspections of materials and equipment.
  - c. Land surveys and topographic maps.
  - d. Field and/or construction surveys.
  - e. Photogrammetry surveys and aerial mapping.
  - f. Environmental studies and analysis including wildlife assessments.
  - g. Airport planning (Master Planning, project feasibility studies).
  - h. Expert witness testimony in litigation involving specific projects.
  - i. Public information and community involvement surveys, studies, and activities.
  - j. Contact with Media.
  - k. Assisting the City of Holbrook in seeking out and preparation of necessary applications for local, State, Federal, and/or private grant funding.
  - l. Preparation of DBE Plans/Goals, including bringing the City of Holbrook current with all DBE requirements and maintaining accuracy.
  - m. Preparation of or updating and possible submittal of the Airport Layout Plan and Master Plan.

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- n. Preparation and possible submittal of property maps.
  - o. Preparation and possible submittal of quality control plans.
  - p. Preparation and possible submittal of invoices, billings, and final or closeout reports.
  - q. Provide input on refinement of ACM /EAP documents.
  - r. Review and make recommendations on maintenance of existing structures at the airport.
  - s. Recommend the schedules of rentals and/or leases and other charges for the use of the services and facilities at the airports.
  - t. Recommend possible expansion and/or land acquisitions.
  - u. Make recommendation on airport improvements based on observations during onsite visits.
5. Operations: The RFQ's will also be evaluated on the firm's ability to provide airfield operations assistance, including but not limited to, evaluation of FBO services, recommendations on airfield operation equipment, fueling, and management/operations.
6. Travel reimbursement: the State of Arizona travel policy will be followed. The City of Holbrook will only reimburse the consultant at a rate not to exceed that stated in the State travel policy. A.R.S. 34-603 must be followed for all reimbursement. The travel policy can be reviewed at <http://www.gao.az.gov/travel/default.asp>

FUTURE PROJECTS: The following projects are dependent upon federal AIP funding and approval of the City of Holbrook, so it shall be understood that some of the services related to the projects may or may not be accomplished during the term of this agreement. The presence of a project on this list in no way guarantees funding of the project or that the project will be done, or that the project will be done by the consultant selected. City of Holbrook reserves the right to initiate additional services not included in the initial procurement should private and or additional City of Holbrook resources become available.

Current and projected ACIP projects include:

### **Holbrook Municipal Airport**

1. Relocate fuel farm adjacent to access road.  
Justification: The existing fuel farm is in the future RPZ. The relocation of this obstruction is required to move forward on other anticipated projects.
2. Crack seal, fog seal, remark Rwy 3/21 (6698 ft x 75 ft) PCI 71 and apron (33,600sy) PCI 59.  
Justification: Pavement needs treatment to extend useful life. 2010 APMS study showed Rwy 3/21 PCI of 71 and apron PCI of 59.
3. RSA 3/21 grading (7178 ft x 120 ft)  
Justification: The Rwy shoulders are identified as a shortcoming on the 5010 inspection. The Rwy edges and lights are experiencing erosion resulting in edge drops and exposed light cans larger than 3 inches.
4. EA for Rwy 3/21 shift (1302 ft x 75 ft).

Justification: Incompatible land use is located within the RPZ to Rwy 3. This project would remove in incompatible land use by shifting Rwy 3/21 and the associated RPZ.

5. Master plan update
6. Airport Layout Plan (ALP) update
7. Construct Utility Extensions
8. Published GPS or LNAV Approach
9. Design/Construct Airfield markings
10. Environmental Reviews as required for each project-Categorical Exclusions and Environmental Assessments
11. Provide non FAA funded airport planning, engineering, environmental and miscellaneous airport consulting services as may be required

#### **4.0 PREPARATION OF PROPOSAL – REQUIRED CONTENT**

Each response to this RFQ shall include the information described in this section. Failure to include all of the elements specified may be cause for rejection of the proposal. Additional information may be provided, but should be succinct and relevant to the goals of this RFQ. Excessive information will not be considered favorably. All documents shall be 8 ½ X 11 inches, or folded to such a size and include a table of contents.

All submittals shall contain the following elements **and in the order given**:

- 4.1 **Cover Letter** to include the following information:
  - a. Title of this RFQ and number
  - b. Name and Mailing Address of Firm (include physical location if mailing address is a post office box.)
  - c. Contact Person, Telephone number and fax number.



d. A statement that the submitting firm will perform the services as described in the Scope of Work.

4.2 **Confidentiality:** All submittals will be considered public information and, subsequent to award of this RFQ, all or part of any submittal will be released to any person or firm who requests it. Consultants shall specify in their Cover Letter if they desire that any portion of their submittal be treated as proprietary and not releasable as public information. However, Consultants should be aware that all such requests may be subject to legal review and challenge.

4.3 **Signatory Requirements:** The Cover Letter must be signed by an officer empowered by the Consultant to sign such material and thereby commit the Consultant to the obligations contained in the RFQ response. **Further, the signing and submission of a response shall indicate the intention of the Consultant to adhere to the provisions described in this RFQ and a commitment to enter into a binding contract.**

Therefore the Cover Letter must be signed in accordance with the following provisions:

- If the response is submitted on behalf of a **Partnership**, the Cover Letter shall be signed in the firm name by a partner or the Attorney-In-Fact. If signed by the Attorney-In-Fact, there shall be attached to the proposal a Power-Of-Attorney evidencing authority to sign proposals, dated the same date as the proposal and executed by all partners of the firm.
- If the response is submitted on behalf of a **Corporation**, the Cover Letter shall have the correct corporate name thereon and the actual signature of the authorized officer of the corporation written(not typed) below the corporate name. The title of the office held by the person signing for the corporation shall appear below the signature of the officer; OR
- If the response is submitted on behalf of an **Individual** doing business under a firm name, the Cover Letter shall be signed in the name of the individual doing business under the proper firm name and style.

4.4 **Statement of Interest**

Provide a statement of interest describing interest in items identified in the scope of services.

4.5 **Understanding of the Tasks and Scope of Work:**

Provide a brief response that demonstrates your firms understanding the tasks in the scope of work. Provide a narrative on how your firm will comply with the proposed scope of work and what special services your firm has available to meet our agency needs for our projects.

4.6 **Background/Available Resources**

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- a. Provide a brief description of your firm, including relevant information about the firm's qualifications to perform the services requested. Include length of time in existence, organizational structure, and the number of employees. Also include an organization chart of personnel to be assigned to the services together with the specific project tasks that will be performed by the designated individual.
  - b. Describe your firm's current workload and its ability to complete these services in a timely manner and the resources currently available to perform the work for this contract.
  - c. List other ongoing projects.
  - d. Describe your firm's internal measures that will ensure timely completion.
  - e. Identify the person who is responsible for maintaining the schedule.
  - f. Identify the firm's record for project completion and other recent clients.
  - g. Provide a list of sub-consultants to be used for any work described in this RFQ.
  - h. Indicate any special related services that your firm can provide outside the normal services requested.

**4.7 Qualifications:**

- a. Describe the firms' qualifications in regard to preparing studies, reports, plans, specifications, and estimates for civil engineering improvement projects. This section should list the key points of contact within the firm, and their individual and collective experiences in dealing with City of Holbrook staff.
- b. Describe demonstrated ability to produce well coordinated and detailed designs that minimize change orders.
- c. Describe your demonstrated ability to analyze and refute unwarranted claims and change orders by the contractor.
- d. Describe your ability to meet schedules and keep work within the allocated budget.
- e. Demonstrate the firm's responsiveness to owner's concerns. Outline the response time for contacting The City of Holbrook or responding to phone calls and/or emails.
- f. Identify the type and location of similar work performed which characterizes the work quality.
- g. Describe your knowledge of FAA and ADOT regulations, policies and procedures including grant management and administration.
- h. Describe your familiarity and understanding of the potential list of projects.

**4.8. Experience:**



- a. Describe current relevant experience with airport capital improvement projects, planning, design and engineering of airport aviation facilities.
- b. Describe your demonstrated track record in working with governmental agencies on projects of this type and scope. Previous FAA grant experience is a qualification requirement.
- c. Provide a list of relevant projects, including client names, titles, and contact information. Listing should include nature of work, timeframe completed, term of relationship, and current status.
- d. Describe experience/familiarity with Holbrook Municipal Airport.

**4.9 Quality Control:**

- a. Describe the firm's quality control procedures or activities to assure the reliability of the work and project documentation.
- b. Describe your current workload situation and how, if selected as a result of this RFQ, The City of Holbrook projects will fit into your workload schedule.
- c. Describe what internal procedures and/or policies are associated or related to work quality and cost control.
- d. Describe internal quality and cost control measures and procedure.

**4.10 References:**

Provide references for at least five (5) other clients, including current contact name and telephone numbers. References provided should be for similar services, and include information on when the service was performed and for whom. Include a brief description of the services performed. References will be contacted to inquire about past performance, including, but not limited to:

- a. Ability to meet schedules and keep work within the allocated budget.
- b. Ability and thoroughness in development of plans and specifications.

By providing such references you agree that neither the City of Holbrook nor the clients referenced shall have any liability regarding the provision of such references or the City of Holbrook's use of such references in making selections under this request for proposal.

The City of Holbrook reserves the right to contact additional references discovered from its own research, as necessary.

4.10 **Required Statements:**

Include statements of assurance regarding the following requirements: Non-substitution of the designated members of the team without approval by City of Holbrook (**Section 8.0**), non-conflict of interest and non-collusion (**General Terms & Conditions, item 4 and 5**), and the ability to fulfill the indemnification and insurance requirements as outlined in the sample **Professional Services Agreement, Attachment "A"**.

**5.0 SUBMITTAL INSTRUCTIONS**

- 5.1 Submit **one (1) original and four (#4) copies** of your submittal no later than the time and date indicated on the cover page of this RFQ. All responses shall be submitted in a Sealed envelope or container and clearly marked with the RFQ number and title on the outside of the parcel.
- 5.2 Submittals shall be delivered **ONLY** to: **City of Holbrook**  
**ATTN: Ray Alley**  
**Address: PO Box 970**  
**Holbrook, Az. 86025**
- 5.3 Shipment of your submittal should be made with adequate allowances for slow delivery time.
- 5.4 Submittals delivered to a location other than the above will not be considered duly delivered or timely. The City of Holbrook shall not be responsible for re-routing submittals delivered to a person or location other than that specified above.
- 5.5 Faxed and/or e-mailed submittals shall not be accepted.
- 5.6 Late submittals shall not be accepted or considered.
- 5.7 All submittals, whether selected or rejected, shall become the property of City of Holbrook and will not be returned.
- 5.8 The City of Holbrook reserves the right to waive minor defects and/or irregularities in submittals, and shall be the sole judge of the materiality of any such defect or irregularity. Any incomplete, false, or misleading information provided by or through the Consultant shall be grounds for non-consideration. The City of Holbrook is an equal opportunity employer.
- 5.9 All costs associated with submittal preparation shall be borne by the offeror.
- 5.10 All submittals shall remain firm and fixed for a period of one hundred twenty (120) days following the closing date for the receipt of submittals.

**6.0 EVALUATION CRITERIA**



The following evaluation criteria will be used to determine the most highly qualified firm(s) for this solicitation:

<b>Understanding of the Tasks and Scope of Work: (4.5)</b>	<b>15 Points</b>
<b>Background/Available Resources (4.6)</b>	<b>15 Points</b>
<b>Qualifications (4.7)</b>	<b>25 Points</b>
<b>Experience (4.8)</b>	<b>25 Points</b>
<b>Quality Control (4.9)</b>	<b>10 Points</b>
<b>Results of Reference Checks (4.10)</b>	<b>10 Points</b>

**7.0 SELECTION PROCESS**

- 7.1 The selection process will be in strict accordance with Federal Aviation Advisory Circular 150/5100-14D, Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects, and 49CFR Part 18. The City of Holbrook will follow Arizona Revised Statutes 34, Chapters 1, 2, and 6 for the procedures for the selection of consultants.
- 7.2 Proposals will be reviewed for responsiveness, and responsive proposals will further be screened by a selection committee in accordance with the above criteria. The firm(s) submitting the most highly-rated proposals may be invited for interviews. If the City of Holbrook chooses to conduct interviews, the firm's Lead Representative(s) must be present.
- 7.3 The City of Holbrook reserves the right to make an award without further discussion of the submittal with the offeror. Therefore, the submittal should be submitted initially on the most favorable terms that the firm or individual may propose.
- 7.4 The City of Holbrook reserves the right to award a contract to the firm or individual who, in the sole judgment of the City of Holbrook, provides the most favorable responses to this RFQ pursuant to the Evaluation Criteria indicated above.
- 7.5 The City of Holbrook reserves the right to reject any or all submittals, or to waive minor irregularities in said submittals, or to negotiate minor deviations with the successful firm.
- 7.6 Fees will be negotiated for projects on a task order basis as grants or funding is obtained. Cost or fee information is not to be submitted with this proposal. The City of Holbrook may choose to enter directly into contract negotiations with the highest qualified consultant as determined by the selection committee. If the City of Holbrook is unable to negotiate a fair and reasonable fee, the City of Holbrook will terminate the negotiations. The City of Holbrook may choose to begin negotiations with the next most qualified consultant from the short list or may choose to re-initiate the selection process. Negotiations for each project will take place separately based on a defined work order. Fees for individual project will be negotiated as funding is obtained.

**8.0 ASSURANCE OF EXPERIENCED PROJECT TEAM**

- 8.1 Consultant shall assure that the designated staff including sub-consultants, are used for this the work described in this RFQ. Departure or reassignment of, or substitution for,

any member of the designated project team or sub-consultant(s) shall not be made without the prior written approval of the City of Holbrook.

- 8.2 The City of Holbrook's Representative shall have the authority to remove any personnel from any project; in the event of unsatisfactory performance by said personnel in the opinion of the City of Holbrook's Representative the Consultant shall provide qualified replacement staff acceptable to the City of Holbrook's Representative. The Consultant shall assign only experienced personnel to the work.

## 9.0 GENERAL TERMS & CONDITIONS

- 9.1 **Standard Contract.** Upon completion of the evaluation and recommendation for award, the selected firm will be required to execute a Professional Services Agreement. A sample is included as **Attachment "A"**. Consultants are advised to carefully review the attached contract. Any proposed exceptions, alterations or amendments shall be specified in your submittal, the nature of which may affect the evaluation of your submittal and the perceived ability to successfully award a contract to your firm/individual.
- 9.2 **Non-Appropriation.** The City of Holbrook may terminate any resulting contract at the end of any fiscal year, June 30<sup>th</sup>, without further liability other than payment of debt incurred during such fiscal year, should funds not be appropriated by its governing body to continue service for which the contract was intended.
- 9.3 **Conflict of Interest.** The Consultant shall warrant that no official or employee of the City of Holbrook has an interest, has been employed or retained to solicit or aid in the procuring of the resulting contract, nor that any such person will be employed in the performance of such contract without immediate divulgence of such fact to the City of Holbrook.
- 9.4 **Non-Collusion.** Firms submitting proposals shall warrant that their offer is made without any previous understanding, agreement or connection with any person, firm or corporation submitting a separate proposal for the same project and is in all respects fair, without outside control, collusion, fraud or otherwise illegal action. This condition shall not apply to proposals which are submitted by firms who have partnered with others to submit a cooperative proposal that clearly identifies a primary Consultant and the associated sub-consultants.
- 9.5 **Protests and Appeals.** In accordance with Section 15.0 of the City of Holbrook Procurement Policy Manual, any actual or prospective Consultant, offeror, or Consultant who is aggrieved in connection with the solicitation or award of a contract may appeal to the Procurement Director. The protest shall be submitted in writing to the Director of Procurement within five (5) working days after such aggrieved person or company knows, or should have known, of the facts giving rise thereto.
- 9.6 **Certification.** The following General Terms and Conditions shall apply to the Request for Qualifications for professional services.
- a. The submission of the bid/offer did not involve collusion or other anti-competitive practices.

- b. The Bidder/Offeror shall not discriminate against any employee, or applicant for employment in violation of Federal Executive Order 11246 and State Executive Order 75.5 and A.R.S. §31-1461 et. seq.
- c. The Bidder/Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid/offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in the rejection of the offer. Signing the bid/offer with a false statement shall void the bid/offer, any resulting Contract and may be subject to legal remedies provided by law.
- d. The Bidder/Offeror agrees to promote and offer to the City of Holbrook only those materials and/or services as stated in and allowed for under resultant Contract(s) as City of Holbrook Contract items.
- 9.7 **Gratuities.** The City of Holbrook may, by written notice to the Consultant, cancel this Contract if it is found by the City of Holbrook that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant, to any officer or employee of the City of Holbrook with a view toward securing a Contract, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is canceled by the City of Holbrook pursuant to this provision, the City of Holbrook shall be entitled, in addition to any other rights and remedies, to recover or to withhold from the Consultant the amount of the gratuity. Paying the expense of normal business meals which are generally made available to eligible City of Holbrook Government customers shall not be prohibited by this paragraph.
- 9.8 **Applicable Law.** This Contract shall be governed by, and the City of Holbrook 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 statutes pertaining specifically to the State. The Law of the State of Arizona shall govern this Contract, and suits pertaining to this Contract shall be brought only in Federal or State Courts in the State of Arizona.
- 9.9 **Arizona Procurement Code.** The Arizona Procurement Code (A.R.S. Title 41, Chapter 23) and the City of Holbrook Purchasing Policy are a part of this document as if fully set forth herein.
- 9.10 **Legal Remedies.** All claims and controversies shall be subject to A.R.S. §12-1518 et. al.
- 9.11 **Contract.** The Contract shall be based upon the solicitation issued by the City of Holbrook and bid/offer submitted by the Consultant in response to the solicitation. The bid/offer shall substantially conform to the terms; conditions and other requirements set for with the rest of the solicitation. The City of Holbrook reserves the right to clarify any contractual terms with the concurrence of the Consultant. However, any substantial non-conformity in the bid/offer shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the City of Holbrook and the

Consultant relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form.

9.12 **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.

9.13 **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 that may remain in effect without the invalid provision or application.

9.14 **Relationship of Parties.** It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. The Consultant is advised that taxes or Social Security payments shall not be withheld from a City of Holbrook payment

issued

hereunder and that Consultant should make arrangements to directly such expenses, if any.

9.15 **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 of this agreement. 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. Whenever a term defined by the City of Holbrook Purchasing Policy is used in this Contract, the definition contained in the Policy shall control.

9.16 **Assignment – Delegation.** The Consultant without prior written permission of the City of Holbrook shall assign no right or interest in this Contract, and no delegation of any duty of the Consultant shall be made without prior written permission of the City of Holbrook. The City of Holbrook shall not unreasonably withhold approval and shall notify the Consultant of the City of Holbrook's position within 15 days of receipt of written notice by the Consultant.

9.17 **Subcontracts.** The Consultant shall not enter into a subcontract with any other party to furnish any of the material, service or construction specified herein without the advance written approval of the City of Holbrook. All subcontracts shall comply with Federal and

State

Laws and Regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the sub-consultant were the Consultant referred to herein.

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The Consultant is responsible for Contract performance whether or not sub-consultants are used. The City of Holbrook shall not unreasonably withhold approval and shall notify Consultant of the City of Holbrook's position within 15 days of receipt of written notice by Consultant.

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9.18 **Rights and Remedies.** No provision in this document or in the Consultant's offer shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the even of any claim of default or breach of Contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, or the payment for materials or services, shall not release either party from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

9.19 **Warranties.** Consultant warrants that all material, service or construction delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material, service, or construction specified and any inspection incidental thereto by the City of Holbrook shall not alter or affect the obligations of the Consultant or rights of the City of Holbrook under the foregoing warranties. Additional warranty requirement may be set forth in this document.

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**Overcharges by Antitrust Violations.** The City of Holbrook maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Consultant hereby assigns to the City of Holbrook any and all claims for such overcharges as to the goods or services used to fulfill the Contract.

9.21 **Force Majeure.** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, Force Majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts or failures or refusal to act by government authority; and other similar occurrences beyond the control of the party declaring Force Majeure which such party is unable to prevent by exercising reasonable diligence. The Force Majeure shall be deemed to commence when the party declaring Force Majeure notifies the other party of the existence of the Force Majeure and shall be deemed to continue as long as the results or effects of the Force Majeure prevent the party from resuming performance in accordance with this agreement. Force Majeure shall not include the following occurrences:

- Late delivery of equipment or materials caused by congestion at a manufacturer's

plant or elsewhere, or an oversold condition of the market.

- Late performance by a sub-consultant unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by Force Majeure.

If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed certified return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so.

The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

- 9.22 **Right to Assurance.** Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 9.23 **Records.** Pursuant to provisions of A.R.S. Title 35, Chapter 1, Article 6, §35-214 and §35-215, each Consultant shall retain, and shall contractually require each sub-consultant to retain, all books, accounts, reports, files and other records relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced for the City of Holbrook.
- 9.24 **Advertising.** Consultant shall not advertise or publish information concerning this Contract without prior written consent of the City of Holbrook. The sponsor shall not unreasonably withhold permission.
- 9.25 **Licenses.** Consultant shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by the Consultant as applicable to the Contract.
- 9.26 **Preparation of Specifications by Persons Other than City of Holbrook Personnel.** All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City of Holbrook's needs in accordance with A.R.S. Chapter 23, Article 4. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.



9.27 **Cost of Bid Preparation.** The City of Holbrook shall not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.

9.28 **Public Record.** All bids and proposals submitted in response to this solicitation shall become the property of the City of Holbrook and shall become a matter of Public Record available for review, subsequent to the award notification. As provided by the City of Holbrook Purchasing Policy.

Proposals will be subject to disclosure under PRA (Public Records Act). Projects are subject to the provisions of Executive Order 11246. Affirmative Action to Ensure Equal Employment Opportunity and the Department of Transportation Regulations 49 CFR Part 26, Disadvantaged Business Enterprise participation. DBE firms are encouraged to submit and RFQ.

9.29 **Payment by the City of Holbrook.** Each payment obligation of the City of Holbrook created hereby is conditioned upon the availability of City of Holbrook, State, and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City of Holbrook and available for the continuance of services herein contemplated, the contract period for the service may be terminated by the City of Holbrook at the end of the period for which funds are available.

The City of Holbrook shall notify the Consultant at the earliest possible time which service will or may be affected by a shortage of funds. No penalty shall accrue to the City of Holbrook in the event this provision is exercised, and the City of Holbrook shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

**10.0 MANDATORY FEDERAL CONTRACT PROVISIONS FOR PROFESSIONAL SERVICES (A/E) CONTRACTS**

<b>Provision</b>	<b>Law/Statute</b>
<b>Provisions for all A/E Contracts</b>	
Civil Rights Act of 1964, Title VI - Contractor Contractual Requirements	49 CFR part 21
Airport and Airway Improvement Act of 1982, Section 520	49 USC § 47123
Disadvantaged Business Enterprise	49 CFR part 26
Lobbying and Influencing Federal Employees	49 CFR part 20
Access to Records and Reports	49 CFR § 18.36
Breach of Contract Terms	49 CFR § 18.36
Rights to Inventions	49 CFR § 18.36
Trade Restriction Clause	49 CFR part 30
<b>Additional Provisions for A/E Contracts Exceeding \$10,000</b>	
Termination of Contract	49 CFR § 18.36
<b>Additional Provisions for A/E Contracts Exceeding \$25,000</b>	
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion	49 CFR part 29



**This Section Left Intentionally Blank**

Attachment "A"

City of Holbrook Logo

**CITY OF HOLBROOK PROCUREMENT DEPARTMENT**

Address

Phone: (xxx) xxx-xxxx Fax: (xxx) xxx-xxxx

Website: www.name

**Professional Services Agreement**

*Insert Project Title*

**Agreement Number**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between CITY OF HOLBROOK, hereinafter referred to as the CITY OF HOLBROOK, and **Enter Consultants Name Here**, hereinafter referred to as the CONSULTANT.

**I. SCOPE OF SERVICES**

Subject to the terms and conditions set forth in this agreement, Consultant shall provide the services described in **Exhibit "A" Scope of Services**.

**II. COMPENSATION AND METHOD OF PAYMENT**

In consideration for the performance of the services described in the Scope of Services, the City of Holbrook shall pay the Consultant the total sum of \_\_\_\_\_.

The City of Holbrook will pay the Consultant following the submission of itemized invoices(s) for the services rendered. No payment shall be issued prior to receipt of material or service and a correct invoice. Each invoice must bear written certification by an authorized City of Holbrook representative confirming the services for which payment is requested have been performed. The City of Holbrook agrees to pay all properly documented invoices, for accepted work within thirty (30) days of receipt.

All notices, invoices and payment shall be made in writing and may be given by personal delivery or by mail.

The designated recipients for such notices, invoices and payments are as follows:

Consultant: **Enter Consultants Firm Name, Contact Person, Address and Phone Number**

City of Holbrook: City of Holbrook  
Department  
Address  
**Contact Person:**

**III. DURATION AND RENEWAL**

The Consultant shall not commence any billable work or provide any material or services under this Agreement until Consultant receives a purchase order, or is otherwise directed to do so in writing by the City of Holbrook Procurement Director or his designee. The Consultant shall complete all work to the satisfaction of the City of Holbrook in accordance with the Scope of Services.

This agreement shall be in effect **Five years from execution date.**

**IV. TERMINATION**

- A. The City of Holbrook may cancel this Agreement without penalty or further obligation pursuant to A.R.S. §38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City of Holbrook is or becomes, at any time while the Agreement or any extension of the Agreement is in effect any employee of, or Consultant to any other party to this Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when written notice from the City of Holbrook is received by the parties to this Agreement, unless the notice specifies a later time.
  
- B. This Agreement may also be terminated at any time by mutual written consent, or by the City of Holbrook, with or without cause, upon giving the thirty (30) days written notice to the Consultant. The City of Holbrook at its convenience, by written notice, may terminate this Agreement, in whole or in part. If this Agreement is terminated, the City of Holbrook shall be liable only for payment under the payment provisions of this Agreement for services rendered and accepted material received by the City of Holbrook before the effective date of termination.
  
- C. The City of Holbrook reserves the right to cancel the whole or any part of this Agreement due to failure of the Consultant to carry out any term, promise or condition of the Agreement. The City of Holbrook will issue a written ten (10) day notice of default to the Consultant for acting or failing to act any of the following, in the opinion of the City of Holbrook:
  - 1. Consultant provides personnel who do not meet the requirements of the Agreement;
  - 2. Consultant fails to adequately perform the stipulations, conditions, or services/specifications required in the Agreement;
  - 3. Consultant attempts to impose on the City of Holbrook personnel, materials, products, or workmanship that is not of an acceptable quality;
  - 4. Consultant fails to furnish the required service and/or product within the time stipulated in the Agreement;
  - 5. Consultant fails to make progress in the performance of the requirements of the Agreement and/or gives the City of Holbrook a positive indication that consultant will not or cannot perform to the requirements of the Agreement.

**V. ENFORCEMENT, LAWS AND ORDINANCES**

This agreement shall be enforced under the laws of the State of Arizona. Consultant must comply with all applicable federal, state, and local laws, ordinances, and regulations. Consultant shall ensure payment of all taxes, licenses, permits, and other expenses of any nature associated with the provision of services herein. Consultant shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Consultant.

**VI. INDEPENDENT CONSULTANT**

At all times the Consultant shall represent himself/herself to be an independent Consultant offering services to the general public and shall not represent himself/herself, of his/her employees, to be an employee of the City of Holbrook. Therefore, the Consultant shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agree to indemnify, save, and hold the City of Holbrook, its officers, agents and employees, harmless from and against, any and all loss, cost (including attorney fees), and damage of any kind related to such matters.

The Consultant is advised that taxes or social security payments shall not be withheld from a City of Holbrook payment issued hereunder and that Consultant should make arrangements to directly pay such expenses, if any. The City of Holbrook will not provide any insurance coverage to the Consultant including Workmen's Compensation coverage.

**VII. MODIFICATIONS**

This Agreement may only be modified by a written amendment signed by persons duly authorized to enter into Agreements on behalf of the City of Holbrook and the Consultant.

**VIII. WAIVER**

The failure of either party of this Agreement to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

**IX. INDEMNIFICATION**

Consultant shall indemnify, defend, save and hold harmless the City of Holbrook, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Consultant or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Consultant to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the

parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Consultant from and against any and all claims. It is agreed that Consultant will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Consultant agrees to waive all rights of subrogation against the City of Holbrook, its officers, officials, agents and employees for losses arising from the work performed by the Consultant for the City of Holbrook.

**X. INSURANCE**

Consultant and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The City of Holbrook in no way warrants that the minimum limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the work under this contract by the Consultant, its agents, representatives, employees or subcontractors, and Consultant is free to purchase additional insurance.

**A. MINIMUM SCOPE AND LIMITS OF INSURANCE:** Consultant shall provide coverage with limits of liability not less than those stated below.

**1. Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$ 50,000
• Each Occurrence	\$1,000,000

a. The policy shall be endorsed to include the following additional insured language: “The City of Holbrook, its departments, agencies, boards, commissions, and its officers, officials, agents, and employees shall be named as additional insured’s with respect to liability arising out of the activities performed by or on behalf of the Consultant”.

**2. Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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a. The policy shall be endorsed to include the following additional insured language: “The City of Holbrook , its departments, agencies, boards, commissions, and its officers, officials, agents, and employees shall be named as additional insured’s with respect to liability arising out of the activities performed by or on behalf of the Consultant, involving automobiles owned, leased, hired or borrowed by the Consultant”.

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

- a. This requirement shall not apply when a Consultant or subcontractor exempt under A.R.S. 23-901, and when such Consultant or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

4. **Professional Liability (Errors and Omissions Liability)**

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- b. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. The City of Holbrook, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by the Consultant, even if those limits of liability are in excess of those required by this Contract.
2. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources.
3. Coverage provided by the Consultant shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION:** With the exception of (10) day notice of cancellation for non-payment of premium, any changes material to compliance with this contract in the insurance policies above shall require (30) days written notice to the City of Holbrook. Such notice shall be sent directly to the City of Holbrook Representative, PO BOX 970, Holbrook AZ 86025 and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an "A.M. Best" rating of not less than A- VII. The City of Holbrook in no way warrants that the above-required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Consultant shall furnish the City of Holbrook with certificates of insurance (ACORD form or equivalent approved by the City of Holbrook) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the City of Holbrook before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the City of Holbrook Representative Ray Alley, PO BOX 970, Holbrook AZ 86025. The City of Holbrook project/contract number and project description shall be noted on the certificate of insurance. The City of Holbrook reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time

- F. **SUBCONTRACTORS:** Consultants' certificate(s) shall include all subcontractors as insured's under its policies or Consultant shall furnish to the City of Holbrook separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the WHO, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
- H. **EXCEPTIONS:** In the event the Consultant or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the Consultant or sub-contractor(s) is/are a City of Holbrook agency, board, commission, or university, none of the above shall apply.

#### XI. **MISCELLANEOUS PROVISIONS**

- A. No assignment of this Agreement or sub-agreement shall be made by the Consultant with any other party for furnishing any of the services herein contracted for without the advance written approval of the City Manager of City of Holbrook.

All sub-consultants shall comply with Federal and State laws and regulations which are applicable to the services covered by the sub-agreement and shall include all the terms and conditions set forth herein which shall apply with equal force to the sub-agreement, as if the sub-consultant were the Consultant referred to herein. The Consultant is responsible for Agreement performance whether or not sub-consultants are used.

- B. The Consultant shall establish and maintain procedures and controls that are acceptable to the City of Holbrook for the purpose of assuring that no information contained in its records or obtained from the City of Holbrook or from others in carrying out its functions under the Agreement shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Agreement. Persons requesting such information must be referred to the City of Holbrook.
- C. All services, information, computer program elements, reports, and other deliverables which may have a potential patent or copyright value and which are created under this Agreement shall be the property of the City of Holbrook and shall not be used by the

Consultant or any other person except with the prior written permission of the City of Holbrook.

- D. This Agreement is subject to the provisions of A.R.S. Sec. 38-511.
- E. The Consultant shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable Federal regulations under the Act.

**XII. LEGAL ARIZONA WORKERS ACT COMPLIANCE:**

Consultant hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to Consultant's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The Consultant shall further ensure that each sub-consultant who performs any work for the Consultant under this Agreement likewise complies with the State and Federal Immigration Laws.

The City of Holbrook shall have the right at any time to inspect the books and records of the Consultant and any sub-consultant in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of the Consultant's or any sub-consultant's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Agreement subjecting the Consultant to penalties up to and including suspension or termination of this Agreement. If the breach is by a sub-consultant, and the sub-agreement is suspended or terminated as a result, the Consultant shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the sub-agreement or retain a replacement sub-consultant, (subject to City of Holbrook approval if MWBE preferences apply) as soon as possible so as not to delay project completion.

The Consultant shall advise each sub-consultant of the City of Holbrook's rights, and the sub-consultant's obligations, under this Section by including a provision in each sub-agreement substantially in the following form:

"The sub-consultant hereby warrants that it will at all times during the term of this Agreement comply with all federal laws applicable to the sub-consultant's employees and with the requirements of A.R.S. §23-214(A). The sub-consultant further agrees that the City of Holbrook may inspect the sub-consultant's books and records to insure that the sub-consultant is in compliance with these requirements. Any breach of this paragraph by the sub-consultant will be deemed to be a material breach of this Agreement subjecting the sub-consultant to penalties up to and including suspension or termination of this Agreement."

Any additional costs attributable directly or indirectly to remedial action under this Section shall be responsibility of the Consultant. In the event that remedial action under this Section results in delay to one or more tasks on the critical path of the Consultant's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which the Consultant shall be entitled to an extension of time, but not costs.

**XIII. FOREIGN INVESTMENT AND BUSINESS OPERATIONS:**

By signing this agreement Consultant certifies that it does not have scrutinized business operations in Iran and Sudan as per A.R.S sec. 35-297.

This Agreement represents the entire agreement between the CITY OF HOLBROOK and the CONSULTANT relating to this requirement and shall prevail over any and all previous verbal and written agreements.

**CONSULTANT:**

**APPROVED:**

CITY OF HOLBROOK

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Title

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Title

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Address

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Address

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Date

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Clerk of the Board

**ATTEST:**

**APPROVED AS TO FORM:**

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City of Holbrook Attorney

EXHIBIT "A" – SCOPE OF SERVICES

***Enter Consultants Scope of Work Here***